STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	DECISION DTA NO. 825752
MAYRA GUFFIN	:	
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2007.	:	

Petitioner, Mayra Guffin, filed an exception to the determination of the Administrative Law Judge issued on January 23, 2014. Petitioner appeared by Philip Duncan, EA. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel).

Petitioner filed a brief in support of her exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioner filed a letter brief in lieu of a formal reply brief. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claim for refund of personal income taxes paid.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. We have also made additional findings of fact numbered 4 through 8 herein. We make these changes to more throughly reflect the record. The Administrative Law Judge's findings of fact and the additional

findings of fact are set forth below.

1. Petitioner, Mayra Guffin, a California resident, timely filed a 2007 New York State Nonresident and Part-Year Resident Income Tax Return (Form IT-203) by the April 15, 2008 deadline. On her return, petitioner reported total New York State personal income tax due of $27,254.00, paid by $968.00 in withholding and $26,286.00 with the return. A copy of a W-2 associated with the return reports New York wages for petitioner.

2. Petitioner filed an amended 2007 New York State Nonresident and Part-Year Resident Income Tax Return (Form IT-203-X) on July 20, 2012, claiming a refund of $27,339.00.[1] A corrected W-2 (Form W-2c) attached to the return reports zero New York wages for petitioner.

3. On November 20, 2012, the Division of Taxation (Division) issued a Notice of Disallowance that denied petitioner's refund claim as untimely.

4. In her petition, petitioner asserted that: (1) she did not live or work in New York during 2007; (2) her employer erroneously issued to her a W-2 reporting New York wages; (3) she paid the balance due with her return as a good faith payment to avoid paperwork and any issues with her credit; (4) she relied upon the advice of tax professionals that she needed the corrected W-2 showing that she did not have New York income prior to filing an amended return; (5) she requested her employer to issue a corrected W-2 soon after filing the original return; (6) her employer "severely delayed" issuing the corrected W-2; and (7) she filed her claim for refund as set forth in the amended return as soon as she received the corrected W-2 from her employer.

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[1] The petition seeks a refund of $26,371.00. There is no explanation in the record for the relatively small differences between the tax reported due on the original return, the amount claimed as a refund on the amended return and the amount claimed in the petition.

5. It is conceded in the petition that the claim for refund was filed after the expiration of the statute of limitations set forth in Tax Law § 687 (a).

6. The Division filed its answer to the petition denying the facts as set forth in the petition and affirmatively setting forth more limited facts (for example, stating that the original return was filed, but not addressing whether the W-2 was incorrect or whether petitioner did or did not live or work in New York).

7. Petitioner did not respond to the motion of the Division for summary determination.

8. On exception, petitioner asserts that at the time she paid the tax, she mistakenly believed that although she did not live or work in New York, her income was subject to tax in New York, because her employer was based in New York and paid her from New York.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The case was presented to the Administrative Law Judge in the form of a motion for summary determination filed by the Division. As petitioner did not respond to the Division's motion, the Administrative Law Judge found that petitioner was deemed to have conceded that there existed no question of fact that would require a hearing.

The Administrative Law Judge then noted that pursuant to Tax Law § 687 (a), a claim for refund or credit of an overpayment of personal income tax must be filed within three years from the date the return was filed or two years from the date that the tax was paid, whichever occurs later. The Administrative Law Judge concluded that petitioner's claim for refund was late-filed as it was due by April 15, 2011, and not filed until July 20, 2012.

The Administrative Law Judge found that even if the sympathetic circumstances described by petitioner were assumed to be true, the statute of limitations must be strictly adhered

to and is "not open to discretionary change by the courts no matter how compelling the circumstances" (***Cohen v Pearl River Union Free School Dist.***, 70 AD2d 94, 99 [1979] ***revd on other grounds*** 51 NY2d 256 [1980]).

Finally, the Administrative Law Judge concluded that issue had not been joined regarding the question of whether petitioner was entitled to relief under the special refund authority of Tax Law § 697 (d). Therefore, the Administrative Law Judge did not address the question in his determination.

ARGUMENTS ON EXCEPTION

Petitioner argues that issue was joined on the question of whether she is entitled to relief under the special refund authority of Tax Law § 697 (d), as she raised the issue through the facts presented and relief requested in her petition, and she was not required to argue entitlement to relief under a particular section of the Tax Law. Furthermore, this was evidenced by the Division presenting arguments against the application of the special refund authority of Tax Law § 697 (d) in its motion for summary determination. Petitioner asserts that at the time the overpayment of tax was made, she believed that her income was earned in New York because her employer was based in New York and it was not until after making the overpayment that she learned of her mistake through discussions with a tax professional and then attempted to correct it. Petitioner argues that this is a mistake of fact allowing for the application of the special refund authority of Tax Law § 697 (d) and that such authority should be exercised under the circumstances of this case (i.e., where petitioner did not owe the taxes that she paid).

The Division asserts that the Administrative Law Judge correctly concluded that the Division properly disallowed petitioner's claim for refund as untimely pursuant to Tax Law

§ 687 (a). Furthermore, the Division contends that the Administrative Law Judge correctly held that petitioner did not raise the issue of the application of the special refund authority under Tax Law § 697 (d) because she did not specifically mention it in her petition and she chose not to respond to the Division's motion for summary determination, thereby conceding that there were no questions of fact requiring a hearing. Thus, the Division argues that petitioner may not now raise issues of fact before this Tribunal. Finally, citing ***Matter of Wallace***, Tax Appeals Tribunal, October 11, 2001, the Division asserts that the special refund authority contained in Tax Law § 697 (d) may not be invoked in this case because petitioner made an overpayment of tax based upon a mistake of law and not a mistake of fact.

OPINION

We agree with the ultimate conclusion of the Administrative Law Judge denying the petition in this matter, based upon the reasoning set forth below.

Tax Law § 687 (a) provides that an application for a refund or credit of an overpayment of tax shall be made within two years after the tax was paid or three years after the return was filed, whichever is later. The Division has shown, and petitioner conceded, that her application for a refund as set forth in the amended return filed on July 20, 2012 was filed after the expiration of the relevant statute of limitations on April 15, 2011. As noted by the Administrative Law Judge, no matter how sympathetic the circumstances, the statute of limitations "must be strictly adhered to" (***Kavanagh v Noble***, 332 US 535, 539 [1947]) and is "not open to discretionary change by the courts no matter how compelling the circumstances" (***Cohen v Pearl River Union Free School Dist.*** at 99).

Thus, the crux of this matter is whether issue was joined on the question of the

applicability of the special refund authority contained in Tax Law § 697 (d), and, if so, whether petitioner is entitled to relief under the statute.

We find that issue was joined and that petitioner is entitled to a substantive review of whether relief under Tax Law § 697 (d) is appropriate. In the petition, petitioner asserted that: (1) she did not live or work in New York during 2007; (2) her employer erroneously issued to her a W-2 reporting New York wages; (3) she paid the balance due with her return as a good faith payment to avoid paperwork and any issues with her credit; (4) she relied upon the advice of tax professionals that she needed the corrected W-2 showing that she did not have New York income prior to filing an amended return; (5) she requested her employer to issue a corrected W-2 soon after filing the original return; (6) her employer "severely delayed" issuing the corrected W-2; and (7) she filed her claim for refund as set forth in the amended return as soon as she received the corrected W-2 from her employer. Furthermore, it is conceded in the petition that petitioner's claim for refund was filed after the expiration of the statute of limitations set forth in Tax Law § 687 (a). We agree with petitioner that the assertion of these facts, considered together with the concession that the claim for refund was filed after the expiration of the statute of limitations, can be construed as requesting relief under the special refund authority of Tax Law § 697 (d). As no other relief was available to petitioner at the time she filed her application for refund, this is a rational construction. Furthermore, the Division suffered no prejudice in the preparation of its case from petitioner's failure to specifically mention Tax Law § 697 (d), in that the Division addressed the special refund authority issue in its motion for summary determination. Therefore, it is concluded that issue was joined once the Division filed its answer

in this matter.[2]

That said, petitioner has not shown that she is entitled to relief under the special refund authority of Tax Law § 697 (d).

Tax Law section 697 (d) provides as follows:

> "(d) Special refund authority. -- Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, ***or paid by such taxpayer or other person under a mistake of facts***, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller" (Emphasis added).

Petitioner does not assert that "any moneys have been erroneously or illegally collected," but rather that her payment of taxes was made "under a mistake of facts." In determining the facts of this case, we first consider that by failing to respond to the motion of the Division for summary determination, petitioner has conceded that the facts as presented in the affidavits submitted by the Division are correct (***see Kuehne & Nagel v Baiden***, 36 NY2d 539, 544 [1975]; ***Whelan v GTE Sylvania***, 182 AD2d 446 [1992]). However, the facts asserted in the Division's supporting affidavits dealt with the timing of the filing of the returns and not the circumstances surrounding the filing of the returns. For those facts, we turn to the petition, because in reviewing a motion for summary determination, the evidence must be viewed in a manner most favorable to the party opposing the motion (***Museums at Stony Brook v Village of Patchogue Fire Dept.,*** 146 AD2d 572, 573-74 [1989]; ***see also Weiss v Garfield***, 21 AD2d 156, 158 [1964])

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[2] As it is concluded that issue was joined at the time the Division filed its answer, petitioner's failure to respond to the Division's motion for summary determination is not relevant to the question of whether issue was joined.

and such evidence includes the petition (20 NYCRR 3000.9 [b] [1]).

According to the petition, petitioner knew where she lived and worked during 2007 and specifically knew that she did not live or work in New York State. Furthermore, the explanation for the payment of the tax in the first instance is that petitioner made a "good faith" payment of tax until such time as she could get a corrected W-2 and file an amended return. She hoped that by making such a "good faith" payment, she would avoid any paperwork entanglements and any effect that the nonpayment of the tax might have on her credit. Indeed, the facts set forth in the petition indicate that petitioner did not even think that tax was due at the time she paid the tax, but rather proceeded under the misguided assumption that she could not take a position in contradiction of the W-2 issued by her employer.[3]

Looking at the these asserted facts in a light most favorable to petitioner, we are unable to see any mistake of fact made by petitioner. As has previously been explained by this Tribunal, a mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (***see Wendel Found. v Moredall Realty Corp.***, 176 Misc 1006, 1009 [1941]; ***see also Matter of Cassos***, Tax Appeals Tribunal, September 30, 2010*;* ***Matter of Wallace***). Whereas, a mistake of law has been defined as acquaintance with facts as they really are, but a mistaken belief regarding the legal consequences following from those facts (***see Wendel Found. v Moredall Realty Corp.*** at 1009; ***see also Matter of Cassos***; ***Matter of Wallace***). In this matter, petitioner was mistaken as to the ability to file a return inconsistent with the erroneous W-2

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[3] On exception, petitioner asserts that at the time she paid the tax, she mistakenly believed that although she did not live or work in New York, her income was subject to tax in New York, because her employer was based in New York and paid her from New York. To the extent that such facts as asserted by petitioner on exception differ from those in the petition, those facts will not be considered by the Tribunal (***see Matter of Ippolito***, Tax Appeals Tribunal, August 23, 2012, ***sub nom Matter of Ippolito v Commissioner of N.Y. State Dept. of Taxation & Fin.*** 116 AD3d 1176 [2014]; ***see also Matter of Schoonover***, Tax Appeals Tribunal, August 15, 1991).

issued by her employer, and about the legal consequences of failing to file such a return within the applicable statute of limitations. Petitioner was not mistaken as to where she lived and worked. Thus, petitioner's ignorance or misapprehension of the legal consequences following from the known facts is clearly a mistake of law. As such, petitioner is not entitled to relief under the special refund authority of Tax Law § 697 (d) (***See Nathel v Commissioner of Taxation & Fin. of State of N.Y.***, 232 AD2d 836, 837 [1996], [not entitled to refund under special refund authority where the taxpayer knew the facts but failed to take an authorized deduction]; ***Matter of Goodspeed***, Tax Appeals Tribunal, January 29, 2009 [not entitled to refund under special refund authority where the taxpayer knew the facts but was mistaken as to whether New York or Maine was entitled to tax income from the gain of the sale of real property in Maine]).

For the reasons set forth herein, we affirm the determination of the Administrative Law Judge.

Accordingly it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Mayra Guffin is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Mayra Guffin is denied; and

4. The Notice of Disallowance, dated November 20, 2012, is sustained.

DATED: Albany, New York
September 18, 2014

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner