

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
	:	
of	:	
	:	
<b>BRENDA WILLIAMS</b>	:	DECISION
	:	DTA NO. 830688
for Redetermination of a Deficiency or for Refund of	:	
New York State and City Personal Income Tax under	:	
Article 22 of the Tax Law and the Administrative Code	:	
of the City of New York for the Year 2013.	:	

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Petitioner, Brenda Williams, filed an exception to the determination of the Administrative Law Judge issued on March 9, 2023. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Colleen McMahon, Esq., of counsel).

Petitioner did not file a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a reply brief. Oral argument was not requested. The six-month period for the issuance of this decision began on June 20, 2023, the date that petitioner's reply brief was received.

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

***ISSUE***

Whether the Division of Taxation's denial of petitioner's claim for refund of personal income tax for the year 2013, upon the basis that the claim was filed after the expiration of the period of limitations, was proper and should be sustained.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. Those facts appear

below.

1. Petitioner, Brenda Williams, filed her 2013 New York State resident income tax return (return), form IT-201, on February 6, 2014. On line 80 of her return, petitioner reported total tax due in the amount of \$3,925.00, which amount was not paid when the return was filed.

2. On June 6, 2014, the Division of Taxation (Division) issued a notice and demand, assessment number L-041381477, to petitioner for the amount of tax due as reported on her return and it imposed interest and penalty for a total amount due of \$4,004.52.

3. Subsequently, petitioner entered into an installment payment agreement with the Division to pay the outstanding tax liability. Petitioner began making payments on February 26, 2015 and continued doing so until the liability was fully satisfied on December 5, 2016.

4. On December 3, 2020, petitioner filed an amended New York State resident income tax return, form IT-201X, for the tax year 2013, requesting a refund of \$4,905.00.

5. On December 18, 2020, the Division issued to petitioner an account adjustment notice that denied the refund claimed in her amended return as untimely filed pursuant to Tax Law § 687 (a).

6. On December 22, 2020, the Division issued a notice of adjusted assessment (notice) that reiterated that petitioner's claim for refund was denied.

7. Petitioner filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice. A conciliation order, CMS No. 328609, dated August 20, 2021, was issued to petitioner that sustained the denial of the refund claim.

8. On October 1, 2021, petitioner filed a timely petition with the Division of Tax Appeals in protest of the conciliation order.

9. The Division filed a motion for summary determination pursuant to 20 NYCRR 3000.9 (b) on November 15, 2022. Accompanying the motion was an affirmation of Colleen McMahon, Esq., dated November 10, 2022, and the affidavit of Robin McNamara, dated November 8, 2022, with attached exhibits.

10. Ms. McNamara is a Taxpayer Services Specialist II in the Division's Individual Liability Resolution Center (ILRC). She has held her current position for four years and has worked for the Division for eight years. Ms. McNamara's responsibilities include supervising resolvers who handle protests of personal income tax returns and overseeing ILRC cases before BCMS.

In performance of her responsibilities, Ms. McNamara reviewed the information in the Division's systems including correspondence, case contacts, filing history and other documents for petitioner, including both her return and amended return for the tax year 2013. Ms. McNamara affirms that the Division received a return from petitioner for tax year 2013 on February 6, 2014, reporting tax due in the amount of \$3,925.00. Thereafter, she affirms that a notice and demand was issued to petitioner and that petitioner entered into an installment payment agreement for the tax liability for 2013 as set forth in the notice and demand. Ms. McNamara affirms that the terms of the installment payment agreement were fully satisfied by December 5, 2016. Ms. McNamara further affirms that the Division received an amended return for tax year 2013 from petitioner on December 3, 2020. Ms. McNamara states that an account adjustment notice – personal income tax was issued to petitioner on December 22, 2020, denying the refund claim asserted in the amended return based on the fact that the statute of limitations for filing a claim for refund had expired. Ms. McNamara affirms that she conducted a review of the Division's official records and that no amended return was filed by petitioner for tax year

2013 prior to December 5, 2018, two years from the date petitioner completed payment of her 2013 income tax liability.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge determined that petitioner's refund claim, made by filing her amended 2013 New York State resident income tax return, was filed beyond the period of limitations, and therefore properly denied. The Administrative Law Judge thus granted the Division's motion for summary determination and denied the petition.

***ARGUMENTS ON EXCEPTION***

Petitioner contends that the Division's denial of her refund claim is unfair. Petitioner notes that the Division accepted and processed her amended return. She questions why, given that circumstance, her refund claim was denied.

The Division contends that the Administrative Law Judge correctly determined that petitioner's refund claim was untimely filed and therefore properly denied.

***OPINION***

The Administrative Law Judge properly granted the Division's motion for summary determination.

There are no relevant facts in dispute in the present matter. Petitioner filed her 2013 New York return on February 6, 2014. Pursuant to Tax Law § 687 (h), that return was deemed filed on April 15, 2014. Petitioner completed her payment of the liability reported due on the 2013 return on December 5, 2016. Petitioner filed her 2013 amended New York return on December 3, 2020.

Tax Law § 687 (a) provides that a claim for refund of an overpayment of income tax must be filed by the taxpayer within three years from the time the return was filed or within two

years from the time the tax was paid, whichever period expires the latest. Here, the period that expires the latest is two years from the time the tax was paid.

As noted, petitioner completed her payment of the tax reported due on her original 2013 return on December 5, 2016. Her refund claim, made with her amended 2013 return, was filed about four years later, on December 3, 2020. Petitioner's refund claim was thus filed well after the two-year limitations period expired. Tax Law § 687 (e) expressly precludes the granting of any refund where a claim is filed beyond the period of limitations, with exceptions not relevant here.

Regarding petitioner's fairness argument, the record does not establish whether petitioner overpaid her New York income tax liability for 2013. Even assuming that she did overpay, the law is clear that statutes of limitations, such as Tax Law § 687 (a), "must be strictly adhered to" (*Kavanagh v Noble*, 332 US 535, 539 [1947] *rehearing denied* 332 US 850 [1948]) and are "not open to discretionary change . . . no matter how compelling the circumstances" (*Cohen v Pearl River Union Free School Dist.*, 70 AD2d 94, 99 [2d Dept 1979] *revd on other grounds* 51 NY2d 256 [1980]; *see also Matter of Wasserman*, Tax Appeals Tribunal, May 10, 2001).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Brenda Williams is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Brenda Williams is denied; and
4. The Division of Taxation's denial of petitioner's refund claim is sustained.

DATED: Albany, New York  
December 7, 2023

/s/ Anthony Giardina  
Anthony Giardina  
President

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner

/s/ Kevin A. Cahill  
Kevin A. Cahill  
Commissioner