

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JILL SCHWARTZ : DETERMINATION
for Redetermination of a Deficiency of for Refund of : DTA NO. 826230
New York State Personal Income Tax under Article 22 :
of the Tax Law for the Year 2007. :

Petitioner, Jill Schwartz, filed a petition 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.

A hearing was held before Barbara J. Russo, Administrative Law Judge, in New York, New York, on June 17, 2015 at 10:30 A.M., with all briefs to be submitted by September 2, 2015, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Leo Gabovich).

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for credit or refund for the 2007 tax year on the basis that the claim was filed after the applicable statute of limitations for credit or refund had expired.

FINDINGS OF FACT

1. Petitioner, Jill Schwartz, timely filed her 2007 resident income tax return, form IT-201, on April 11, 2008, reporting taxable interest income in the amount of \$17,281.00, a capital gain in the amount of \$200,125.00, a New York City school tax credit of \$145.00 and tax due of \$21,773.00. Together with her 2007 return, petitioner sent a check, dated April 11, 2008, for the

amount of tax reported due of \$21,773.00. The check was processed by New York State on April 15, 2008.

2. Petitioner filed an amended 2007 resident income tax return, form IT-201-X, dated March 16, 2011, claiming a refund in the amount of \$21,918.00, which consisted of the amount paid with the original return of \$21,773.00, plus the claimed New York City school tax credit of \$145.00. Petitioner's amended return states the reason for the amendment as "sale of residence" and includes an amended schedule D, Capital Gains and Losses, reporting a home sale price of \$203,193.00 and a cost basis of \$203,193.00, resulting in no gain, and claiming an Internal Revenue Code § 121 exclusion.

3. The Division of Taxation (Division) issued a Notice of Disallowance, dated October 17, 2011, to petitioner, which stated:

"Section 687 of the New York State Tax Law states that the deadline for claiming a refund expires 3 years from the date the return was due or 2 years from the date the tax was paid. Therefore, for tax year 2007, the refund requested is out of statute."

The Notice of Disallowance does not indicate the date the refund claim was filed.

4. The Division issued an Account Adjustment Notice, dated August 23, 2011, in response to petitioner's amended 2007 return. The Account Adjustment Notice indicates an original due date of April 15, 2008, a return file date of May 9, 2011, and states that petitioner is not entitled to a refund.

5. The Division submitted into the record a copy of petitioner's amended 2007 return, dated March 16, 2011, along with a copy of an envelope addressed to the State Processing Center, which appears to have contained the amended return. The postmark on the envelope is

not legible.

6. The Division submitted into the record an affidavit of Robert Stephens, a Taxpayer Services Specialist 2 in the Division's Individual Liability Resolution Unit. Mr. Stephens states that in October 2011, he reviewed Ms. Schwartz's resident income tax return, amended resident income tax return and letters from Sandra Karas, Coordinator of the Volunteer Income Tax Assistance (VITA) program, and petitioner's doctor. Mr. Stephens states that based on his review of petitioner's individual protest case, he issued a notice of disallowance dated October 21, 2011, denying the refund requested because refund claims expire "either after three years the return is due or two years after the tax is paid."¹ Mr. Stephens further states in the affidavit that petitioner paid the tax on April 11, 2008 and filed an amended return seeking a refund on March 16, 2011.

7. During the hearing, the Division's representative confirmed that petitioner's amended return requesting a refund for 2007 was filed on March 16, 2011. The Division's representative further stated that the Division does not dispute petitioner's underlying request for refund and only contends that such request was untimely because it was filed more than two years after the tax was paid.

CONCLUSIONS OF LAW

A. As relevant to this proceeding, Tax Law § 687, entitled "Limitations on credit or refund" provides as follows:

"(a) General. --- Claim for credit or refund of an overpayment of

¹ It is noted that, although Mr. Stephens states in his affidavit that he issued a Notice of Disallowance dated October 21, 2011, the Notice of Disallowance in the record is dated October 17, 2011. The Division offered no explanation for the discrepancy.

income tax shall be filed by the taxpayer within (i) three years from the time the return was filed, (ii) two years from the time the tax was paid . . . whichever of such periods expires the latest, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim”

B. For the year at issue, petitioner timely filed her return and submitted payment of taxes reported due on her return on April 11, 2008. The check was processed by the state on April 15, 2008. Pursuant to Tax Law § 687(h), any return filed before the last day prescribed for the filing thereof (i.e., April 15), shall be considered as filed on such last day. Similarly, Tax Law § 687(i) provides that any tax paid by the taxpayer before the last day prescribed for its payment shall be deemed to have been paid “on the fifteenth day of the fourth month following the close of his taxable year with respect to which such amount constitutes a credit or payment,” i.e., April 15, 2008. Accordingly, petitioner’s return and payment are deemed to have been filed on April 15, 2008. In order to be entitled to a refund for 2007, petitioner would be required to file a claim for such refund within three years from the time the return was filed (i.e., April 15, 2011), or two years from the time the tax was paid (i.e., April 15, 2010), “whichever of such periods expires the latest” (Tax Law § 687[a]). In this case, since petitioner timely filed her 2007 return on April 15, 2008, the three year period applies, and petitioner had until April 15, 2011 to file a refund request. The Division concedes that petitioner’s amended return requesting a refund for tax year 2007 was filed on March 16, 2011. As such, petitioner’s refund request falls within the three-year statute of limitations set forth in Tax Law § 687 and is timely.

C. The Division argues that the two-year period from the time of payment, rather than the three-year period from the time of filing a return, applies. However, the Division does not contend that petitioner failed to file a return for 2007, which would invoke the two-year period from payment date. Instead, the Division argues that because petitioner paid the tax on April 11, 2008, the same date she filed her 2007 return, she was required to request a refund within two years of that payment date. The Division's argument ignores the plain language of the statute which states that a claim for refund shall be filed within three years from the time the return was filed or two years from the time the tax was paid, "whichever of such periods expires the latest." Since petitioner's payment was made simultaneously with the filing of her 2007 return, the three-year period pertains, and the Division improperly denied petitioner's refund claim.

D. The petition of Jill Schwartz is granted and the Division's Notice of Disallowance dated October 17, 2011 is canceled.

DATED: Albany, New York
February 18, 2016

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE