

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :

of :

**CHANDRAMATTIE SINGH** :

DETERMINATION  
DTA NO. 850216

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 2017. :

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Petitioner, Chandramattie Singh, 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 year 2017.

A formal hearing was held before Barbara J. Russo, Administrative Law Judge, in Brooklyn, New York, on April 17, 2024, at 12:00 p.m., with the final brief to be submitted by July 31, 2024, 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. (Daniel Schneider, Esq., of counsel).

***ISSUE***

Whether petitioner has established that the Division of Taxation improperly denied her claim for refund of personal income tax for the year 2017, on the basis that the claim was filed after the expiration of the period of limitations.

***FINDINGS OF FACT***

1. On March 3, 2018, petitioner, Chandramattie Singh, electronically filed a New York State resident income tax return, form IT-201, for the year 2017 (return). Petitioner reported \$25,056.00 of New York adjusted gross income and New York State tax of \$470.00 on the

return. After claiming tax withheld from wages of \$689.00, petitioner claimed a refund of \$219.00.

2. The Division of Taxation (Division) issued petitioner a refund in the amount of \$219.00 for tax year 2017.

3. Petitioner filed an amended federal return, form 1040X, for tax year 2017 (amended 2017 federal return), which was received by the Internal Revenue Service (IRS) on September 2, 2020. Correspondence from petitioner's tax preparer, Carlos Linares at Liberty Tax Service, indicates that the amended 2017 federal return was sent to petitioner to be signed and mailed on August 7, 2020. The record is unclear as to what date the amended 2017 federal return was filed. The amended 2017 federal return revised petitioner's adjusted gross income from \$25,056.00 as reported on the original 2017 federal return to zero and requested a federal refund of \$608.00.

4. According to correspondence, dated September 13, 2021, from Clara Somodi, office manager of Liberty Tax Service, petitioner also filed an amended New York State resident income tax return for the year 2017 on August 7, 2020.

5. Petitioner testified that she subsequently called the Division on multiple occasions to inquire about her 2017 amended New York State resident income tax return and the status of her refund request and was informed that the amended return had not been received.

6. On August 23, 2021, the IRS issued a change to petitioner's 2017 federal taxable income (federal changes). The federal changes made the changes to petitioner's taxable income as requested by petitioner's amended 2017 federal return and issued a federal refund in the amount of \$608.00.

7. On August 23, 2021, petitioner filed a New York State amended resident income tax return, form IT-201-X, for the year 2017 (amended return). On the amended return, petitioner reported the same federal adjusted gross income as that reported on her amended 2017 federal return (zero) and accepted by the federal changes, reported no New York adjusted gross income and no New York State tax, reported payments of \$844.00, consisting of tax withheld in the amount of \$689.00, New York City school tax credit of \$63.00, and an amount paid with the original return of \$92.00, and requested a refund of \$844.00.<sup>1</sup>

8. On September 3, 2021, the Division issued an account adjustment notice denying the refund claimed on petitioner's amended return for the year 2017 on the basis that the amended return was not timely filed. The account adjustment notice recalculated petitioner's federal adjusted gross income to zero, recomputed New York tax due to zero, and listed expired payments and credits in the amount of \$533.00, consisting of New York City school tax credit of \$63.00 and tax withheld of \$689.00.

9. On September 13, 2021, in response to the Division's account adjustment notice, Ms. Somodi of Liberty Tax Service sent correspondence to the Division on behalf of petitioner. The correspondence stated that petitioner's amended return was prepared and mailed on August 7, 2020. The correspondence further stated that after not hearing from the Division, petitioner called and was told that the amended return was not received, and she then resent the amended return on August 23, 2021. The correspondence also stated that the post office receipt for the filing of petitioner's amended return was destroyed by flooding from Hurricane Ida. Attached to this correspondence was a copy of correspondence, dated August 7, 2020, from Liberty Tax

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<sup>1</sup> There is no evidence in the record that petitioner paid \$92.00 with the original return. The original return only reported total payments of \$689.00 from New York State tax withheld (*see* finding of fact 1).

Service to petitioner regarding the filing of her amended 2017 federal return (*see* finding of fact 3), the Division's account adjustment notice, correspondence from the IRS, dated July 1, 2021, acknowledging receipt of petitioner's amended 2017 federal return on September 2, 2020, copies of various identification and health insurance cards for petitioner, and a United States Postal Service (USPS) receipt, dated September 13, 2021, indicating that a letter was sent on that date to an Albany, New York, address via first class mail.

10. Petitioner filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) protesting the account adjustment notice. By order dated July 8, 2022 (CMS No. 000332706), the conciliation conferee sustained the statutory notice.

11. On July 14, 2022, petitioner filed a timely petition with the Division of Tax Appeals protesting the BCMS order.

12. During the hearing, the Division introduced an affidavit of Tonya Wollman, sworn to on March 26.<sup>2</sup> Ms. Wollman is a Taxpayer Services Specialist 2 in the Division's Individual Liability Resolution Center (ILRC). Ms. Wollman has been employed with the Division since 2011 and has held her current position since April 2023. Ms. Wollman's duties include managing and supervising ILRC staff on personal income tax assessments and protests. As part of her responsibilities, she reviews information in the Division's systems, including correspondence, case contacts, filing history and other documents that are part of the Division's official records and kept in the ordinary course of business. Ms. Wollman reviewed the information in the Division's systems regarding petitioner and affirmed that petitioner did not

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<sup>2</sup> The jurat of the notary public, Daniel Schneider, who acknowledged Ms. Wollman's signature on the affidavit states, "Sworn to before me this 26<sup>th</sup> day of March," and does not provide a year. Mr. Schneider, who was the Division's representative during the hearing, stated on the record that the affidavit was prepared on March 26, 2024.

file an amended resident income tax return for 2017 prior to the amended 2017 return filed on August 23, 2021.

13. In further support of its account adjustment notice, the Office of Budget and Management Analysis, Disclosure and Government Exchange, conducted an additional search of the Division's records and certified that petitioner's return was filed on March 3, 2018, the amended return was filed on August 23, 2021, and that no other personal income tax returns or extensions were filed by petitioner for tax year 2017.

### ***CONCLUSIONS OF LAW***

A. It is initially noted that petitioner bears the burden of proof to establish, by clear and convincing evidence, that the Division's disallowance of the claimed refund is erroneous (*see* Tax Law § 689 [e]; *Matter of Suburban Restoration Co. v Tax Appeals Trib.*, 299 AD2d 751, 752 [3d Dept 2002]). The Division disallowed the refund petitioner claimed in her amended return on the basis that it was untimely filed. Petitioner bears the burden to prove that such refund request was timely filed.

B. Tax Law § 687, limitations on credit or refund, provides, in relevant part, as follows:

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

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(c) Notice of federal change or correction -- A claim for credit or refund of any overpayment of tax attributable to a federal change or correction required to be

reported pursuant to section six hundred fifty-nine shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner of taxation and finance. If the report or amended return required by section six hundred fifty-nine is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return."

Tax Law § 659, provides, in relevant part, as follows:

"If the amount of a taxpayer's federal taxable income, total taxable amount . . . reported on his federal income tax return for any taxable year, or the amount of a taxpayer's earned income credit or credit for employment-related expenses set forth on such return . . . is changed or corrected by the United States internal revenue service . . . the taxpayer or employer shall report such change or correction or disallowance within ninety days after the final determination of such change, correction, renegotiation or disallowance, or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous."

C. The Division argues that petitioner's refund claim is not timely because it was not filed within three years of the date on which her return was due to have been filed, in accordance with Tax Law § 687 (a). Petitioner electronically filed her return on March 3, 2018 (*see* finding of fact 1). Pursuant to Tax Law § 687 (h), petitioner's return was deemed to have been filed on the last day prescribed for the filing of the return, i.e. April 17, 2018. Petitioner did not request an extension of time to file her return. As such, the Division asserts that in order to be entitled to a refund for 2017, petitioner was required to file her claim therefor within three years of the date on which her return was deemed to have been filed, i.e., by April 17, 2021 (*see* Tax Law § 687 [a]).

The Division correctly argues that petitioner has not met her burden of proving that her amended return was filed prior to August 23, 2021. The correspondence from Liberty Tax Service, dated August 7, 2020, indicates that Liberty Tax Service sent petitioner an amended

2017 federal tax return on that date for her to sign and file with the IRS. The August 7, 2020, letter does not indicate that Liberty Tax Service also sent petitioner an amended New York State income tax return on that date for her to sign and file with the Division. Additionally, while correspondence from Liberty Tax Service, dated September 13, 2021, states that petitioner's amended return was signed, prepared and mailed on August 7, 2020, the documents attached to that letter do not support the assertion that petitioner mailed an amended New York State income tax return on that date, or at any time prior to August 23, 2021. While the documents introduced by petitioner show that an amended 2017 federal return was filed and received by the IRS on September 2, 2020, there is no evidence that a 2017 amended New York return was filed at the same time. Additionally, the USPS receipts introduced by petitioner do not show any mailings prior to August 23, 2021. While the correspondence from Liberty Tax Service claims that the post office receipt for the filing of petitioner's amended return on August 7, 2020, was destroyed by flooding from Hurricane Ida, the correspondence is not a sworn affidavit or a notarized document and, as such, is accorded no weight as proof that the amended return was filed prior to August 23, 2021. Furthermore, no evidence to support the allegation of flooding at the Liberty Tax Service office, such as an insurance claim, was introduced into the record. In contrast, the Division's certified search of its files and records found that no 2017 amended return or request for extension was filed with, or received by the Division, for petitioner prior to August 23, 2021. Accordingly, petitioner has not met her burden of proving, by clear and convincing evidence, that her amended return with the claimed refund was filed prior to August 23, 2021.

D. While the Division is correct that petitioner has not proven that the amended return was filed within three years of the date the return was due, the Division has not addressed the federal changes or the applicability of Tax Law § 687 (c). As discussed above, petitioner had

two years and ninety days to file any claims for credit or refund based on federal changes (*see* Tax Law § 687 [c]).

On August 23, 2021, the IRS issued to petitioner federal changes wherein it accepted the changes made on her amended 2017 federal return, reducing petitioner's adjusted gross income to zero. Pursuant to Tax Law § 659, petitioner was required to report those federal changes to the Division within 90 days of the notice of the federal changes. In turn, petitioner had two years and ninety days from August 23, 2021, to file any claims for credit or refund based on those changes with the Division (*see* Tax Law § 687 [c]). Petitioner filed her refund claim with her amended return on August 23, 2021, which reported her adjusted gross income as revised by the federal changes. The claim is thus timely filed under Tax Law § 687 (c) to the extent that it does not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return (*id.*).

E. As noted above, the amount of petitioner's refund based on the federal changes is limited the amount of the reduction in tax attributable to such federal changes (*see* Tax Law § 687 [c]). Because petitioner's original return did not claim the New York City school tax credit in the amount of \$63.00 and such amount claimed on the amended return is not attributable to the federal changes, petitioner is not entitled to this amount pursuant to Tax Law § 687 (c), nor is she entitled to it pursuant to Tax Law § 687 (a) because her request was not filed prior to August 23, 2021. Additionally, although petitioner's amended return claims that a payment of \$92.00 was made with the original return, in addition to the amount of tax withheld, she has not presented any evidence to support this payment. The Division's account adjustment notice only shows a payment by virtue of tax withheld in the amount of \$689.00. Petitioner was previously issued a refund by the Division of \$219.00 (*see* finding of fact 2). As such, petitioner is entitled to an



additional refund for tax year 2017 in the amount of \$470.00, plus applicable interest.

F. The petition of Chandramattie Singh is granted to the extent indicated in conclusions of law D and E, but is otherwise denied, the account adjustment notice, dated September 3, 2021, is modified in accordance with conclusions of law D and E, and the Division is directed to issue petitioner a refund in accordance with conclusion of law E.

DATED: Albany, New York  
January 08, 2025

/s/ Barbara J. Russo  
ADMINISTRATIVE LAW JUDGE