

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DIANE RILEY	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 850310
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Year 2017.	:	

Petitioner, Diane Riley, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2017.

A formal hearing by videoconference was held before Anita K. Luckina, Administrative Law Judge, on January 9, 2025, with all briefs to be submitted by April 16, 2025, which date commenced the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Stefan M. Armstrong, Esq., of counsel).

ISSUE

Whether petitioner established that the Division of Taxation improperly denied petitioner's refund claim pursuant to Tax Law § 687 (a).

FINDINGS OF FACT

1. On May 17, 2021, petitioner, Diane Riley, filed form IT-201, New York State resident income tax return, for tax year 2017 (2017 return). Petitioner reported wage income of

\$77,210.00, New York adjusted gross income of \$76,010.00, and total New York State and New York City taxes due of \$5,180.00. After claiming total New York City school tax credits (fixed and rate reduction amounts) of \$184.00 and total New York State and New York City taxes withheld of \$6,845.00, petitioner requested a refund of \$1,849.00.

2. Petitioner did not file form IT-370, application for automatic six-month extension of time to file for individuals, for tax year 2017.

3. On June 16, 2021, the Division of Taxation (Division) issued to petitioner an account adjustment notice (notice) denying petitioner's refund claim of \$1,849.00 for tax year 2017 as follows:

"We denied your claim for the refund or credit because it was filed too late. The tax law allows a refund or credit if the taxpayer makes the claim within three tax years from the time the return was required to be filed or within two years from the time the tax was paid, whichever is later."

4. Petitioner requested a conciliation conference before the Division's Bureau of Conciliation and Mediation Services (BCMS), which was conducted on August 25, 2022. By conciliation order, CMS number 000331519, dated October 7, 2022, BCMS sustained the notice.

5. On October 21, 2022, petitioner timely filed a petition with the Division of Tax Appeals protesting the conciliation order.

6. At the hearing, the Division submitted the affidavit of Oscar Boomer, a Taxpayer Services Specialist 2 in the Division's Office of Processing & Taxpayer Services. Mr. Boomer's duties include reviewing personal income tax returns and refundable credits. Mr. Boomer performed the review of petitioner's 2017 return and avers that the Division has no record of petitioner applying for an extension of time to file her tax return for tax year 2017 and no record of petitioner filing a New York State personal income tax return for tax year 2017 prior to May

17, 2021. Mr. Boomer further avers that petitioner's refund claim for tax year 2017 is time-barred pursuant to the limitations in Tax Law § 687 (a).

7. Petitioner testified at the hearing. Petitioner acknowledged filing her 2017 return on May 17, 2021, based on her belief that the filing deadline was extended to May 17, 2021.

Petitioner testified that she relied on information made available to the public, particularly the Division's *Announcement Regarding Extension of the Deadline to File Personal Income Tax Returns for Tax Year 2020*, Notice N-21-1 (Notice N-21-1), Internal Revenue Service (IRS) notices and communications with IRS personnel. Petitioner posited "that the wording was the same for the [Notice] N-21[-]1 as well as the IRS.gov official release in March of 2021."

Petitioner also maintained that "the way that the notices were given to the public, there was room for misinterpretation" and that Notice N-21-1 "did not explicitly state that the three-year back taxes were exempt from the May 17th extension." Petitioner requested consideration in light of these ambiguities.

CONCLUSIONS OF LAW

A. Tax Law § 687 (a) provides, in relevant part, that:

"[c]laim 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 [or] (ii) two years from the time the tax was paid ... whichever of such periods expires the latest ... 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 ..." (*see also* Tax Law § 1312 [a] [incorporating and applying Tax Law § 687 to tax imposed pursuant to the authority of Article 30]).

The Division "denied [petitioner's] claim for the refund or credit because it was filed too late."

However, petitioner filed the 2017 return on May 17, 2021, and made the refund claim on that 2017 return. Therefore, petitioner's refund claim was timely filed within three years from the time the return was filed. Tax Law § 687 (a) operates here only to limit the amount of the refund

to the amount of tax paid by petitioner within the three-year period immediately preceding the filing of the refund claim plus the period for any extension of time for filing the return.

B. There is no dispute that petitioner did not file her 2017 return before May 17, 2021. It is also undisputed that petitioner did not file form IT-370, application for automatic six-month extension of time to file for individuals, for tax year 2017. Instead, petitioner maintains that the due date for personal income tax returns for tax year 2017 was extended by Notice N-21-1, until May 17, 2021; in particular, Notice N-21-1 did not explicitly exclude prior tax years. However, Notice N-21-1 specifically extended the due date for New York State personal income tax returns for only tax year 2020 *originally due* on April 15, 2021, until May 17, 2021.¹

Petitioner's New York State personal income tax return for tax year 2017 was originally due on April 17, 2018, and, thus, was clearly not affected by the extension provided for in Notice N-21-1 (*see* Tax Law § 651 [a] [providing the time for filing an income tax return as the fifteenth day of the fourth month following the close of the taxable year]; *see also Matter of Goldenberg*, Tax Appeals Tribunal, July 10, 2025 [holding that the limitation period for claiming a personal income tax refund for tax year 2016 was unaffected by the filing deadline extension for tax year 2019 personal income tax returns originally due on April 15, 2020], *remanded on other grounds*). Because petitioner did not have an extension of time to file the 2017 return, petitioner's refund is limited by Tax Law § 687 (a) to the amount of tax paid within the three years immediately preceding the May 17, 2021, refund claim, i.e., May 17, 2018 through May 17, 2021.

¹ On March 17, 2021, the IRS announced postponement of the federal income tax filing due date for individuals for tax year 2020 from April 15, 2021, to May 17, 2021 (*see* I.R.S. News Release IR-2021-59 [Mar. 17, 2021]). That announcement specifically advised that "[t]he federal tax filing postponement to May 17, 2021, only applies to individual federal income tax returns ... [s]tate filing and payment deadlines vary ... [and] [t]he IRS urges taxpayers to check with their state tax agencies for those details" (*id.*; *see also* I.R.S. Notice 2021-21, 2021-15 I.R.B. 986 [explaining that the period of limitations to file a claim for credit or refund of federal income tax expiring on or after April 15, 2021, and before May 17, 2021, was postponed until May 17, 2021]).

C. Pursuant to Tax Law § 687 (i), any tax paid by a taxpayer, income tax withheld from a taxpayer, and any amount paid by a taxpayer as estimated income tax for a taxable year is deemed to have been paid on the fifteenth day of the fourth month following the close of the taxable year with respect to which such amount constitutes a credit or payment. Accordingly, the 2017 payments that comprise petitioner's refund claim were deemed paid on April 15, 2018. Petitioner's May 17, 2021, refund claim, though timely filed, exceeds the amount of tax paid within the three-year period immediately preceding that claim and, thus, is limited by Tax Law § 687 (a) to \$0.00.

D. Further, the circumstances do not warrant relief under the special refund authority pursuant to Tax Law § 697 (d), which states:

“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.”

Initially, it is noted that the special refund authority is permissive not mandatory (*id.*; *see also Matter of Fiduciary Trust Co. of N.Y. v State Tax Commn*, 120 AD2d 848, 850 [3d Dept 1986]). Further, for the special refund authority to apply, the money must have been paid under a mistake of fact and not a mistake of law (*see* Tax Law § 697 [d]; *see also Matter of Wallace*, Tax Appeals Tribunal, October 11, 2001). The Tribunal has stated that a mistake of fact is “an understanding of the facts in a manner different [than] they actually are” (*Matter of Wallace*). A mistake of law, however, is an “acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts” (*id.*). Here, petitioner was clearly operating under a mistake of law in that petitioner was acquainted with the facts (i.e., that

petitioner had not yet filed a New York State personal income tax return for tax year 2017), but was unaware of the legal consequences following from the facts (i.e., that the limitation period for claiming an income tax refund for tax year 2017 was unaffected by the filing deadline extension for personal income tax returns for tax year 2020). Accordingly, the special refund authority in Tax Law § 697 (d) does not apply.

E. The petition of Diane Riley is denied, and the account adjustment notice, dated June 16, 2021, is sustained.

DATED: Albany, New York
October 16, 2025

/s/ Anita K. Luckina
ADMINISTRATIVE LAW JUDGE