

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
IMOGENE REEVES	:	DECISION
	:	DTA No. 806179
For Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Years 1979 and 1980.	:	

Petitioner Imogene Reeves, G.P.O. Box 820, New York, New York 10116 filed an exception to the determination of the Administrative Law Judge issued on February 14, 1991 with respect to her petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1979 and 1980. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Lawrence A. Newman, Esq., of counsel).

Neither party filed a brief on exception. No oral argument was held.

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

ISSUE

Whether petitioner filed timely New York State and City of New York income tax returns for 1979 and 1980.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and make an additional finding of fact. The Administrative Law Judge's findings of fact and the additional finding of fact are set forth below.

Petitioner, Imogene Reeves, filed a timely Federal income tax return for 1979. On July 21, 1980, a notice was issued by the Internal Revenue Service to petitioner at the address G.P.O. Box 820, New York, New York 10116, stating that an overpayment of \$902.51 on said return was being applied to her tax liability for 1974 and that a balance of \$749.14 remained due for 1974.

Petitioner filed a timely Federal income tax return for 1980. On June 1, 1981, the Internal Revenue Service issued a notice to petitioner at the same address as the 1979 notice, correcting petitioner's reported taxes. The notice stated "AN ERROR WAS MADE IN FIGURING YOUR ADJUSTED GROSS INCOME ON LINE 11, FORM 1040A." The tax shown on the return was \$3,333.00 and the corrected tax was \$3,363.00. As tax withheld was \$4,217.08, this resulted in an overpayment of \$854.08.

Petitioner claims that she timely filed New York State and City of New York returns for 1979 and 1980. The Division of Taxation claims that it received the 1979 and 1980 returns from petitioner in correspondence submitted by her in an envelope postmarked June 1, 1985. The returns show petitioner's address as G.P.O. Box 820, New York, New York 10001.¹ The 1979 return is dated April 15, 1980 and shows a refund due of \$335.42 with the notations "Apply on Taxes 1973, 77, 78" and "Please apply on back taxes". The 1980 return is dated April 15, 1981 and shows a refund due of \$349.83, with the notations "Credit to back taxes 1977, 1978" and "Please credit overpayment to balance taxes due 1977, 78 and refund remainder to me".

As of December 16, 1987, the Division of Taxation's accounts receivable system computer records showed that petitioner had outstanding assessments for 1973, 1977 and 1978. Nothing was shown for any other year. Moreover, the Division of Taxation has no record of petitioner having filed New York State and City of New York income tax returns for 1979 and 1980.

On January 20, 1984, a letter was sent to petitioner by the Division of Taxation stating that it had received information that petitioner filed a Federal income tax return for 1981 showing a New York address, but no New York State return could be found. It is unknown if petitioner

¹The postal zip code shown on the Federal notices, on the petition, and in other correspondence, is 10116.

responded to this letter. On December 4, 1984, the Division of Taxation issued a Statement of Audit Changes to petitioner for 1981 asserting \$1,723.39 in tax due, plus penalty and interest, for a total of \$2,981.51. On April 14, 1985, the Division of Taxation issued a notice to petitioner for 1981 stating that:

"As a result of your correspondence and/or recent conference, the balance of the above assessment has been cancelled."

On January 23, 1985, a letter was sent to petitioner by the Division of Taxation stating that it had received information that petitioner had filed a Federal return for 1982 with a New York address, but no New York return could be found. Petitioner checked the box on the letter indicating that she had not filed a New York State return for 1982 and added:

"Not a New York State Resident. Moved out of State. Did not work in N.Y. State 1975, 76; Returns filed for other years. Have enclosed copies of Income Tax Returns filed for years ending: 1982 and 1983."

On February 20, 1987, the Division of Taxation wrote to petitioner stating, in pertinent part, as follows:

"We have thoroughly searched our files and can find no record of a 1977, 1978, 1989 [sic] or 1980 return being filed prior to the ones in your letter of June 1, 1985. Therefore, this date is being considered the filing date for these periods.

The New York State Tax Law does not allow the refund or the credit of a return filed more than 3 years from the original due date of the return (Section 687 of the New York State Tax Law). Your 1979 and 1980 returns, originally due on April 15, 1980 and April 15, 1981, should have been filed on or before April 15, 1983 and April 15, 1984, respectively. Since the earliest filing date available is June 1, 1985, your overpayment request for both of these returns have [sic] been disallowed.

In assembling [sic] all of your information, an overpayment condition was found on your 1981, 1982 and 1983 returns. These three returns are being processed and the overpayments are being applied to your 1973, 1977 and 1978 tax liabilities. A document showing the final net computation will be sent to you shortly."

By letter dated February 11, 1988, the Division of Taxation denied petitioner's claim of \$685.25 in credit or refund for 1979 and 1980, again on the basis that the returns had been received with a filing date of June 1, 1985.

After the hearing, the Administrative Law Judge directed the Division of Taxation's Records Access Office to cause an additional search to be made for any evidence of returns having been filed by petitioner for 1979 and 1980. On January 23, 1991, the Administrative Law Judge received a response from the Processing and Revenue Management Division stating that there was no record of any filing by petitioner for said years.

In addition to the facts found by the Administrative Law Judge, we find the following:

Petitioner testified that while she currently uses certified mail for the filing of her returns, she did not use certified mail for the 1979 and 1980 years. At hearing the Administrative Law Judge suggested that petitioner request copies of her 1979 and 1980 Federal returns from the Internal Revenue Service and submit them to him. The Administrative Law Judge indicated to petitioner that it would seem that if she had filed a Federal return in 1979 and 1980, the State should have notified her in the event that a State return was not filed as it did for the years 1981 and 1982. Petitioner furnished copies of her 1979 and 1980 Federal returns to the Administrative Law Judge.

OPINION

The Administrative Law Judge determined that petitioner failed to sustain her burden of proof under Tax Law § 689(e) and the Administrative Code of the City of New York former section T46-189.0(e) to show that she timely filed New York State and City of New York income tax returns for 1979 and 1980. Accordingly, it was determined that she could not have asserted that overpayments for such years be applied to past liabilities for the years 1973, 1977 and 1978.

On exception, petitioner reasserts her position at hearing that she timely filed returns for tax years 1979 and 1980. Petitioner also takes issue with the determination of the Administrative Law Judge stating that she was led to believe at hearing that the furnishing of her Federal returns for 1979 and 1980 would be sufficient proof of the fact that she filed New York State and City of New York returns for such years.

The Division of Taxation (hereinafter the "Division") relies on the determination of the Administrative Law Judge.

We affirm the determination of the Administrative Law Judge.

Tax Law § 691(a) and Administrative Code of City of New York section 11-1791(a) provide in pertinent part:

"[i]f any . . . document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date . . . is, after such period or such date, delivered by United States mail . . . the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery . . . If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed."

Where a document has not been received by the Division, the general rule is that proof of ordinary mailing is insufficient as a matter of law to prove timely filing (Matter of Savadjian, Tax Appeals Tribunal, December 28, 1990; Matter of Filler, Tax Appeals Tribunal, August 24, 1989; Matter of WSD United Transp., Tax Appeals Tribunal, July 27, 1989).

Here, the Division has no record of having received petitioner's returns for the years 1979 and 1980. Accordingly, the burden is on petitioner to prove that by one means or another she timely filed the returns with the Division.

Petitioner indicated that while she currently uses certified mail, she did not for the years in question. Further, petitioner could not recall in any detail the manner in which she transmitted the 1979 and 1980 returns to the Division. Petitioner testified that she remembered filling out the forms and that she remembered going to an office of the State Department of Taxation and Finance and getting some help from someone with regard to filling out the forms "[a]nd I'm sure that's the one that I left with the person that helped me with the form" (Tr., p. 17). The testimony, while no doubt earnest and sincere, is just not sufficient to allow a determination that petitioner met her burden of proving that the returns were timely filed (see, Matter of Miller v. United States, 784 F2d 728, 86-1 USTC ¶ 9261 [where under similar facts the court rejected as insufficient an affidavit of the taxpayers that the claim for refund was mailed to the Internal Revenue Service]; see also, Matter of Sipam, Tax Appeals Tribunal, March 10, 1988 [for general discussion on filing of various documents with the Division of Taxation and Division of Tax Appeals]).

Finally, we are cognizant of the inference suggested by the Administrative Law Judge at hearing, i.e., that the failure of the Division to take enforcement action for the years 1979 and 1980, in light of the filing of Federal returns for the same years, would indicate that State and City returns were filed. However, while the inference may be logical, neither the inaction of the Division nor the furnishing of such returns in 1985 is sufficient to prove that petitioner timely filed State and City returns for the years 1979 and 1980 in the face of the evidence of nonreceipt furnished by the Division (cf., Matter of Mutual Life Ins. v. State Tax Commn., 142 AD2d 41, 534 NYS2d 565, where the Division introduced no evidence of nonreceipt in response to the petitioner's detailed evidence of mailing).

In summary then, we can only conclude that petitioner has failed to meet the burden of proving that she timely filed returns for 1979 and 1980.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Imogene Reeves is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Imogene Reeves is denied; and

4. The Division's denial, dated February 11, 1988, of petitioner's claim for credit or refund is sustained.

DATED: Troy, New York
August 22, 1991

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner

/s/Maria T. Jones

Maria T. Jones
Commissioner