

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JOSEPH A. AND SUSAN E. BANCO	:	DECISION
for Redetermination of a Deficiency or for	:	DTA No. 813926
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1986, 1987	:	
and 1988.	:	

Petitioners Joseph A. and Susan E. Banco, 798 Langley Road, Amsterdam, New York 12010, filed an exception to the determination of the Administrative Law Judge issued on January 18, 1996. Petitioners appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

Neither party filed a brief on exception. Oral argument was not requested.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for refund of personal income tax paid on Federal pension income on the basis that said claim was filed beyond the statute of limitations period for refund.

FINDING OF FACTS

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

In support of its motion for summary determination, the Division of Taxation (hereinafter the "Division") submitted an affidavit of its representative in which the Division asserts that, since petitioners did not file a refund claim on their 1986, 1987 and 1988 personal income taxes within three years from the time the returns were filed or two years from the time the taxes were paid, whichever was later, as directed by Tax Law § 687, petitioners' refund claim should be

barred as untimely, the petition before the Division of Tax Appeals denied with prejudice and the motion for summary determination granted. The Division notes in its affidavit that while in June of 1994, former Governor Mario Cuomo authorized the payment of refunds to all taxpayers who (1) paid personal income tax on their Federal pension income and (2) had filed timely refund claims pursuant to Tax Law§ 687, petitioners here failed to meet the second requirement. The Division argues that state statutory law concerning refunds controls in the instant case as the United States Supreme Court's decisions in Davis v. Michigan Department of Treasury (489 US 803, 103 L Ed 2d 891) and its progeny "refused to require the retroactive application of the Davis holding regarding the violation of the constitutional doctrine of intergovernmental tax immunities."

Attached to the Division's affidavit is the affidavit of Charles Bellamy, an auditor at the Division whose responsibilities include the review and processing of refund claims made by Federal pension recipients who were taxed on that income prior to 1989. Having reviewed petitioners' file, Mr. Bellamy states that, while petitioners filed their 1986 New York State personal income tax return on or before April 15, 1987, their 1987 New York State personal income tax return on or before April 15, 1988 and their 1988 New York State personal income tax return on or before April 15, 1989, petitioners did not file any refund claims for these tax years until July 1, 1994. Mr. Bellamy points out that, as a result, petitioners were issued a refund denial letter for the years in question.

Petitioners' petition was received by the Division of Tax Appeals on June 12, 1995. In this petition, petitioners state that petitioner Joseph A. Banco retired from the United States Air Force on September 1, 1986, and paid New York State income tax on his pension income for 1986, 1987 and 1988. While petitioners have correctly grasped that "the time constraints involved with a ruling on this matter [are] directly related to Subsection (A) of Section 687 of the New York Tax Law," petitioners argue that they were "not notified by the Taxation Department or any other source that [they] had to submit an IT-113-X Form for each of the . . .

tax years [in question], within three (3) years from the time the tax was paid, to be eligible for a tax refund." Petitioners maintain that they do not believe that they overpaid their state income tax, since, at the time they paid the tax on the pension income, it was proper and due. Petitioners claim that if they had been informed that they needed to submit an IT-113-X Form to keep their claims active to be eligible for a possible refund for the years in question, they certainly would have done so. Petitioners contend that they do not think that by not submitting the IT-113-X Form to keep their claims active, they should be automatically disqualified from the appropriate refund. Petitioners aver: "[t]his was not [our] problem, [we] did [our] part . . . [we] paid [our] state taxes when they were due. If [we] [were] erroneously taxed for three years in accordance with [Tax Law § 687], then [we] think that a refund is due to [us]." Finally, petitioners urge that the State:

"knew in accordance with [Tax Law § 687] that: (1) the refund would have to be allowed to those personnel who knew about and submitted a [sic] IT-113-X in a timely manner to keep their claim active, and . . . (2) for those personnel who did not know about the IT-113-X, a refund would be disallowed in accordance with the New York Tax Law."

Attached to petitioners' petition are the following documents: (1) a copy of the Conciliation Order (CMS No. 141395), dated May 19, 1995, which denied petitioners' request and sustained the refund denial; (2) a copy of the refund denial letter issued by the Division to petitioners on or about August 29, 1994 in which petitioners were informed that their refund claim in the amount of \$317.50 was denied in full as the claims for refund for the years 1986, 1987 and 1988 were not timely filed pursuant to Tax Law § 687;¹ (3) a copy of a letter dated May 1, 1995 from Representative Michael R. McNulty from the 21st District in New York, to petitioner Joseph A. Banco, acknowledging receipt of a letter from petitioner to Mr. McNulty's Schenectady, New York office and informing petitioner that in an effort to be helpful, he had contacted the Division on petitioner's behalf, and would keep petitioner informed of any response he received; (4) a copy of a page from an unknown publication on which petitioners

¹While this refund denial letter cites the contested amount as \$317.50, petitioners, in their petition, claim that the amount of tax contested is approximately \$3,000.00. However, in view of the pleadings in this matter, the amount of the refund sought is apparently not at issue.

have marked "FOR YOUR INFO" atop an article regarding new legislation signed by Governor George Allen of Virginia "to allow some additional federal retirees to participate in a supplemental settlement program to resolve the ongoing dispute over the state taxation of federal retirement benefits", with the program applying "to those retirees who were excluded from the original settlement plan because they failed to meet the filing deadlines . . . "; and (5) a letter dated May 4, 1995 from a Ms. Linsley of the Problem Resolution Office of the Division to petitioner Joseph A. Banco informing Mr. Banco that the Problem Resolution Office could not accept the matter as a Problem Resolution case, since the Problem Resolution Program is set up to resolve "intractable problems that somehow fail to be resolved through normal channels" and that to avail oneself of the Program, "a taxpayer must have previously tried to resolve the problem through routine means." In this letter, Ms. Linsley informed petitioner that she had forwarded his inquiry to the "proper division" for review.

The Division, in its Answer, dated August 21, 1995, denies the allegations made in the petition and states that petitioners failed to file a claim for refund within three years of the filing of the return for the years in question; and therefore, that petitioners' claim for refund was properly denied as untimely pursuant to Tax Law § 687. The Division's other statements are, for the most part, identical to those made in its motion for summary determination, discussed above. In addition, the Division asserts that petitioners bear the burden of proving that the disallowance was erroneous and/or improper.

OPINION

In the determination below, the Administrative Law Judge granted the Division's motion for summary determination in that there were no material and triable issues of fact. In granting the Division's motion, the Administrative Law Judge held that the Division had properly relied on the three-year statute of limitations in Tax Law § 687(a) in disallowing petitioners' refund claim. Recognizing that it was a violation of Federal law for a state to tax retirement benefits paid by the Federal government while exempting those paid by the state (Davis v. Michigan

Dept. of Treasury, supra), the Administrative Law Judge held that the time limitations for claiming a credit or refund in Tax Law § 687(a) provide a sufficient post-deprivation remedy satisfying the minimum requirements of due process (McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 496 US 18, 110 L Ed 2d 17, 28). The Administrative Law Judge held that because the time in which a taxpayer may file a claim for refund is statutorily prescribed, petitioners' excuses for noncompliance have no bearing on the matter. Accordingly, because petitioners filed their claim outside the three-year limitations period, the Division properly disallowed such claim.

On exception, petitioners argue that since the Division was illegally taxing them, a refund is due without regard to the time limitations contained in Tax Law § 687(a). Petitioners do not dispute that they filed their claim for refund in 1994, but assert that they had no reason to know of the statute of limitations or that a refund was ostensibly due them.

We reject petitioners' claims. "Ignorance of the law is no excuse; a taxpayer is charged with knowledge of the law, including subsequent judicial interpretation thereof" (Genesee Brewing Co. v. Village of Sodus Point, 126 Misc 2d 827, 482 NYS2d 693, 700, affd 115 AD2d 313, 496 NYS2d 720; accord Matter of Nathel v. Commissioner of Taxation & Fin., ___ AD2d ___, 649 NYS2d 196). We concur with the Administrative Law Judge that the period for credit or refund contained in Tax Law § 687(a) provides sufficient post-deprivation relief rectifying any unconstitutional deprivation and because petitioners failed to file their claim within the time limitations of Tax Law § 687(a), the Division properly denied such claim (Matter of Jones, Tax Appeals Tribunal, January 9, 1997).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Joseph A. and Susan E. Banco is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Joseph A. and Susan E. Banco is denied; and

4. The Notice of Disallowance dated August 29, 1994 is sustained.

DATED: Troy, New York
April 17, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner