

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
MATTHEW F. AND VIRGINIA M. FORD : DECISION
for Redetermination of a Deficiency or for Refund of : DTA No. 814725
Personal Income Tax under Article 22 of the Tax Law for :
the Years 1977 through 1985. :

Petitioners Matthew F. and Virginia M. Ford, 2950 W. 1100 N., Lot #12, Decatur, Indiana 46733-8718, filed an exception to the determination of the Administrative Law Judge issued on October 17, 1996. Petitioners appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

Petitioners did not file a brief on exception. The Division of Taxation submitted a letter stating it would not be filing a brief in opposition. Oral argument was not requested.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether petitioners are entitled to refunds of personal income taxes paid for the years 1977 through 1985.

FINDINGS OF FACT

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

Petitioners, Matthew F. Ford and Virginia M. Ford, filed a petition seeking a refund of New York State personal income taxes paid for the years 1977 through 1985. The only issue raised by the petition is whether petitioner filed a timely claim for refund of the taxes paid for those years.

According to the affidavit of Charles Bellamy, an employee of the Division of Taxation

("Division") whose duties include the processing of refund claims, petitioners timely filed New York State personal income tax returns for the years in issue. Mr. Bellamy states that the returns were filed on or before April 15 of the year following the year of the return, i.e., their 1977 personal income tax return was filed on or before April 15, 1978, their 1978 personal income tax return was filed on or before April 15, 1979, etc.

Mr. Bellamy also states that petitioners filed claims for refund for the years 1977 through 1985 in October 1989. According to Mr. Bellamy, petitioners did not file refund claims or amended tax returns for those years before October 1989.

The basis for petitioners' refund claims is the United States Supreme Court decision in Davis v. Michigan Dept. of Treasury (489 US 803, 103 L Ed 2d 891) which invalidated a Michigan statute exempting State pensions from tax but not Federal pensions. The Court decided the Davis case on March 28, 1989. Shortly thereafter, many Federal pensioners, like Mr. Ford, filed claims for refund of New York State personal income taxes paid on income from Federal pensions. At first, New York State took the position that the Davis decision did not apply retroactively to tax years before the Davis decision was issued (see, Duffy v. Wetzler, 174 AD2d 253, 579 NYS2d 684, appeal dismissed 79 NY2d 976, 583 NYS2d 190, appeal dismissed 80 NY2d 890, 587 NYS2d 900, cert granted 509 US 917, 125 L Ed 2d 716, on remand 207 AD2d 375, 616 NYS2d 48). In a second ruling, the Supreme Court held that the Davis decision must be applied retroactively. However, the Court did not order the payment of refunds to Federal pensioners; instead, it held that whether a refund was due in any specific instance was a matter of state law (Harper v. Virginia Dept. of Taxation, 509 US 86, 125 L Ed 2d 74). In June 1994, New York began processing the refund claims of Federal pensioners and making payments to all taxpayers who satisfied the following criteria of New York State law: (1) they had paid New York State personal income tax on Federal pension income, and (2) they had filed refund claims in a timely fashion.

On or about June 28, 1994, the Division issued a letter to petitioners under the signature

of James W. Wetzler, Commissioner of Taxation and Finance. In that letter, Commissioner Wetzler stated that the State had decided to approve refund claims rather than wait for further judicial action. He explained that in petitioners' case it was not possible for the Division to determine the exact amount of refund which might be due. Petitioners were asked to provide the Division with copies of Form W-2P, showing their original Federal pension income, and copies of their Federal and State tax returns for the years for which refunds were sought.

The Division issued a refund check to petitioners for the year 1986 and, on or about October 24, 1994, issued them a Notice of Disallowance of their refund claims for the years 1977 through 1985. As pertinent, that notice states:

"Unfortunately, the refund claim(s) you have filed cannot be paid . . . because . . . the claim(s) was not timely filed.

"Under New York State Law (Tax Law section 687), refund claims for any overpayment of tax must be filed by the taxpayer within three years from the date the return was filed or two years from the date the tax was paid, whichever of such periods expires the later. As this three-year limitation on refund claims is statutory (a matter of law), only a change in the law would permit this Department to pay refund claims filed after the three-year limitation has expired."

The Division issued a Conciliation Order to petitioners, dated December 22, 1995, sustaining the Division's Notice of Disallowance.

Commissioner Wetzler's letter led petitioners to believe that their refund claims had been approved and that they only needed to provide the information requested in that letter. Since petitioners provided the information within two to three weeks of receiving Commissioner Wetzler's letter, petitioners believe that they are entitled to receive refunds of tax. Petitioners argue that the period of limitation on refund claims should not apply in this instance because the law exempting state pensions but not Federal pensions from taxation was later found to be unconstitutional. In their view, the Division has superseded the authority of the Supreme Court.

OPINION

In her determination below, the Administrative Law Judge concluded that it was proper to decide the matter via summary determination since there were no material and triable issues of fact presented. The Administrative Law Judge held that although Davis v. Michigan Dept. of

Treasury (supra) invalidated New York's tax statute which exempted from tax pension income received by retired State employees while taxing pension income received by retired Federal employees, the Division nonetheless properly denied petitioners' refund claims as having been filed beyond the statute of limitations for refund. Based on a review of the United States Supreme Court decisions in McKesson Corp. v. Division of Alcoholic Beverages & Tobacco (496 US 18, 110 L Ed 2d 17), Harper v. Virginia Dept. of Taxation (supra) and Reich v. Collins (513 US 106, 130 L Ed 2d 454), the Administrative Law Judge concluded that the ultimate question to be decided was whether New York tax law provided petitioners with meaningful backward-looking relief such that any unconstitutional deprivation could be rectified. The Administrative Law Judge answered this question in the affirmative, holding that New York's refund procedure provided petitioners with a clear and certain post-payment remedy and a meaningful opportunity to obtain relief for any unconstitutionally collected taxes. The Administrative Law Judge also concluded that the refund procedure met the minimum requirements of due process.

On exception, petitioners argue that since the Supreme Court's decision in Davis v. Michigan Dept. of Treasury (supra) was not issued until March 28, 1989, it would have been impossible for them to file timely claims for refund for the years at issue pursuant to New York tax law. Petitioners assert that the Supreme Court decisions cited above override New York tax law.

We affirm the determination of the Administrative Law Judge. After a thorough review of the Administrative Law Judge's determination and the cases cited therein, we see no reason to alter her analysis or conclusions.

We also note that petitioners could have initiated their own refund proceeding in a timely manner challenging the constitutionality of taxing the pensions of Federal retirees while exempting the pensions of State retirees, however, they chose not to avail themselves of this option.

Finally, we observe that, absent special circumstances, Tax Law § 683 provides for a

general three-year period for the Division to issue an assessment to a taxpayer. Accordingly, we see no inequity in the current statutory scheme which limits a taxpayer to the same three-year period for the filing of a claim for refund.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Matthew F. and Virginia M. Ford is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Matthew F. and Virginia M. Ford is denied; and
4. The Notice of Disallowance dated October 24, 1994 is sustained.

DATED: Troy, New York
April 3, 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