

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
HOWARD J. AND DOLORES J. WALTER	:	DECISION
for Redetermination of a Deficiency or for	:	DTA No. 814937
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1986, 1987 and	:	
1988.	:	

Petitioners Howard J. and Dolores J. Walter, 205 Deerpath Lane, Hendersonville, North Carolina 28739-7901, filed an exception to the determination of the Administrative Law Judge issued on November 7, 1996. Petitioners appeared by Caroline G. Trinkley, Esq. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel).

Petitioners did not submit a brief. The Division of Taxation submitted a letter stating that it would not be filing a brief. Oral argument was not requested.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUES

I. Whether, because of oral and written statements of its employees, the Division of Taxation should be estopped from asserting the statute of limitations of Tax Law § 687(a) as a bar to petitioners' claim for refund.

II. Whether petitioners' claim for refund of personal income taxes paid for the years 1986, 1987 and 1988 should be granted pursuant to the special refund authority contained in Tax Law § 697(d).

FINDINGS OF FACT

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

Petitioners, Howard J. Walter and Dolores J. Walter, filed a petition seeking a review of a denial of claims for refund of New York State personal income taxes for the years 1986, 1987 and 1988. The Division of Taxation ("Division") issued a Notice of Disallowance, dated October 24, 1994, denying those refunds on the ground that the refund claims were not filed within the period of limitation set forth at Tax Law § 687(a).

Petitioners timely filed New York State personal income tax returns for the years in issue. Petitioners filed their 1986 personal income tax return on or before April 15, 1987, filed their 1987 personal income tax return on or before April 15, 1988 and filed their 1988 personal income tax return on or before April 15, 1989.

Petitioners filed a Claim for Credit or Refund of Personal Income Tax (form IT-113X) which was received by the Division on April 18, 1989. In a block on the form next to the statement: "Claim for calendar year or fiscal year ending", petitioners entered "Dec 31, 1985". On the same form, petitioners responded "No" to the question: "Did you file claims for any other year?"

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 but not Federal pensions from income tax. The Court decided the Davis case on March 28, 1989. Shortly thereafter, many Federal pensioners filed claims for refund of New York State income taxes paid on Federal pensions. Following the Davis decision, the New York State Legislature amended the Tax Law to exclude Federal pensions, as well as New York State pensions, from taxation; however, the amended law applies only to Federal pensions received in taxable years beginning on or after January 31, 1989 (L 1989, ch 664, §§ 1, 2, effective July 21, 1989).

By their petition, petitioners allege the following:

"3. That Petitioner, Howard J. Walter, called the New York State Department of Taxation and Finance (NYSDTF) in the Fall of 1988 and inquired into the procedure he should follow to obtain a refund for the years 1985, 1986 and 1987.

"4. That Petitioner, Howard J. Walter, was advised by an employee of the aforesaid NYSDTF that he only needed to file one refund form for the previous three (3) years."

Petitioners further allege that they filed their New York State Income Tax return for 1988 in March of 1989 under protest (Petition, ¶ 6).

By letter dated December 8, 1989, the Division denied petitioners' claim for refund for 1985. In that letter, the Division stated its position that the Davis decision did not apply retroactively to cover tax years beginning before the issuance of that decision. In addition, the Division noted that it had no authority under New York State law to issue refunds for taxes paid on Federal pension benefits for the years prior to the change in the Tax Law, before January 1, 1989. The letter states: "Your claim has been disallowed as New York State will not issue refunds for taxes paid on federal pension benefits for years prior to 1989."

The Division informed petitioners of their right to protest the Division's determination by filing a petition with the Division of Tax Appeals. The time for filing such a petition was said to be two years from the date of the letter, but the Division stated that if pending litigation changed the Division's position "your claim will be automatically reconsidered." The Division's letter refers specifically to tax year 1985 and to no other tax year.

Petitioners took no further action after receiving the Division's letter of December 8, 1989. They allege that they wrongly believed that "only one refund form was required" to obtain a refund for the tax years 1985 through 1988 and that their belief was based on misinformation provided to them by a Division employee.

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 New York 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. On August 17, 1994, petitioners claimed refunds for 1986, 1987 and 1988 by filing amended returns for those years.

The Division issued a Notice of Disallowance to petitioners for tax years 1986, 1987 and 1988, dated October 24, 1994. The Division explained that the claim for those years was denied because it was not filed within three years of the time the returns for those years were filed.

The Division refunded tax paid by petitioners for the 1985 tax year in the amount of \$1,708.00.

The Division takes the position that petitioners' claims for refund for 1986, 1987 and 1988 are barred by the three-year period of limitation provided for in Tax Law § 687(a) which states, as relevant:

"Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid . . . or, if no return was filed, within two years from the time the tax was paid."

Petitioners state that they "are in agreement with the NYSDTF that there are no material and/or triable issues of fact in this matter." (Petitioners' Answer to Motion for Summary Determination, ¶ 13.)

OPINION

In her determination below, the Administrative Law Judge granted the Division's motion for summary determination in its favor. The Administrative Law Judge concluded that summary determination was the appropriate disposition of this matter since both petitioners and the Division conceded that there were no material issues of fact.

In addressing the merits of the case, the Administrative Law Judge failed to apply the estoppel doctrine against the Division. The Administrative Law Judge noted that the estoppel doctrine should be applied with utmost caution and care against a governmental agency (see, Schuster v. Commissioner, 312 F2d 311, 62-2 USTC ¶ 12,121).

The Administrative Law Judge noted that petitioners failed to prove their claim that they detrimentally relied on two representations made by the Division concerning (1) an oral instruction that petitioners only needed to file one refund form for all the tax years and (2) the letter dated December 8, 1989 in which the Division denied petitioners' claims for refund for the years 1986, 1987 and 1988. Accordingly, the Administrative Law Judge failed to invoke the doctrine of estoppel in this case.

The Administrative Law Judge also concluded that petitioners' claim for refund did not fall within the meaning and intent of Tax Law § 697(d). The Administrative Law Judge noted that while the refund authority granted by Tax Law § 697(d) is discretionary, petitioners failed to show that the moneys at issue were erroneously or illegally collected or paid by the taxpayer under a mistake of facts. Therefore, the Administrative Law Judge sustained the Division's denial of petitioners' refund claim and granted summary determination in favor of the Division.

On exception, petitioners argue that there is a basis for invoking the doctrine of estoppel in this case against the Division. Petitioners state that the Administrative Law Judge's finding that petitioners did receive oral instructions from the Division that they only needed to file one refund form for the previous three years is contradicted by her conclusion that "[w]ithout adequate proof that the Division explicitly advised petitioners that a claim for one specified tax year, 1985, would be deemed to be a claim for the years 1985 through 1988, I cannot find that there was any conduct by the Division which justifies the application of the doctrine of estoppel" (Determination, conclusion of law "D").

We do not find that the Administrative Law Judge's conclusion was contradictory. As set forth in her determination, the Administrative Law Judge emphasized the fact that petitioners' claim for refund was not denied because petitioners filed only one refund form, but rather, their claim for refund form failed to state for which years a refund was being requested. In this case, petitioners failed to state in their refund claim that they were requesting a refund for the tax years 1986, 1987 and 1988; rather, their claim form only referenced a refund request for the year ending December 31, 1985. Also, as noted by the Administrative Law Judge, the refund

form requires the taxpayer to explicitly state for which years the refund is being requested. Since petitioners failed to demonstrate that they were explicitly advised by a Division employee that a claim for the tax year 1985 would be deemed to be a claim for tax years 1985 through 1988, there is no basis to invoke the doctrine of estoppel against the Division.

Petitioners continue to argue on exception that their refund should be granted pursuant to the special refund authority provided in the Tax Law.

Tax Law § 697(d) states as follows:

"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."

Petitioners assert that the Administrative Law Judge focused solely on that portion of the statute dealing with mistake of fact. However, petitioners argue that they did not pay under a mistake of fact. Rather, petitioners argue that they were required to pay income tax on their Federal pension income under New York State Tax Law. Petitioners allege that the money collected from them was erroneously or illegally collected and that special refund authority exists allowing the tax commission to refund their money without regard to any period of limitations.

Although the erroneous or illegal collection of moneys is sufficient to invoke the special refund authority, there has been no demonstration by petitioners that money was collected from them illegally or erroneously (see, Matter of Lonergan, Tax Appeals Tribunal, February 13, 1997). Therefore, since petitioners failed to timely file a claim for refund under Tax Law § 687(a), they are not entitled to a refund for the tax years 1986, 1987 and 1988 (Matter of Epstein, Tax Appeals Tribunal, March 27, 1997; Matter of Hicks, Tax Appeals Tribunal, March 20, 1997; and Matter of Mostachetti, Tax Appeals Tribunal, February 13, 1997).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Howard J. and Dolores J. Walter is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Howard J. and Dolores J. Walter is denied; and
4. The Notice of Disallowance dated October 24, 1994 is sustained.

DATED: Troy, New York
May 15, 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