

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

---

|                                                      |   |                |
|------------------------------------------------------|---|----------------|
| In the Matter of the Petition                        | : |                |
| of                                                   | : |                |
| <b>SUSAN EVELYN KYNOR</b>                            | : | DECISION       |
|                                                      | : | DTA NO. 816085 |
| for Redetermination of a Deficiency or for Refund of | : |                |
| Personal Income Tax under Article 22 of the Tax Law  | : |                |
| for the Year 1992.                                   | : |                |

---

Petitioner Susan Evelyn Kynor, 111 North 17<sup>th</sup> Street, East Orange, New Jersey 07017-5214, filed an exception to the determination of the Administrative Law Judge issued on February 11, 1999. Petitioner appeared *pro se*. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

Neither party filed a brief in this matter. Oral argument was not requested.

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

***ISSUES***

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

II. Whether petitioner's refund claim should be granted under the special refund authority of Tax Law § 697(d).

III. Whether Tax Law § 687(a) as applied in this case unconstitutionally deprived petitioner of her rights to due process and equal protection of the laws.

***FINDINGS OF FACT***

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

Petitioner, Susan Evelyn Kynor, filed her 1992 New York State Nonresident and Part-Year Resident Return (Form IT-203) on August 15, 1996.

Petitioner's 1992 return claimed an overpayment of \$1,241.32. This overpayment resulted from the difference between the amount of withholding taxes collected by petitioner's employer and petitioner's total 1992 New York State and City of New York income tax liability. Specifically, petitioner's employer withheld \$4,229.92 in income taxes and petitioner's total income tax liability was \$3,088.60.<sup>1</sup> Although petitioner did not claim a refund of this overpayment on her return,<sup>2</sup> the Division of Taxation ("Division") treated petitioner's return as a claim for refund.

Petitioner did not file a copy of a signed New York State Form IT-370 (Application for Automatic Extension of Time to File for Individuals) with her 1992 return. Petitioner also did not file a signed Federal Form 4868 (Application for Automatic Extension of Time to File U.S. Individual Income Tax Return) with her 1992 New York return.

Pursuant to a letter dated September 25, 1996 and a Notice of Disallowance dated October 11, 1996, the Division denied petitioner's refund claim as being filed late. As indicated on both the letter dated September 25, 1996 and the Notice of Disallowance, the reason for the

---

<sup>1</sup>Petitioner made a mathematical error in calculating her overpayment. Based on the amounts reported on the return, petitioner's overpayment for 1992 was \$1,141.32.

<sup>2</sup>Petitioner left line 75 of her 1992 IT-203 ("Amount of [overpayment] to be refunded to you") blank.

denial was that petitioner's refund claim for 1992 (i.e., the 1992 return) had been filed more than three years from the date the 1992 return was due and was therefore beyond the period of limitations for such a claim.

Late-filed returns, such as petitioner's 1992 New York nonresident return, are processed by the Delinquent and Amended Returns Processing Unit of the Division's Processing Bureau. Late-filed returns that meet certain guidelines set internally by the Processing Bureau may be assessed or refunded by the Processing Bureau. Late-filed returns that do not meet the Processing Bureau's internal guidelines for assessment or refund are sent to the Division's Audit Division to be reviewed by a Senior Audit Clerk under the direction of an Income Tax Technician II.

Upon receiving a late-filed return from the Processing Bureau, the standard procedure to be followed by the Senior Audit Clerk includes a review of all available information in the Division's computer system related to the filing of an extension application. If the year in question has been deleted from viewing access on the computer system, a request for a microfiche search is sent to the Division's Central Files Master Index section. The results of such a search are sent to the Audit Division.

Petitioner's 1992 nonresident return did not meet the Processing Bureau's internal guidelines for the granting of a refund. Accordingly, the return was forwarded to the Audit Division and was assigned to a Senior Audit Clerk for review.

The Senior Audit Clerk assigned to review petitioner's 1992 return followed the standard procedures described above and concluded that, prior to the receipt of petitioner's 1992

nonresident return, the Division did not receive either a signed Form IT-370 or a signed Federal Form 4868 from petitioner.

On or about May 12, 1998, following the filing of the petition herein, the Audit Division conducted a follow-up search of the Division's records for any evidence that petitioner had filed either a signed Form IT-370 or a Form 4868. This search failed to turn up any record of an extension request filed by petitioner for the tax year 1992. This search did reveal that petitioner had filed a valid extension request for both the 1991 and 1993 tax years.

Petitioner filed a Form 4868 for the tax year 1992 with the Internal Revenue Service in 1993.

Petitioner did not offer into evidence herein a copy of any New York State extension application for the 1992 tax year.

Petitioner did not offer into evidence herein any documentary evidence of mailing (e.g., a return receipt) to prove that either a Form IT-370 or a Form 4868 was mailed to New York State to request an extension with respect to petitioner's 1992 New York nonresident return.

#### ***DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

In his determination, the Administrative Law Judge addressed the factual question of whether petitioner timely filed an application with the Division for an automatic extension on either Form IT-370 or Federal Form 4868 for the tax year 1992. The Administrative Law Judge concluded that petitioner failed to timely file a request for an extension and, thus, the Division properly denied her refund claim pursuant to Tax Law § 687(a).

Moreover, the Administrative Law Judge determined that petitioner cannot avail herself of the special refund authority under Tax Law § 697(d) since she presented no evidence to show

that the amount in question was erroneously or illegally collected from her or was paid under a mistake of fact.

The Administrative Law Judge also rejected petitioner's constitutional arguments. With respect to petitioner's claim that she was deprived of due process, the Administrative Law Judge noted that Tax Law § 687(a) provides sufficient procedural protections to satisfy due process requirements. Petitioner also alleged a violation of her right to equal protection under the laws. The Administrative Law Judge reasoned that in the absence of a showing of uneven treatment, there can be no equal protection violation (*see, Trump v. Chu*, 65 NY2d 20, 489 NYS2d 455, *appeal dismissed* 474 US 915, 88 L Ed 2d 250). The Administrative Law Judge further stated that petitioner presented no evidence to demonstrate that she was treated any differently than any other taxpayer with respect to section 687(a) of the Tax Law.

Lastly, the Administrative Law Judge found that whether petitioner filed a Federal extension request for 1992 or whether New Jersey requires such a request has no bearing on her failure to file an extension with New York State. Accordingly, the Administrative Law Judge sustained the Division's denial of petitioner's refund claim.

### ***ARGUMENTS ON EXCEPTION***

Petitioner submits the same arguments to us that were presented to the Administrative Law Judge. Primarily, petitioner argues that she did meet the three-year time frame for filing a refund request pursuant to Tax Law § 687(a). Petitioner alleges that since her 1992 return was filed on August 15, 1996, she had until August 15, 1999 within which to file her refund claim. Furthermore, petitioner continues to assert that she did file for an extension. Petitioner maintains

that the fact that New York State did not receive her form IT-370 does not mean that she did not mail the form to them.

Additionally, petitioner argues that she is entitled to relief pursuant to the special refund authority. Petitioner asserts that the amount collected in withholding taxes from her wages was, in fact, collected in error since her New York City taxes withheld were much more than her actual New York City tax liability. Moreover, petitioner continues to state that her equal protection rights were violated. Lastly, petitioner asserts that the Administrative Law Judge's finding that the fact that a Federal extension was filed is without merit in this case is wrong. Petitioner claims that because she filed a Federal extension for the year 1992, that proves that she also must have filed an extension with the State of New York.

### ***OPINION***

Petitioner has provided us with the same arguments that she made before the Administrative Law Judge and, thus, has not given us any reason to modify the determination in any respect. Since the Administrative Law Judge adequately and correctly addressed the issues presented to him, we affirm his determination for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Susan Evelyn Kynor is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Susan Evelyn Kynor is denied; and

4. The Notice of Disallowance is sustained.

DATED: Troy, New York  
August 26, 1999

---

/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