

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
OLIVER PETROVICH : DECISION
for Redetermination of a Deficiency or for Refund : DTA NO. 816544
of Personal Income Tax under Article 22 of the :
Tax Law for the Year 1988. :

Petitioner Oliver Petrovich, Auburn Correctional Facility, 90A0014, P.O. Box 618, Auburn, New York 13024, filed an exception to the determination of the Administrative Law Judge issued on June 17, 1999. Petitioner appeared *pro se*. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Michael J. Glannon, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation did not file a brief in opposition. Oral argument was not requested.

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

ISSUE

Whether petitioner is entitled to a refund of New York State personal income tax for the year 1988.

FINDINGS OF FACT

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

Petitioner, Oliver Petrovich, filed a New York State Resident Fast Form Income Tax Return (“Form IT-100”) for the year 1988. This return is dated as signed on March 24, 1997. The envelope in which the return was mailed bears a March 26, 1997 United States Postal Service (“USPS”) postmark, and the return is indate stamped as received by the Division of Taxation (“Division”) on March 31, 1997. Petitioner claimed filing status “1,” or “single,” on this return. As borne out by a Wage and Tax Statement (“Form W-2”) attached to the return, petitioner reported \$24,389.76 as “Wages, salaries, tips, etc.” on line two, and reported \$1,486.32 as “New York State tax withheld” on line ten. A letter attached to the return indicates that petitioner was seeking a refund for the year 1988. The dollar amount of the refund was not specified.

The Division issued a responding letter, dated June 19, 1997, denying petitioner’s claim for refund. In its letter, the Division notes that petitioner’s return for 1988 was due on April 15, 1989, but that a search of Division records did not reveal the filing of any return for 1988 prior to the return received by the Division on March 31, 1997. The Division’s letter goes on to state that the deadline for filing a claim for refund expired three years from the date the return was due, which in this case was April 15, 1992, that petitioner’s return was not filed until March 31, 1997, and that Tax Law § 687 includes no provision for waiver of the statute of limitations as it applies to requests for refunds or credits.

Petitioner filed a Claim for Credit or Refund of Personal Income Tax (“Form IT-113-X”), dated July 26, 1997 and received by the Division on July 30, 1997. This claim lists total tax paid of \$1,486.32 (as did petitioner’s 1988 return) and, with respect to the amount of credit or refund

sought, states as follows: “I filed those IT-100 easy forms, to have you figure it out.” Petitioner included an explanation of the basis for his refund claim as follows:

Denial of 1988-State Tax Refund. Because I filed too late, this year, way past the statue [sic] of limitations. But, I have a reasonable excuse, to pursue [sic] a refund.

I’m in prison for killing my parents in 1988, and the prosecution doctors diagnosed [sic] me with a mixed personality disorder, defense doctors, with a mental disorder.

On the outside, my tax returns for refunds were allways [sic] done by some office, together with my parents.

I knew nothing of state tax refunds, until this year, because I filed a Federal refund, only a few years ago.

On August 15, 1997, the Division issued a Notice of Disallowance denying petitioner’s refund claim in full upon the basis that the claim had not been filed within the later of three years from the date the return was due or two years from the date the tax was paid.

Following a conciliation conference, conducted via correspondence, with the Division’s Bureau of Conciliation and Mediation Services (“BCMS”), a conciliation order (CMS No. 163293) dated May 15, 1998 was issued. This order denied petitioner’s request for refund and sustained the Division’s August 15, 1997 Notice of Disallowance. The order also specifies the amount of refund disallowed as \$299.00.

Petitioner challenged the disallowance of his claim for refund by filing a petition with the Division of Tax Appeals. In his petition, dated May 20, 1998, and in his subsequent letter-brief and two reply briefs, petitioner argues that his failure to file for the year 1988 was due to special circumstances. More specifically, on October 12, 1989, petitioner was convicted on two counts of second degree murder for the September 24, 1988 shotgun slaying of his parents. Petitioner

was sentenced thereafter to 2 consecutive terms of 25 years to life in State prison, and in fact has been incarcerated since the September 25, 1988 date of his arrest for murder. In the context of this proceeding, petitioner maintains that he was unaware of his obligation to file Federal or state tax returns because his parents had always taken care of making such filings for him. He argues in turn that because of his parents' deaths in 1988 and because he was involved in the ensuing legal proceedings against him in connection therewith, he was neither aware of his obligation to file nor in a position to secure the necessary information with which to make his filings.

Petitioner states that he learned of his obligation to file a Federal income tax return from another State prison inmate. According to petitioner, he filed his 1988 Federal income tax return in 1991 and received a refund. However, he claims he was unaware of his State filing obligation until 1997, when he filed his Form IT-100 for 1988 as described above. Petitioner's position is that notwithstanding the lateness of his filing for 1988, he remains entitled to a refund for such year because of the special circumstances described above. In addition, petitioner argues that the Division failed to forward information to him or to inquire about his lack of filing for 1988 prior to the expiration of the statute of limitations. Petitioner maintains that this lack of inquiry by the Division, together with the special circumstances of his arrest, conviction and subsequent incarceration, should excuse the lateness in filing his claim and allow for the refund to be granted under the special refund authority of Tax Law § 697(d).¹

¹ Petitioner also claims that he never received a Notice of Deficiency pursuant to Tax Law § 681 for the year 1988. However, there is no claim by the Division and no evidence in the record that a Notice of Deficiency was, or would have been, issued to petitioner under the circumstances of this case. In fact, there is no dispute that taxes withheld from petitioner's wages exceeded his tax liability for 1988, thus obviating any reason for a Notice of Deficiency and leaving petitioner in a position to receive a refund of his overpayment of tax for such year upon timely claim therefore.

The Division maintains that petitioner is not entitled to a refund under Tax Law § 687(a), because this section limits the amount of any refund or credit to the amount of tax paid within the three years immediately preceding the filing of the claim. According to the Division, petitioner paid no tax for the year 1988 within the three years preceding the March 26, 1997 filing of his 1988 return.² The Division also asserts that the special refund authority of Tax Law § 697(d) does not apply because there has been no showing that the amount sought for refund was erroneously or illegally collected.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that Tax Law § 686 provides the Commissioner of Taxation with the authority to credit or refund overpayments of tax and interest within the applicable period of limitations. The Division had calculated petitioner's overpayment as \$299.00, and petitioner did not dispute that this was the correct amount of overpayment. However, petitioner's claim was denied due to the provisions of Tax Law § 687(a) which required petitioner to file his claim for refund within the later of three years from the time his return was filed or two years from the time the tax was paid. Pursuant to Tax Law § 687(i), the amount withheld from petitioner's wages for 1988 was deemed paid on April 15, 1989. Petitioner's 1988 return, however, was not filed until March 26, 1997. The Administrative Law Judge concluded that the refund claim, measured from either the date on which his return was filed or the date on which his formal refund claim was filed, was timely filed within three years of the date of the filing of his 1988 return.

² Although the Division refers to March 31, 1997 as the filing date for petitioner's 1988 return, the envelope in which the return was filed bears a March 26, 1997 USPS postmark, and it is this earlier date which serves as the date of filing (Tax Law § 691[a]).

Despite this timely filing, the Administrative Law Judge concluded that petitioner was not entitled to a refund of the amount of tax overpaid for 1988 because when a refund claim is made within three years from the filing of the return, Tax Law § 687(a) limits the amount of any refund to the amount of tax paid within the three-year period immediately preceding the filing of the refund claim. Since petitioner's payment of tax was deemed to have occurred on April 15, 1989, a date more than three years before he filed his refund claim, the Administrative Law Judge concluded that no refund was available to petitioner in this case.

The Administrative Law Judge found no merit in petitioner's argument that he did not know of his obligation to file a return or to claim a refund until many years after the year in issue. Further, the Administrative Law Judge noted that despite petitioner's claim that the Division was under a duty to advise petitioner of his right to a refund, the Division is under no such obligation to personally advise taxpayers of their filing obligations or of potential refunds to which they might be entitled.

Finally, the Administrative Law Judge rejected petitioner's claim that he was entitled to a refund pursuant to the special refund authority of Tax Law § 697(d), which authorizes the Tax Commissioner to make refunds without regard to any period of limitations in certain situations where taxes were erroneously or illegally collected. The Administrative Law Judge concluded that Tax Law § 697(d) was inapplicable to petitioner's situation since there was no evidence to suggest that any of the overpaid tax in question was erroneously or illegally collected from petitioner rather than simply withheld from petitioner's wages through normal tax withholding procedures.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that the Administrative Law Judge erroneously denied his claim for refund and he takes exception to so much of his determination as concluded that the Division is not under a duty to personally advise every taxpayer of their filing obligations and that the amount of taxes withheld by petitioner's employer was withheld through normal procedures.

Petitioner apparently argues that just as Tax Law § 681 provides for notice to be provided to every taxpayer against whom the Division asserts a deficiency of income tax, so must notice be provided as to other circumstances, such as the availability of refunds.

Petitioner also contends that because the amount of tax withheld from his wages exceeded his liability, such tax was not obtained through normal procedures. Thus, it was erroneously paid pursuant to a mistake of fact and the special refund authority of Tax Law § 697(d) should apply.

The Division asserts that the Administrative Law Judge correctly decided the issues presented in this case and his determination should be affirmed.

OPINION

We affirm the determination of the Administrative Law Judge. Petitioner has raised the same issues and presented the same arguments herein as were considered by the Administrative Law Judge. We find that the Administrative Law Judge completely and adequately addressed the issues presented to him and correctly applied the Tax Law and relevant case law to the facts of this case. We see no reason to modify his determination in any respect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Oliver Petrovich is denied;

2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Oliver Petrovich is denied; and
4. The Notice of Disallowance, dated August 15, 1997, is sustained.

DATED: Troy, New York
January 20, 2000

/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