

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>MARILYN BOWMAN-BRITT</b>	:	DECISION
	:	DTA NO. 818976
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Year 1995.	:	

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Petitioner Marilyn Bowman-Britt, 197 East 56<sup>th</sup> Street, Brooklyn, New York 11203, filed an exception to the determination of the Administrative Law Judge issued on October 17, 2002. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Michelle M. Helm, Esq., of counsel).

Petitioner did not file a brief in support of her exception. The Division of Taxation filed a letter in lieu of a formal brief in opposition. Petitioner's request for oral argument was denied.

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

***ISSUE***

Whether the Division of Taxation properly disallowed petitioner's claim for refund of personal income taxes for the year 1995.

***FINDINGS OF FACT***

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

Petitioner failed to file a timely New York State income tax return for 1995. Rather, she filed a New York State and City income tax return for 1995 more than three years late on September 7, 1999. On her return, she reported New York adjusted gross income of \$53,322.00, with taxable income of \$40,933.00 after claiming an itemized deduction. On this taxable income, she calculated New York City income tax of \$1,594.00 and New York State income tax of \$2,680.00 for a total 1995 New York State and City income tax of \$4,274.00. Since she had New York State and City income tax withheld in the total amount of \$4,929.00, petitioner claimed a refund of \$655.00 representing the amount overpaid.

The Division of Taxation (“Division”) issued a Notice of Disallowance dated April 21, 2000 rejecting petitioner’s refund claim for the following reason:

The Tax Law does not permit us to allow the refund or credit you claimed on your income tax return for the year(s) 1995. The deadline for filing for a refund or credit expired three years from the date the return was due.

There is no provision in Section 687 of the New York State Tax Law for waiving the three year statute of limitations as it applies to requests for refunds or credits.

In her petition, petitioner explained that “[d]uring the year, 1995, I did not have the clear presence of mind nor the concentration to fulfill my own business obligations.” Petitioner, noted further that she was the “sole caretaker of both my parents,” who have suffered serious illnesses and hospitalizations since 1993.

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

The Administrative Law Judge reasoned that, since petitioner did not contest any of the facts set forth in the Division's motion, there were no material issues of fact in dispute. Thus, he concluded that a determination could be issued as a matter of law in favor of any party based on the motion for summary determination made in this case.

The Administrative Law Judge noted that petitioner filed her 1995 New York income tax return on September 7, 1999 and the Division properly treated her return as a claim for refund since such claim was made within three years from the time the return was filed. However, the Administrative Law Judge noted that the overwithheld tax in issue here was deemed paid on April 15, 1996 pursuant to Tax Law § 687(i). Thus, since the overwithheld tax was not paid within the three years immediately preceding September 7, 1999, the Administrative Law Judge determined that petitioner's claim for refund must be denied as untimely pursuant to Tax Law § 687(a).

***ARGUMENTS ON EXCEPTION***

Petitioner states in her exception that she has been faithfully filing her income tax returns for close to 40 years and she has never been denied a refund because of an untimely request. Petitioner asks for leniency and claims that she should not be penalized for only one incident. Petitioner questions whether any taxpayer has prevailed in a situation analogous to hers and states that it is unfathomable that a taxpayer in her position has not received a more favorable ruling.

In opposition, the Division asserts that petitioner does not dispute that her refund claim was untimely filed and, as such, the refund was properly denied by the Division.

**OPINION**

Tax Law § 687(a) states, in pertinent part, that:

[c]laim 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, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. *If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return* (emphasis added).

As determined by the Administrative Law Judge and not disputed by petitioner, the claim for refund in this case was not timely filed. Since there is no basis for waiving the statute of limitations set forth above, we agree with the Administrative Law Judge and find that the claim for refund filed by petitioner was properly disallowed by the Division.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Marilyn Bowman-Britt is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Marilyn Bowman-Britt is denied; and
4. The Notice of Disallowance dated April 21, 2000 is sustained.

DATED: Troy, New York  
October 16, 2003

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

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