

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**EDWARD LEVINE** : DECISION  
for Redetermination of a Deficiency or for : DTA NO. 821413  
Refund of Personal Income Tax under Article :  
22 of the Tax Law for the Years 1995 through :  
2001. :  
\_\_\_\_\_ :

Petitioner, Edward Levine, filed an exception to the determination of the Administrative Law Judge issued on January 10, 2008. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel).

Petitioner did not file a brief in support. The Division of Taxation did not file a 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 denied petitioner's claims for credit or refund of personal income tax for the 1995 through 2001 tax years on the basis that the claims were filed after the applicable statute of limitations for credit or refund had expired.

***FINDINGS OF FACT***

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

Petitioner, Edward Levine, timely filed with the Division of Taxation (“Division”) his 1995 through 2001 New York State resident personal income tax returns.

During the period 1993 through 1995, petitioner suffered from severe depression. He lost both his parents during this period of time and was forced to retire from employment with the Internal Revenue Service on disability income. At the time of his retirement, petitioner had not yet reached the age of 62.

In completing his federal income tax returns for the years at issue, petitioner included his disability income in taxable income as required by the Internal Revenue Code, which provided that if a taxpayer retired on disability, payments received are fully taxable as ordinary income until the taxpayer reaches minimum retirement age. Petitioner erroneously assumed that New York State treated disability income in the same way that the Internal Revenue Service did and included such income in his New York State adjusted gross income for the years at issue.

According to petitioner, the instructions for Form IT-201 also led to his erroneous conclusion. Petitioner’s 1995 through 2001 personal income tax returns did not exclude from New York State adjusted gross income the disability pension income received as permitted by Tax Law § 612(c)(3-b)(I).

In early 2006, while preparing his New York State personal income tax return for 2005, petitioner realized that his disability income received as a result of his retirement from the Internal Revenue Service was not subject to New York State personal income tax. Accordingly, on February 10, 2006, petitioner filed amended New York State resident personal income tax returns for the years 1995 through 2001, wherein Mr. Levine’s disability income was excluded from New York adjusted gross income. The amended returns each sought a refund of the New

York State personal income tax paid on Mr. Levine's disability income for the years 1995 through 2001. The total amount requested was \$2,782.00.

The Division, on April 21, 2006, issued a Notice of Disallowance to petitioner denying in full the \$2,782.00 refund claimed on his 1995 through 2001 amended personal income tax returns. The basis for the Division's denial was that the amended returns, received on February 10, 2006, were filed after the applicable statute of limitations for credit or refund had expired.

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

In his determination, the Administrative Law Judge noted that Tax Law § 687(a) provides that a claim for credit or refund of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later. The Administrative Law Judge also noted that payment of income tax withheld during any taxable year is deemed to have been paid by the taxpayer on April 15 of the following year pursuant to Tax Law § 687(I). The Administrative Law Judge concluded that the tax withheld from petitioner during 2001 was deemed to have been paid on April 15, 2002. Accordingly, petitioner's claim for refund for 2001, dated February 10, 2006, was not made within three years of the date the tax was paid. The Administrative Law Judge determined that petitioner's claims for refund for the years 1995 through 2000 were also filed on February 10, 2006, after the three year statute of limitations for refund had expired.

The Administrative Law Judge determined that petitioner erroneously included his disability payments in the computation of his New York adjusted gross income for the years at issue.

***ARGUMENTS ON EXCEPTION***

On exception, petitioner argued that the IT-201 instructions were clearly misleading and that consideration should be given in the matter.

***OPINION***

Tax Law § 687(a) provides as follows:

General. -- Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within (i) three years from the time the return was filed, (ii) two years from the time the tax was paid . . . whichever of such periods expires the later . . . . 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 . . . .

Petitioner argued that he was prevented from filing his original returns in a correct manner and timely filing his amended returns in a timely manner due to mental illness.

Petitioner seeks equitable tolling of the statute of limitations set forth in Tax Law § 687(a) based on his disability. In *United States v. Brockamp*, 519 US 347 (1997), the taxpayer therein argued that senility caused the delay in filing the claim and that the statutory time limitation should be extended because of the existence of a mental disability. The Court rejected the taxpayer's contentions saying that there was neither an explicit nor implied equitable tolling exception in IRC § 6511.

The court stated in part as follows:

To read an "equitable tolling" provision into these provisions, one would have to assume an implied exception for tolling virtually every time a number appears. To do so would work a kind of linguistic havoc. Moreover, such an interpretation would require tolling, not only procedural limitations, but also substantive limitations on the amount of recovery-a kind of tolling for which we have found no direct precedent. Section 6511's detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate to us that Congress did not intend the courts to read other unmentioned, open-ended, "equitable" exceptions

into the statute that it wrote. There are no counter-indications. Tax law, after all, is not normally characterized by case-specific exceptions reflecting individualized equities (519 US, at 352).

While decisions of the Federal courts interpreting the Internal Revenue Code are not binding precedent in interpreting the provisions of the Tax Law, following such interpretations has long been favored by the courts of New York where, as here, the New York statute is patterned on the Federal one. Thus, the Court of Appeals stated in *Matter of Marx v. Bragalini*, 6 NY2d 322 (1959), at 333, “It has long been the policy of our courts to adopt, whenever reasonable and practical, the Federal construction of substantively similar tax provisions . . . . The doctrine is in furtherance of the legislative policy of maintaining uniformity in the administration of the two tax laws.” We find no reason to interpret the provisions of Tax Law § 687(a) differently.

Petitioner argued that the instructions on the IT-201 form were misleading. We reject petitioner’s claim. “Ignorance of the law is no excuse; a taxpayer is charged with knowledge of the law . . .” (*see, Genesee Brewing Co. v. Village of Sodus Point*, 126 Misc 2d 827 [1984], *affd* 115 AD2d 313 [1985]). Petitioner clearly misunderstood the instructions on the IT-201 form, in which he included his disability payments in the computation of his adjusted gross income. Accordingly, we find that there is no basis for waiving the statute of limitations set forth above.

As determined by the Administrative Law Judge and not disputed by petitioner, the claim for refund in this case was not timely filed. Petitioner has produced no evidence below, nor argument on exception, that would justify our modifying the determination of the Administrative Law Judge in any respect.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

1. The exception of Edward Levine is denied;

2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Edward Levine is denied; and
4. The Notice of Disallowance, dated April 21, 2006 is sustained.

DATED: Troy, New York  
August 7, 2008

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
President

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

/s/ Robert J. McDermott  
Robert J. McDermott  
Commissioner