

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
YANG AND KYUNG H. CHO : DECISION
for Redetermination of a Deficiency or for Refund of : DTA NO. 824624
Personal Income Tax under Article 22 of the Tax Law for :
the Year 2006. :

Petitioners, Yang and Kyung H. Cho, filed an exception to the determination of the Administrative Law Judge issued on March 22, 2012. Petitioners appeared by Yoon S. Shu, Esq. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele Milavec, Esq., of counsel).

Petitioners did not file a brief in support of their exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioners did not file a reply brief. Oral argument was not requested.

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

ISSUES

Whether the Division of Taxation sufficiently met its burden of proof to support its motion seeking dismissal of the petition or whether there exists sufficient ambiguity in the record to warrant granting the parties an opportunity to present more evidence on a particular issue.

FINDINGS OF FACT

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

Petitioners timely filed their 2006 New York State personal income tax return and paid the tax due of \$16,190.00 by the April 15, 2007 deadline.

On May 10, 2010, petitioners filed an amended return with New York for the year 2006 seeking a refund of \$21,610.00. The basis for the amendment was to increase a resident credit for taxes paid to the state of New Jersey. As part of their amended return, petitioners included a letter dated March 22, 2010, from the State of New Jersey's Department of the Treasury, Division of Taxation, informing them of a deficiency for the 2006 tax year in the amount of \$30,031.00.

On November 12, 2010, the Division of Taxation (Division) issued a Notice of Disallowance to petitioners disallowing the claimed refund for the year 2006. The subject notice stated, in pertinent part:

“The New York State Tax Law does not permit us to allow the refund you claimed on your return of \$21,610.00 for the year 2006. The deadline for filing for a refund expired three years from the date the return was due. Because we did not receive an Extension to File (IT-370), the 2006 amended return would have been due April 15, 2010 for the refund to be issued. Your return was not received until May 10, 2010.”

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge pointed out that petitioners were not contesting the fact that the period of limitation for filing their refund claim had expired, and thus, their amended return was untimely. The Administrative Law Judge rejected petitioners' argument that they should be entitled to relief pursuant to the special refund authority outlined pursuant to Tax Law § 697 (d).

The Administrative Law Judge noted that in order to qualify for relief under the special refund provision, petitioners needed to establish that they paid money erroneously under a

mistake of fact. The Administrative Law Judge further noted that petitioners were informed of their New Jersey deficiency by a letter, dated March 22, 2010, or 24 days before the expiration of New York's statute of limitations for refunds for the period at issue. The Administrative Law Judge concluded that petitioners' failure to timely file a refund claim for 2006 was based upon a mistake of law, not a mistake of fact.

Thus, the Administrative Law Judge granted summary determination in favor of the Division.

ARGUMENTS ON EXCEPTION

On exception, petitioners argue that they made a mistake of fact, and as such, under Tax Law § 697 (d), they are entitled to a refund.

The Division argues that petitioners' exception should be denied in its entirety and that the determination of the Administrative Law Judge granting summary determination should be affirmed.

OPINION

We reverse the determination of the Administrative Law Judge.

A motion for summary determination shall be granted:

“if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party” (20 NYCRR 3000.9 [b] [1]).

Section 3000.9 of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to New York Civil Practice Law and Rules § 3212.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], *citing Zuckerman v City of New York*, 49 NY2d 557 [1980]). Inasmuch as summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439 [1968]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572 [1989]).

Tax Law § 697 (d) provides 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” (emphasis added).

As discussed by the Administrative Law Judge in his determination, a mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (*see Wendel Found. v Moredall Realty Corp.*, 176 Misc 1006 [1941]). In contrast, a mistake of law has been defined as acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts (*id.*).

In this case, petitioners make the allegation that their failure to timely file the appropriate amended return was the result of a mistake of fact. The Division filed a motion for summary determination, with affidavits and relevant documentation attached thereto, seeking to have the petition dismissed. The Division has established, and petitioner has conceded, that the filing of

the amended New York State tax return was past the statute of limitations. However, the Division's submissions fail to clearly address the relevant provisions of Tax Law § 697 (d). Specifically, its papers do not address the issue of whether the Division's records indicate that "any moneys have been erroneously or illegally" collected from or paid by petitioners because of a mistake of fact. In the absence of this information, we conclude that, as a matter of law, the Division has not proven that it is entitled to a judgment in its favor.

We find that further proceedings are warranted in order to clarify the ambiguities with regard to the records maintained by the Division. Granting a motion for summary determination is premature. It must first be determined whether the Division's records support the claim that the money alleged to have been erroneously or illegally collected from or paid by petitioners to the Division was done so under a mistake of fact.

We remand this matter to the Administrative Law Judge for further proceedings on the issue of whether the Division's records support the claim that the money alleged to have been erroneously or illegally collected or paid by petitioners to the Division was done so under a mistake of fact and, if then appropriate, a determination of whether the other factors required under Tax Law § 697 (d) have been met and, therefore, the Division must utilize the section in this case.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Yang and Kyung H. Cho is granted;
2. The determination of the Administrative Law Judge is reversed; and
3. The Division of Taxation's motion for summary determination is denied and the

matter is remanded to the Administrative Law Judge for further proceedings consistent with this decision.

DATED: Albany, New York
February 21, 2013

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner