STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PETER W. AND LORE SILTON	:	DETERMINATION DTA NO. 818827
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Years 1987 and 1990 through 1995.	:	

Petitioners, Peter W. and Lore Silton, 46 Bonwit Road, Rye Brook, New York 10573, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1987 and 1990 through 1995.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 90 South Ridge Street, Rye Brook, New York, on March 27, 2003 at 2:15 P.M. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Susan Parker).

Since neither party herein elected to reserve time for the submission of post-hearing briefs, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

ISSUES

I. Whether the Division of Taxation properly denied petitioners' claims for refund on the basis that said claims were filed after the expiration of the applicable statute of limitations for credit or refund.

II. Whether the personal income tax forms for the years at issue fail to properly and clearly advise petitioners that the income they received from IRA distributions qualify for the pension and annuity income exclusion provided for in Tax Law § 612(c)(3-a), and if so, whether petitioners should be granted the refunds they claimed due to the faulty design of the returns, notwithstanding the fact that said refund claims were filed after the statute of limitations for refund had expired.

FINDINGS OF FACT

1. Petitioners herein, Peter W. and Lore Silton, timely filed joint New York State resident personal income tax returns for the years 1987 and 1990 through 1995. The 1987 return was prepared by a public accounting firm, while petitioner Peter W. Silton personally prepared the returns for the years 1990 through 1995. For each of the seven years in dispute petitioners received distributions of taxable income in varying amounts from Individual Retirement Accounts ("IRA"). The following table sets forth the amount of taxable IRA distributions received by petitioners, and included in Federal adjusted gross income, for each year at issue:

YEAR	AMOUNT
1987	$16,926.00
1990	$20,000.00
1991	$6,000.00
1992	$2,000.00
1993	$2,500.00
1994	$30,500.00
1995	$24,603.00

2. For New York State income tax purposes, if a taxpayer has attained the age of 59 1/2, the first $20,000.00 of an IRA distribution is not taxable and, pursuant to Tax Law § 612(c)(3-a),

is to be subtracted from Federal adjusted gross income in computing New York adjusted gross income.[1] Although petitioners were entitled to exclude all or a portion of their IRA distributions from New York State taxation, they failed to claim the pension and annuity income exclusion on their original returns for the years 1987 and 1990 through 1995.

3. On April 29, 2000, petitioners filed amended New York State personal income tax returns for the years 1987 and 1990 through 1995 whereon they claimed that the following IRA distribution amounts were not taxable for New York State income tax purposes pursuant to the pension and annuity income exclusion provisions of Tax Law § 612(c)(3-a):

YEAR	AMOUNT
1987	$16,926.00
1990	$20,000.00
1991	$6,000.00
1992	$2,000.00
1993	$2,500.00
1994	$23,000.00
1995	$22,103.00

4. Pursuant to notices of disallowance dated November 3, 2000 (for the 1994 tax year) and December 29, 2000 (for the remaining six years), the Division of Taxation ("Division") advised petitioners that the refunds claimed on the amended returns filed on April 29, 2000 were disallowed in full since "[T]he Tax Law does not permit us to allow the refund or credit you claimed on your income tax return for the year. The deadline for filing for a refund or credit

[1] This modification reducing Federal adjusted gross income is commonly referred to as the "pension and annuity income exclusion" and this term will be used hereinafter in this determination.

expired three years from the date the return was due." Petitioners disagreed with the Division's denial of their claims for refund and this proceeding ultimately ensued.

SUMMARY OF THE PARTIES' POSITIONS

5. Petitioners argue that they failed to claim the pension and annuity income exclusion on their original returns for the seven years at issue because the format of the New York income tax returns was poorly designed and misleading. Specifically, petitioners point to the fact that the New York State income tax return[2] requires a taxpayer to report on lines 1 through 18 the items of income, gain and loss and adjustments to income which were shown on their Federal income tax return and used to compute Federal adjusted gross income. Lines 9 and 10 of the New York return require a taxpayer to report separately the "Taxable amount of IRA distributions" and "Taxable amount of pensions and annuities," respectively. The New York return next requires a taxpayer to make any applicable additions to and subtractions from Federal adjusted gross income to arrive at New York adjusted gross income. In the subtraction section of the New York return a taxpayer is directed at line 27 to subtract from reported Federal adjusted gross income the "Pension and annuity income exclusion." The heart of petitioners' argument is that line 27 of the return fails to indicate that an IRA distribution can also qualify for the pension and annuity income exclusion and that there is sufficient space on line 27 for the Division to have inserted the words "and IRA distribution," thereby alerting a taxpayer that IRA distributions can also qualify for the pension and annuity income exclusion. Petitioners note that since IRA distributions and pension and annuity income are separately reported on lines 10 and 11, respectively, the only reasonable conclusion which can be drawn from a review of the return is

[2] For purposes of this determination I have used the format of the 1995 return for purposes of identifying various lines and what items appear on said lines. For the other years at issue the same items appear on the returns; however, they may be designated by different line numbers.

that the pension and annuity income exclusion applies only to the pension and annuity income reported on line 11 and not the IRA distribution reported on line 10. Petitioners asserted that they were completely misled by the format of the tax return and that they relied on the return to their detriment. Petitioners believe that the Division should not be able to apply the statute of limitations for refund in this matter since it was the Division's faulty and misleading tax return which led them to believe that an IRA distribution did not qualify for the pension and annuity income exclusion.

6. The Division notes that the instruction booklet for each of the seven years in dispute, specifically the section headed "New York Subtractions . . . Line 27 Pension and annuity income exclusion" advises a taxpayer that if he or she was age 59 1/2 they could exclude from New York adjusted gross income not more than $20,000.00 of pension and annuity income which was included in Federal adjusted gross income. The instructions further provided that "Qualifying pension and annuity income includes . . . periodic and lump-sum payments from an IRA, but not payments derived from contributions made after you retired." The Division maintains that the instruction booklet for each year at issue clearly informed all taxpayers that an IRA distribution could qualify for the pension and annuity income exclusion and that petitioners' failure to claim the pension and annuity income exclusion was the direct result of their failure to read the instruction booklet for each year.

7. Petitioners also note that their returns for the 1993 and 1995 tax years were examined by the Division and that as a result of said examinations additional tax was found to be due for 1993 and that they were allowed a refund for 1995. Petitioners assert that since the Division examined their returns for the 1993 and 1995 tax years, it was under a duty to perform a

complete review of the returns and that a complete review would have disclosed the omission of the pension and annuity income exclusion.

8. The Division maintains that it did not conduct an examination of petitioners' returns for 1993 and 1995 and that the adjustments made for these two years were merely computer generated computational changes.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 687(a), a limitations period is imposed upon taxpayers who wish to claim a refund of an overpayment of income tax as follows:

> Claim 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.)

B. Petitioners do not contest the fact that their refund claims for each of the years at issue were not timely filed. Rather, petitioners contend that the period of limitations should not bar their claims because the format of the State income tax returns misled them. This contention must be rejected. The Tax Appeals Tribunal in ***Matter of Jones*** (January 9, 1997) noted that New York's income tax refund procedures have been recognized as a "constitutionally sound scheme which . . . simultaneously [respected] the State's fisc [citation omitted]." In ***Jones*****,** the taxpayer's refund claim was denied despite the fact that New York State had required the payment of State income tax on Federal pension income in violation of the United States Constitution. The Tribunal's reasoning in ***Jones*** was embraced by the Appellate Division in ***Matter of Brault v. Tax Appeals Tribunal*** (265 AD 2d 700, 696 NYS 2d 579), a subsequent case

addressing State income taxation on Federal pension income. In ***Brault*** the Court stated that "[I]nasmuch as Tax Law § 687(a) constitutes a permissible procedural protection, its application to petitioners' refund claims did not deprive them of due process. . . ." The three-year period of limitations to file a refund claim has also been recognized by the United States Supreme Court as sufficient for due process requirements (***McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*****,** 496 US 18, 45, 110 L Ed 2d 17, 41).

In the matter at hand, it was petitioners' failure to read the instructions for the State income tax return which contributed to their failure to exclude their IRA distributions from State taxation. If the statute of limitations was applied to the taxpayers in ***Jones*** and ***Brault*****,** who were taxed by New York in violation of the United States Constitution, it must also be applied to petitioners. In short, New York's interest in financial stability justifies its enforcement of the three-year statute of limitations under Tax Law § 687(a).

Simply stated, there is no basis in law to grant petitioners the relief they seek. Although this conclusion may appear harsh, it must be noted that the law affords a taxpayer a substantial time period, in this case three years, to file a claim for credit or refund, and unfortunately for petitioners, they failed to file their claim for the years 1987 and 1990 through 1995 within the time frame allowed by law. Conversely, the Division, once a return has been filed, generally has a like three-year period to issue a notice of deficiency to a taxpayer asserting that additional taxes are due (Tax Law § 683[a]). Accordingly, I see no inequity in the current statutory scheme which holds a taxpayer to the same three-year period to file a claim for credit or refund.

C. Nevertheless, petitioners' point that the format of the State income tax returns were misleading does have some validity. It would have been clearer if the terminology "Pension, annuity and IRA distribution income exclusion" was inserted on line 27 of the tax return instead

of "Pension and annuity income exclusion" and I urge the Division to consider such a change on future returns. However, such shortcoming does not provide a basis to revive claims for refund which were barred by the period of limitations specified in law. I cannot hold the Division to a standard that a tax return, by itself, must be designed in such a manner that a taxpayer is alerted to every single facet of the Tax Law. The instruction booklet, in a basic sense, is designed for this purpose and it is not unreasonable to expect a taxpayer who chooses to prepare his own return to carefully read it.

D. Finally, petitioners' argument that the Division was under a duty to conduct a complete review of their 1993 and 1995 tax returns must be rejected. It is clear that the adjustments made by the Division for these two years were in fact computer generated mathematical changes and were not the result of any review, audit or examination of the returns. It must be noted that it is a taxpayer's responsibility to file a complete and accurate tax return and unfortunately for petitioners they failed to do so.

E. The petition of Peter W. and Lore Silton is denied and the notices of disallowance dated November 3, 2000 and December 29, 2000 are sustained.

DATED: Troy, New York
May 29, 2003

/s/ James Hoefer
PRESIDING OFFICER