STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
STANLEY AND MAGALI CANCAR	:	SMALL CLAIMS DETERMINATION DTA NO. 820083
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax under Chapter 17, Title 11 of the Administrative Code of the City of New York for the Year 1998.	:	

Petitioners, Stanley and Magali Cancar, 75 Poplar Street, Apt. 2I, Brooklyn, New York 11201, 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 and New York City personal income tax under Chapter 17, Title 11 of the Administrative Code of the City of New York for the year 1998.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York, on March 9, 2005 at 9:15 A.M. Petitioners appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Mac Wyszomirski).

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' claim for credit or refund for the 1998 tax year on the basis that said claim was filed after the applicable statute of limitations for credit or refund had expired.

II. Whether the claim for credit or refund, if found to have been filed beyond the statute of limitations for credit or refund, can nonetheless be allowed pursuant to the special refund authority set forth in Tax Law § 697(d).

FINDINGS OF FACT

1. On April 15, 1999, petitioners timely filed with the Division of Taxation ("Division") a request for an automatic extension of time to file their 1998 New York State and City personal income tax return. Enclosed with the request for an extension of time to file was petitioners' check in the sum of $2,156.10, representing the balance which petitioners estimated would be due upon the filing of their 1998 income tax return.

2. On November 29, 2002, the Division sent a letter to petitioner Stanley Cancar indicating that a search of its records failed to disclose that he had filed a New York State and City personal income tax return under his social security number for the 1998 tax year. On December 31, 2002, petitioners mailed to the Division a 1998 New York State and City resident personal income tax return reporting that they had overpaid their 1998 State and City income tax liability by $2,777.25. The return reported that petitioners wished to have the $2,777.25 overpayment for 1998 applied to their 1999 estimated tax account. The $2,777.25 overpayment was computed in the following manner:

ITEM	AMOUNT
NYS tax withheld	$2,577.15
NYC tax withheld	1,837.00
Amount paid with extension	2,156.10
Total payments	6,570.25
NYS and NYC tax due	3,793.00
Overpayment	$2,777.25

3. On August 4, 2003, the Division issued a notice to petitioners denying the $2,777.25 overpayment as shown on their 1998 return. The basis for the Division's denial was that the 1998 return, mailed on December 31, 2002, was filed after the applicable statute of limitations for credit or refund had expired.

4. Petitioners personally prepared both their Federal and New York State and City personal income tax returns for the 1998 tax year prior to the August 15, 1999 extended due date. Petitioners both testified that their Federal and New York State and City personal income tax returns for 1998 were personally delivered to the United States Post Office located one block from their apartment on the same date prior to August 15, 1999. The returns were mailed using ordinary first class mail. Petitioners experienced no dispute with the Internal Revenue Service regarding its receipt of the 1998 Federal return mailed on or before August 15, 1999.

5. When petitioners prepared their Federal and New York State and City tax returns for 1999 they, for the first time, utilized a tax preparation computer program. Line 58 of Federal Form 1040 for 1999 directs taxpayers to enter "1999 estimated tax payments and amount applied from 1998 return." When preparing their 1999 Federal return, petitioners entered the amount of their 1998 Federal overpayment which was applied to or carried forward to the 1999 tax year. Since the Internal Revenue Service had received petitioners' 1998 Federal return on or before the

August 15, 1999 extended due date, its records would have reflected that the 1998 Federal overpayment had been applied to the 1999 tax year and that petitioners' 1999 return had properly claimed the 1998 overpayment as a payment of taxes on their 1999 Federal return.

In contrast, the New York State and City resident income tax return for 1999, Form IT-201, line 65, advises taxpayers to enter "Total of estimated tax payments, and amount paid with extension Form IT-370." Without specific directions on line 65 of Form IT-201 to enter the amount of the 1998 overpayment applied to the 1999 tax year, petitioners'1999 New York return did not claim the 1998 overpayment of $2,777.25 as a payment on the 1999 return. When the Division received petitioners' 1999 return, on or before April 15, 2000, it had no record of petitioners' filing a return for 1998 wherein they carried over a $2,777.25 overpayment to the 1999 tax year. Accordingly, since petitioners' 1999 return did not claim the $2,777.25 overpayment from 1998 as a payment on their 1999 return, and since the Division had no record of an overpayment from 1998 being applied to the 1999 tax year because it had not received petitioners' 1998 return, the Division noted no discrepancy in processing petitioner's 1999 return.

6. The Division has made at least two searches of its records in an attempt to locate the 1998 return purportedly mailed by petitioners on or before the August 15, 1999 extended due date. The searches revealed that the Division has only one 1998 return on file for petitioners and that this return was mailed on December 31, 2002. A check of petitioners' filing record for years both prior and subsequent to the 1998 tax year discloses that they have consistently filed their income tax returns in a timely manner.

SUMMARY OF PETITIONERS' POSITION

7. Petitioners maintain that they timely mailed their 1998 New York State and City personal income tax return to the Division on the same date that they mailed their 1998 Federal income tax return, i.e., on or before the August 15, 1999 extended due date. Since the 1998 Federal return was timely received by the Internal Revenue Service, petitioners argue that it should also be found that their 1998 New York State and City income tax return was likewise filed on or before the August 15, 1999 extended due date. Petitioners also assert that their exemplary record of filing timely income tax returns should weigh heavily in their favor.

8. Petitioners also argue that the design of Form IT-201, unlike Federal Form 1040, does not clearly instruct a taxpayer to include on line 65 the overpayment from the prior year's tax return which was carried over to the current year. Had the New York return for 1999 been more specific with respect to line 65, petitioners assert that they would have entered the 1998 overpayment on the 1999 return. When the Division processed petitioners' 1999 return claiming a $2,777.25 overpayment from 1998 to 1999, the Division's failure to receive the 1998 return would have surfaced immediately and well before the statute of limitations expired for the 1998 tax year. Also, petitioners believe that the Division had a duty and responsibility to advise them that it had no record of a 1998 return having been filed before the statute of limitations for refund expired.

9. Finally, petitioners maintain that there is no question of fact or law in this matter and that the refund for 1998 can therefore be granted pursuant to the special refund authority contained in Tax Law § 697(d).

CONCLUSIONS OF LAW

A. As relevant to this proceeding, Tax Law § 687, entitled "Limitations on credit or refund" provides as follows:

> (a) General. --- 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. . . . 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. . . . If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately proceeding the filing of the claim. . . .

B. For the 1998 tax year, petitioners' payment of taxes was via tax withheld from wages and a $2,156.10 estimated tax payment made April 15, 1999 when they submitted their request for an extension of time to file. Pursuant to Tax Law § 687(i), income taxes withheld from wages and estimated tax payments for the 1998 tax year are deemed to have been paid by a taxpayer on April 15th of the following year, i.e., April 15, 1999. Because petitioners had a valid extension of time to August 15, 1999 to file their 1998 return, any claim for credit or refund of the tax withheld from wages in 1998 or the estimated tax payment made for 1998 would be required, pursuant to Tax Law § 687(a), to be filed by August 15, 2002. Since it is clear that the 1998 return submitted by petitioners on December 31, 2002 was filed after the statute of limitations for refund had expired, resolution of the controversy herein turns on whether petitioners have proven that they filed a return for 1998 on or before August 15, 2002.

C. Tax Law § 691(a) provides, in pertinent part, that:

> If any return . . . required to be filed . . . within a prescribed period or on or before a prescribed date . . . is, after such period or such date, delivered by United States mail . . . the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. . . . If

> any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed.

When the Division fails to receive a document, the general rule is that proof of ordinary mailing is insufficient as a matter of law to prove timely filing (***Matter of Dattilo,*** Tax Appeals Tribunal, May 11, 1995, ***confirmed Dattilo v. Urbach,*** 222 AD2d 28, 645 NYS2d 352; ***Matter of Schumacher,*** Tax Appeals Tribunal, February 9, 1995; ***Matter of Reeves***, Tax Appeals Tribunal, August 22, 1991; ***Matter of Savadjian***, Tax Appeals Tribunal, December 28, 1990).

D. In the instant matter, I am satisfied that the Division has conducted several searches of its records in an effort to locate the 1998 return allegedly mailed on or before August 15, 1999 and that it has no record of ever receiving this return. Since the Division's records reflect that the first time it received petitioners' return for 1998 was on December 31, 2002, the burden is on petitioners to prove (Tax Law § 689[e]), by one means or another, that they filed their return for 1998 with the Division before the statute of limitations for refund had expired. Petitioners' testimony concerning the mailing of their 1998 return on or before August 15, 1999, although forthright and sincere, is not sufficient to permit a conclusion that they have met their burden of proving that the return for 1998 was filed (delivered) to the Division before April 15, 2002 (***see, Matter of Dattilo, supra*; *Matter of Schumacher, supra; Matter of Miller v. United States***, 784 F2d 728, 86-1 US Tax Cas ¶ 9261; ***Matter of Sipam***, Tax Appeals Tribunal, March 10, 1988 [for a general discussion on the filing of various documents with the Division and the Division of Tax Appeals]).

E. Petitioners could have avoided any risk of mishandling of the 1998 return by the Postal Service or by the Division had they used certified or registered mail (Tax Law § 691[a];

20 NYCRR 2399.2[b]), since certification or registration serves as prima facie evidence that a document or payment was delivered. However, petitioners chose to mail their 1998 return using ordinary first class mail and therefore they bore the risk of nondelivery or mishandling. It is noted that when issuing a Notice of Deficiency or Notice of Disallowance to a taxpayer, the Division is required to send the notices by certified or registered mail (Tax Law § 681[a]; § 689[c][3]) to ensure delivery. Accordingly, I see no inequity in the statute since it places the same mailing requirements on a taxpayer to ensure delivery of a document to the Division.

F. While Tax Law § 687(a) provides for a three-year statute of limitations to claim a refund, it must be noted that 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. Therefore, it cannot be found that the statutory scheme is unfair since it provides both parties with the same three-year time frame. Both the Tax Appeals Tribunal, in ***Matter of Jones*** (January 9, 1997), and the Appellate Division, in ***Matter of Brault v. Tax Appeals Tribunal*** (265 AD2d 700, 696 NYS2d 579), have upheld the validity of applying the three-year statute of limitations for refund in cases with facts similar to those found in the instant matter. By establishing time frames for the issuance of notices of deficiency and the filing of claims for refund, the Tax Law provides both the State of New York and its taxpayers with the financial stability and security that comes from knowing that a specific tax year is closed.

G. Petitioners' argument that the 1999 return was poorly designed and led to their failure to claim the 1998 overpayment as a payment on their 1999 return is without merit. By choosing to prepare their own returns, petitioners, at the very least, must carefully read the instruction booklet which accompanied the returns and they also take the risk that the returns may not be properly prepared. The 1999 instruction booklet for preparing resident income tax returns filed

on Form IT-201 clearly advises a taxpayer on page 31 to "[i]nclude on line 65 the total of your 1999 estimated tax payments (include your last installment, even if paid in 2000) and any overpayment that you asked us to apply from your 1998 return to your 1999 estimated tax." Petitioners' failure to claim the 1998 overpayment as an estimated tax payment on their 1999 return was the result of their failure to read or properly implement the clear directions contained in the 1999 instruction booklet and was not due to the design of the 1999 tax return. The Division cannot be held 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 or nuance of the Tax Law. The instruction booklet, in a basic sense, is designed for this purpose and it is not unreasonable to expect taxpayers who choose to prepare their own return to carefully read it.

H. Turning next to petitioners' assertion that the refund should be granted pursuant to the special refund authority contained in Tax Law § 697(d), it is concluded that said section is not applicable to the facts of this case. Tax Law § 697(d) provides, in pertinent part, that:

> 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.

In ***Matter of Wallace*** (Tax Appeals Tribunal, October 11, 2001), the Tribunal opined:

> A mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (54 Am Jur 2d Mistake, Accident or Surprise § 4; ***see also, Wendel Foundation v. Moredall Realty Corp.***, 176 Misc 1006, 29 NYS2d 451). A mistake of law, on the other hand, has been defined as acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts (54 Am Jur 2d Mistake, Accident or Surprise § 8; ***see also, Wendel Foundation v. Moredall Realty Corp., supra***)

The same result reached by the Tribunal in ***Wallace*** is required here. In this matter there is clearly a question of fact, i.e., whether the return for 1998 was filed before the statute of limitations expired. Accordingly, since there is a question of fact the special refund authority provisions of Tax Law § 697(d) are not applicable.

I. Finally, petitioners' position that the Division should have advised them of its failure to find a 1998 tax return before the statute of limitations for refund expired is without merit. I am not aware of, nor have petitioners pointed to, any provisions in the Tax Law, regulations or precedent which places such a responsibility on the Division. Petitioners, once they chose to use ordinary first class mail to mail their return for 1998, should have followed up on the status of the overpayment claimed on said return within the ample three-year period allowed before the statute of limitations for credit or refund expired. The situation herein was further exacerbated when petitioners failed to claim the 1998 overpayment as an estimated tax payment on their 1999 tax return.

J. While it is unfortunate that petitioners cannot be granted the refund they are due because of the expiration of the statute of limitations for credit or refund, such conclusion is within the clear mandate of the statute. Tax Law § 687(e) specifically provides that:

> Failure to file claim within prescribed period.--- No credit or refund shall be allowed or made, except as provided in subsection (f) of this section or subsection (d) of section six hundred ninety, after the expiration of the applicable period of limitations specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this article.

K. The petition of Stanley and Magali Cancar is denied and the Division's August 4, 2003 notice disallowing the $2,777.25 claim for credit or refund for 1998 is hereby sustained.

DATED: Troy, New York
May 12, 2005

/s/ James Hoefer
PRESIDING OFFICER