STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ARTHUR AND RUTH LEHRER	:	DETERMINATION DTA NO. 820640
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 the Administrative Code of the City of New York for the Year 1999.	:	

Petitioners, Arthur and Ruth Lehrer, 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 the Administrative Code of the City of New York for the year 1999.

On November 9, 2005, the Division of Taxation, by its representative, Christopher C. O'Brien, Esq. (Kevin R. Law, Esq., of counsel), filed a motion for an order granting summary determination to the Division of Taxation pursuant to section 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal on the ground that there are no material issues of fact. Petitioners, appearing *pro se*, filed a response to the Division of Taxation's motion for summary determination on November 30, 2005, at which time the 90-day period for issuance of this determination commenced.

Upon the motion papers and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for refund under Tax Law § 687(a) or, in the alternative, denied the application of the special refund authority pursuant to Tax Law § 697(d).

FINDINGS OF FACT

1. Petitioners herein, Arthur and Ruth Lehrer, personally prepared and timely filed New York State and City resident personal income tax returns for the year 1999 on or about April 15, 2000. The 1999 return reported New York taxable IRA distributions in the amount of $78,000.00, and taxable pensions and annuities in the amount of $32,112.00, comprised in part of a pension or annuity distribution to petitioner Ruth Lehrer in the amount of $24,793.09 from the New York State Teachers Retirement System. On line 27 of the return, petitioners reported a New York subtraction for the pension and annuity exclusion in the amount of $40,000.00. The return reflected New York adjusted gross income of $130,094.00, New York State taxes of $7,705.00, New York City taxes of $4,262.00 and, after application of payments from various sources, a balance due in the amount of $7,820.00.

2. For New York State and City income tax purposes, if a taxpayer has attained the age of 59 ½, the first $20,000.00 of an IRA distribution or pension and annuity income 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. Petitioners had attained the age of 59 ½ prior to the years at issue and excluded from taxation IRA and pension and annuity income of $40,000.00 ($20,000.00 each).

However, for New York State and City income tax purposes pursuant to Tax Law § 612(c)(3), another modification to which petitioners may have been entitled was for the payment

of pensions to officers and employees of New York State, its subdivisions and agencies, to the extent includible in gross income for Federal income tax purposes ("the NYS pension exclusion"). Petitioners failed to claim this exclusion for the amount of $24,793.09 paid to Ruth Lehrer from the New York State Teachers Retirement System for 1999.

3. On or about April 14, 2004, petitioners filed an amended New York personal income tax return for the year 1999, reducing reported New York adjusted gross income by the NYS pension exclusion in the amount of $24,793.00, pursuant to Tax Law § 612(c)(3), seeking a refund in the amount of $3,125.00. Petitioners had neglected to enter the NYS pension exclusion on line 24 as a New York subtraction, asserting the error was due to clerical or computer error.

4. The Division of Taxation ("Division") denied petitioners the refund claimed for 1999 on the basis that the amended return was filed beyond the applicable statute of limitations for refund. By letter dated October 18, 2004, the Division advised petitioners that the $3,125.00 refund claimed was disallowed in full. Petitioners disagreed with the Division's denial of their claim for refund and filed a petition with the Division of Tax Appeals on July 25, 2005.

5. In support of its motion for summary determination, the Division submitted the affidavit of Stanley Szozda, a Division employee, which included petitioners' 1999 New York State income tax return; applicable Forms 1099-R; a copy of petitioners' amended 1999 return; the Division's denial of refund correspondence; the petition with attachments; and the Division's answer.

6. Petitioners' response to the Division's motion for summary determination suggests that the request for refund is not based upon the submission of any new findings or documentation, as the same was submitted with the original return, and that petitioners should be granted relief pursuant to the special refund authority of Tax Law § 697(d).

CONCLUSIONS OF LAW

A. A motion for summary determination may 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]).

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 (***see***, ***Glick & Dolleck v. Tri-Pac Export Corp.***, 22 NY2d 439, 293 NYS2d 93; ***see also***, ***Museums at Stony Brook v. Village of Patchogue Fire Dept.***, 146 AD2d 572, 536 NYS2d 177). If material facts are in dispute, or if contrary inferences may be reasonably drawn from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (***see***, ***Gerard v. Inglese***, 11 AD2d 381, 206 NYS2d 879). Summary determination is a drastic remedy and should not be granted if there is any doubt as to the existence of a triable issue (***see, State Bank of Albany v. McAuliffe***, 97 AD2d 607, 467 NYS2d 944, ***appeal dismissed*** 61 NY2d 758).

The Division contends that there are no material issues of fact or law revealed in the record, and that it is entitled to a determination denying the petition as a matter of law. The essence of the Division's position is its assertion that petitioners have not complied with Tax Law § 687, which imposes limitations on credits or refunds of overpayments 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, 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. . . .
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> (i) Prepaid income tax.--For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year with respect to which such amount constitutes a credit or payment. (Emphasis added.)

B. The Division does not dispute the applicability of the NYS pension exclusion to petitioners' 1999 State income tax return or the calculation of petitioners' corresponding refund resulting from the proposed amended return. However, Tax Law § 687(a) requires that petitioners file their claim for refund within the later of three years from the time their return was filed or two years from the time the tax was paid. The only tax payments for 1999, a city of New York School tax credit, New York State tax withheld and estimated tax payments, were deemed to have been made on April 15, 2000 (Tax Law § 687[i]). Petitioners' 1999 personal income tax return was due to be filed not later than April 15, 2000. The later of three years from filing or two years from payment is the former, April 15, 2003. It follows that since petitioners did not file their amended return claiming the refund in issue until April 15, 2004, the Division properly denied the refund (Tax Law § 687[a]).

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 tax year 1999 within the time frame allowed by law. Conversely, once a return has been filed, the Division generally has the same three-year period to issue a notice of deficiency to a taxpayer asserting that additional taxes are

due (Tax Law § 683[a]). There is 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. Turning next to petitioner's assertion that the refunds 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 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.

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

> 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***). Petitioners knowingly, albeit mistakenly, reported MABSTOA retirement contributions as taxable New York State income for the years at issue. Petitioners' assumption that they were required to include such contributions as New York State taxable income was a mistake of law and not of fact.

The same result reached by the Tribunal in ***Wallace*** is required in this case. Petitioners chose to prepare their own tax returns and had not detected the clerical or computer error which omitted the subtraction of the New York State pension amount. The fact of the existence of Mrs. Lehrer's Teachers Retirement Pension and the fact that a corresponding subtraction could be

utilized were not understood to be different than they actually were. Petitioners mistakenly did not prepare their tax return in 1999 in accordance with the Tax Law. Unfortunately, they failed to avail themselves of the NYS pension exclusion. This is clearly a mistake of law and not of fact. Accordingly, petitioners are not entitled to refund relief pursuant to Tax Law § 697(d).

D. There being no material and triable issue of fact requiring a hearing, the Division's motion for summary determination is granted.

E. The petition of Arthur and Ruth Lehrer is denied and the Division's notice of disallowance of petitioners' claim for refund dated October 18, 2004, is sustained.

DATED: Troy, New York
February 23, 2006

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE