

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
CAROLE J. TREMBLEY : SMALL CLAIMS
 : DETERMINATION
 : DTA NO. 821346
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 1999 and 2000. :

Petitioner, Carole J. Trembley, 102 Kenmore Street, #2, Syracuse, New York 13219, 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 1999 and 2000.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 333 East Washington Street, Syracuse, New York on April 24, 2007 at 1:00 P.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Mac Wyszomirski).

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

ISSUE

Whether the Division of Taxation properly denied petitioner's claims for credit or refund for the 1999 and 2000 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

1. Petitioner, Carole J. Trembley, timely filed with the Division of Taxation (“Division”) her New York State personal income tax returns for the years 1999 and 2000. The following table sets forth relevant figures as reported on each return:

ITEM	1999	2000
New York adjusted gross income	\$11,194.00	\$11,995.00
New York State tax	\$102.00	\$134.00
New York State tax withheld	\$123.00	\$150.00
Refund	\$21.00	\$16.00

The Division granted petitioner the refund as claimed on both her 1999 and 2000 income tax returns. Neither return claimed the real property tax credit for homeowners and renters as provided for in Tax Law § 606(e).

2. On April 13, 2005, petitioner filed with the Division amended personal income tax returns for the 1999, 2000 and 2001¹ tax years. The only change reflected on the amended returns for 1999 and 2000 was petitioner’s assertion that she was entitled to claim the real property tax credit for homeowners and renters and was thus due refunds in the amount of \$26.00 for 1999 and \$27.00 for 2000.

3. On January 27, 2006, the Division issued a Notice of Disallowance to petitioner denying in full the \$26.00 refund claimed for 1999 and the \$27.00 refund sought for 2000. The basis for the Division’s denial was that the claims for refund for both years, filed on April 13, 2005, were submitted after the applicable statute of limitations for credit or refund had expired.

¹The Division granted petitioner the \$27.00 refund she claimed on her amended return for the 2001 tax year. Accordingly, this year is not at issue in this proceeding and will not be addressed hereinafter.

SUMMARY OF PETITIONER'S POSITION

4. Petitioner's New York State income tax returns for 1999 and 2000 were prepared by the Internal Revenue Service ("IRS"). Petitioner asserts that the IRS did not properly prepare her New York State income tax returns for 1999 and 2000 when it failed to claim the real property tax credit to which she was entitled. Petitioner claims that she first became aware of the existence of the real property tax credit in early April 2005 when she utilized the services of another tax preparer for the 2004 tax year. As soon as petitioner learned of the real property tax credit, she filed the amended returns at issue in this proceeding. Petitioner argues that under the present circumstances she should be granted the refunds for 1999 and 2000, notwithstanding any statute of limitations on credits or refunds which may be applicable.

CONCLUSIONS OF LAW

A. As relevant to this proceeding, Tax Law § 606(e) provides for a refundable real property tax credit for certain qualifying homeowners and renters. Tax Law § 606(e)(9) requires that a claim for the real property tax credit must be filed with the Division within three years from the time that a calendar year income tax return would have been required to be filed by the qualifying homeowner or renter pursuant to Tax Law § 651.

B. In accordance with Tax Law § 651, petitioner's income tax returns for 1999 and 2000 were due to be filed on or before April 15, 2000 and April 15, 2001, respectively. In the instant matter, there is no dispute that petitioner filed her 1999 and 2000 amended tax returns, each claiming a refund of the real property tax credit, on April 13, 2005. Accordingly, it is clear that petitioner's claims for refund for both the 1999 and 2000 tax years were filed after the respective statute of limitations for refund of the real property tax credit had expired.

C. While it may appear harsh that Tax Law § 606(e)(9) places a three-year statute of limitations on taxpayers 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 a three-year statute of limitations for refund. 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. In *Matter of Nierenstein* (Tax Appeals Tribunal, April 21, 1988), the Tribunal opined that:

There is no authority for the Division of Taxation to approve the claim in a manner inconsistent with the Tax Law. Statutes of limitations are matters of law, enacted by the State Legislature for the purpose of guiding all persons who are, or may become parties to a legal proceeding, with respect to the timely filing of the various documents necessary to the particular program or proceeding involved.

The statute of limitations here is three years. Its purpose is to allow a reasonable time for taxpayers who have erroneously filed or paid taxes to realize their error and make application for refund. The State is thus put on notice that there is this three year period during which it may be liable for such claims. At the end of the period, the matter is settled. Anything less than this degree of certainty would make the financial operation of government difficult, if not impossible. In short, the statute of limitations at issue here is a balance between the needs of the State with regard to the protection of its financial resources and the rights of taxpayers to correct their errors.

The rationale set forth in *Nierenstein* is equally applicable to the case at hand.

Accordingly, the Division is correct in its assertion that regardless of the merits of petitioner's claims for refund, they must be denied as not timely filed.

D. While it is unfortunate that the refunds claimed by petitioner for the 1999 and 2000 tax years cannot be granted 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.

E. The petition of Carole J. Trembley is denied and the Division's Notice of Disallowance dated January 27, 2006 is, as it related to the 1999 and 2000 tax years, sustained.

DATED: Troy, New York
July 12, 2007

/s/ James Hoefer
PRESIDING OFFICER