

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MARTIN S. AND ELIZABETH G. FROMM	:	SMALL CLAIMS DETERMINATION DTA NO. 821565
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 1996.	:	

Petitioners, Martin S. and Elizabeth G. Fromm, 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 year 1996.

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 November 14, 2007 at 1:15 P.M. Petitioner Martin S. Fromm appeared pro se. The Division of Taxation appeared by Daniel Smirlock, Esq. (Susan Parker).

Since neither party reserved time to file a post-hearing brief, the three-month period for the issuance of this determination commenced as of the date the small claims hearing was held.

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for credit or refund for the 1996 tax year on the basis that the claim was filed after the applicable statute of limitations for credit or refund had expired.

FINDINGS OF FACT

1. Petitioners, Martin S. and Elizabeth G. Fromm, filed their 1996 New York State resident personal income tax return on January 31, 2002, more than four years past its October

15, 1997 extended due date. The New York State tax due as shown on petitioners' 1996 return totaled \$11,657.00 and this amount was paid at the time the return was filed on January 31, 2002.

2. On June 3, 2002, the Division of Taxation (Division), issued a Notice and Demand for Payment of Tax Due to petitioners asserting that they owed \$10,469.27, which amount included interest of \$4,932.42, since petitioners did not pay their 1996 income tax liability by the April 15, 1997 due date, and penalties totaling \$5,536.85 for failure to timely file their 1996 return and failure to timely pay the tax due. By check dated October 2, 2002, petitioners paid \$10,670.81 to the Division, which amount fully satisfied the updated interest (\$5,133.96) and penalties (\$5,536.85) sought in the Notice and Demand for Payment of Tax Due.

3. On June 1, 2005, more than two and one half years after they paid the amount asserted due in the Notice and Demand for Payment of Tax Due, petitioners sent a letter to the Division requesting that the late filing and late payment penalties assessed for the 1996 tax year be abated for reasonable cause. By letter dated September 2, 2005, the Division advised petitioners that they had failed to establish reasonable cause for abatement of the late filing and late payment penalties and that if they desired further review of this matter they needed to file a claim for refund.

4. On or about November 22, 2005, petitioners filed a Claim for Credit or Refund with the Division seeking a refund of \$5,144.48¹ for the late filing and late payment penalties assessed for the 1996 tax year and paid on October 2, 2002. By letter dated February 3, 2006, the Division

¹ Petitioners' claim for refund mistakenly indicates that the amount of refund sought was \$5,144.48, which amount is \$10.52 more than the interest paid for the late payment of their income tax for the 1996 tax year. Petitioners' claim for refund seeks a refund of the late filing and late payment penalties assessed for the 1996 tax year, which amount actually totals \$5,536.85.

denied in full petitioners' claim for refund for the 1996 tax year on the basis that the claim was filed after the applicable statute of limitations for refund had expired.

5. Petitioners retained a firm located in Los Angeles, California, to negotiate the issue of late filing and late payment penalties imposed by the Internal Revenue Service (IRS) for the 1996 tax year. It was petitioners' understanding that this firm would also handle the late filing and late payment penalties imposed by the Division for the 1996 tax year; however, there is no evidence to show that this firm ever contacted the Division on petitioners' behalf regarding this issue.

SUMMARY OF PETITIONERS' POSITION

6. Petitioners do not dispute that their claim for refund for the 1996 tax year was filed on or about November 22, 2005 and that the applicable statute of limitations for claiming a refund of the penalties paid on October 2, 2002 for the late filing and late payment of their 1996 income tax expired on October 2, 2004. Although petitioners concede that their claim for refund for 1996 was filed late, they nonetheless believe that the refund should be granted on equitable grounds. Specifically, petitioners maintain that when they received the Division's Notice and Demand for Payment of Tax Due dated June 3, 2002, they sought the advice of the Los Angeles, California, firm and were advised to pay the assessment and that the firm would obtain a refund of the penalties at a later date. Petitioners assert that the firm was successful in settling the late filing and late payment penalty issue with the IRS; however, no such settlement was ever reached with the Division. Petitioners aver that they continued to follow up by telephone with the firm regarding the status of the late filing and late payment penalties assessed by the Division and were assured that negotiations were ongoing. When it became clear to petitioners that the firm had not entered into any negotiations with the Division on their behalf, they filed a

complaint with the New York State Attorney General concerning the firm's actions in this matter. Petitioners believe that given the unique circumstances of this matter, the refund should be granted on the grounds of fairness and equity.

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 preceding the filing of the claim. . . .

B. It is undisputed in this matter that late filing and late payment penalties for the 1996 tax year, totaling \$5,536.85, were paid on October 2, 2002. Pursuant to Tax Law § 687(a), petitioners had two years from October 2, 2002, or by October 2, 2004, to seek a refund of the penalties. Thus, petitioners' claim for refund for 1996, dated November 22, 2005, was not made within two years of the date the tax was paid, and it is clear that the claim for refund at issue was filed after the statute of limitations for refund had expired.

C. While it may appear harsh that Tax Law § 687(a) places a statute of limitations on taxpayers to claim a refund, it must be noted that the Division, once a return has been filed, generally must issue a Notice of Deficiency to a taxpayer asserting that additional taxes are due within a specific time period. Therefore, it cannot be found that the statutory scheme is unfair since it provides both parties with definitive time periods to issue assessments and claim refunds.

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 [1999]), have upheld the validity of applying the 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. 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 petitioners' claim for refund it must be denied as not timely filed.

D. While it is unfortunate that petitioners are precluded from pursuing a refund of the late filing and late payment penalties assessed for the 1996 tax year 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.

Finally, I do not believe that the principals of fairness and equity are applicable here.

First, it is clear that petitioners did not timely file their 1996 income tax return and did not pay the amount due in a timely manner. Accordingly, the Division was correct in asserting that late filing and late payment penalties were due. It appears that petitioners' dispute is with the Los Angeles, California, firm they retained to handle this matter and its alleged failure to act on petitioners' behalf. This is, however, a matter to be addressed between petitioners and the firm.

E. The petition of Martin S. and Elizabeth G. Fromm is denied and the Division's Notice of Disallowance dated February 3, 2006 denying petitioners' claim for credit or refund for the 1996 tax year is sustained.

DATED: Troy, New York
January 31, 2008

/s/ James Hoefer
PRESIDING OFFICER