

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of : DETERMINATION  
**RATI AND KAMLA PANCHAL** : DTA NO. 821619  
for Redetermination of Deficiency or for Refund :  
of New York State Personal Income Tax under :  
Article 22 of the Tax Law for the Years 1999, :  
2000 and 2001. :  
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Petitioners, Rati and Kamla Panchal, 83-51 266 Street, Floral Park, New York 11004, 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, 2000 and 2001.

The Division of Taxation, by Daniel Smirlock, Esq. (Barbara J. Russo, Esq., of counsel), brought a motion, dated May 3, 2007, seeking summary determination in the above-referenced matter pursuant to sections 3000.5 and 3000.9(b) of the Tax Appeals Tribunal's Rules of Practice and Procedure. Pursuant to section 3000.5, petitioners had 30 days or until June 4, 2007 to respond to the motion. Petitioners failed to respond to the motion, thus the 90-day period for issuance of this determination commenced on June 4, 2007. After due consideration of documents and arguments presented, Daniel J. Ranalli, Assistant Chief Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly disallowed petitioners' claim for refund for the years 1999, 2000 and 2001 on the basis that the claims were filed after the applicable statute of limitations for credit or refund had expired.

***FINDINGS OF FACT***

1. Petitioners, Rati and Kamla Panchal, timely filed their New York State income tax return for the tax year 1999 on April 15, 2000. Petitioners also timely filed their New York State income tax return for the tax year 2000 on April 15, 2001 and timely filed their New York State income tax return for the tax year 2001 on April 15, 2002.

2. Petitioners, on their 1999 tax return, reported adjusted New York State gross income of \$53,522.00, New York State taxes due of \$1,921.00 and reported a refund of \$1,795.00. On their 2000 tax return, petitioners reported their adjusted New York State gross income of \$57,743.00, New York State taxes due of \$2,201.00 and reported a refund of \$1,933.00. On their 2001 tax return, petitioners reported adjusted New York State gross income of \$76,371.00, New York State taxes due of \$3,451.00 and reported a refund of \$2,166.00.

3. For New York State and City income tax purposes if an individual has attained the age of 59½, the first \$20,000.00 of an IRA distribution or pension and annuity is not taxable and pursuant to Tax Law § 612(c)(3-a) is subtracted from Federal gross income in computing New York State gross income. Petitioners had attained the age of 59½ for the tax years at issue; however, petitioners failed to make such claims on their original tax returns for those years.

4. Petitioners filed amended resident income tax returns for tax years 1999, 2000 and 2001 on February 27, 2006 requesting refunds of \$794.00 for 1999, \$1,484.00 for 2000, and \$1,539.00 for 2001, respectively.

5. The Division issued a Notice of Disallowance dated June 30, 2006, disallowing petitioners' claim for refund for the years 1999, 2000 and 2001 because the claim was not timely filed. The notice stated in part:

The provisions of the New York State Income Tax Law require us to provide you with this notice disallowing your claim for refund, in full, for the following reasons:

The New York State Tax Law does not permit us to allow the refunds claimed on your returns.

The Tax Law provides for the granting of a refund or credit if it is applied for within three years from the time the return was required to be filed or within two years from the time the tax was paid, whichever is later.

Your claim was received on 3/8/06.

6. On or about March 22, 2007 petitioners filed a petition with the Division of Tax Appeals seeking refunds for the tax years at issue.

7. In support of their motion for summary determination the Division submitted: copies of petitioners' 1999, 2000 and 2001 resident income tax returns, copies of the amended resident income tax returns for the years 1999, 2000 and 2001, a copy of the Notice of Disallowance, a copy of the Conciliation Order, a copy of the petition and a copy of the Division's answer.

***CONCLUSIONS OF LAW:***

A. A motion of summary determination will 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]).

B. Section 3000.9(c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to section 3212 of the CPLR. "The proponent of summary judgment must make a prima facie showing of entitlement to judgment as a matter of law tendering sufficient evidence to eliminate any material issue of fact from the case" (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316, 317 citing *Zuckerman v. City of*

*New York*, 49 NY2d 557, 562, 427 NYS2d 595). 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” (*Glick & Dolleck v. Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93, 94; *Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 AD2d 572, 536 NYS2d 177, 179). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*Gerard v. Inglese*, 11 AD2d 381, 206 NYS2d 879, 881). “To defeat a motion for summary judgment, the opponent must also produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim,’ and ‘mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient’” (*Whelan v. GTE Sylvania*, 182 AD2d 446, 582 NYS2d 170, 173, citing *Zuckerman v. City of New York, supra*).

C. Tax Law § 687 imposes limitations on credits or refunds of overpayments as follows:

(a) . . . Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within (i) three years from the time the return was filed, (ii) two years from the time the tax was paid . . . whichever of such periods expires the latest. . . .

If the taxpayer fails to file a claim within the prescribed period then no credit or refund shall be allowed (*see*, Tax Law § 687[e]).

D. In the instant matter, petitioners timely filed their tax returns for the years at issue. However, petitioners did not file their amended resident income tax returns claiming refunds for the tax years 1999, 2000 and 2001 until February 2006 which is beyond the three-year statutory

time limit. Since the claim for refund was filed after the three-year period had expired Tax Law § 687(a), (e) bars recovery of the refund.

Although this decision may appear harsh, the law does afford taxpayers substantial time, in this case three years, to file a claim for credit or refund. Unfortunately, petitioners failed to file their claim within the statutory time period (*see*, Tax Law § 687[a], [e]). Furthermore, once a tax return has been filed the Division has the same three-year time period to issue a notice of deficiency asserting that additional taxes are due (*see*, Tax Law § 683[a]). It is not unfair to hold the taxpayer to the same three-year period to file a claim for credit or refund.

E. Petitioners have failed to respond to the Division's motion for summary determination and therefore have been deemed to have admitted that no question of fact requiring a hearing exists (*see, Kuehne & Nagel v. Baiden*, 36 NY2d 539, 544, 369 NYS2d 667, 671; *Costello v. Standard Metals*, 99 AD2d 227, 472 NYS2d 325, *appeal dismissed* 62 NY2d 942). Since there is no material and triable issue of fact the Division's motion for summary determination is granted, the petition of Rani and Kamal Panchal is denied and the Notice of Disallowance is sustained.

DATED: Troy, New York  
August 2, 2007

/s/ Daniel J. Ranalli  
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE