

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MAYRA GUFFIN	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 825752
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 2007.	:	

Petitioner Mayra Guffin 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 2007.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Michelle W. Milavec, Esq., of counsel), brought a motion on October 10, 2013, seeking summary determination in the above-referenced matter pursuant to Tax Law § 2006(6) and section 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner did not file a response to the Division of Taxation’s motion. Accordingly, the 90-day period for the issuance of this determination began on November 12, 2013, the due date for petitioner’s response. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Timothy Alston, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioner’s claim for refund pursuant to Tax Law § 687(a).

FINDINGS OF FACT

1. Petitioner, Mayra Guffin, a California resident, timely filed a 2007 New York State Nonresident and Part-Year Resident Income Tax Return (Form IT-203) by the April 15, 2008 deadline. On her return petitioner reported total New York State personal income tax due of \$27,254.00, paid by \$968.00 in withholding and \$26,286.00 with the return. A copy of a W-2 associated with the return reports New York wages for petitioner.

2. Petitioner filed an amended 2007 New York State Nonresident and Part-Year Resident Income Tax Return (Form IT-203-X) on July 20, 2012, claiming a refund of \$27,339.00.¹ A corrected W-2 (Form W-2c) attached to the return reports zero New York wages for petitioner.

3. On November 20, 2012 Division of Taxation (Division) issued a Notice of Disallowance that denied petitioner's refund claim as untimely.

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]).

B. Petitioner did not respond to the Division's motion; she is therefore deemed to have conceded that no question of fact requiring a hearing exists (*see Kuehne & Nagel v. Baiden*, 36 NY2d 539, 544 [1975]; *John William Costello Assocs. v. Standard Metals*, 99 AD2d 227 [1st Dept 1984]).

¹ The petition seeks a refund of \$26,371.00. There is no explanation in the record for the relatively small differences between the tax reported due on the original return, the amount claimed as a refund on the amended return and the amount claimed in the petition.

C. A claim for refund or credit of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later (Tax Law § 687[a]). With certain exceptions not relevant herein, Tax Law § 687(e) specifically precludes the granting of any refund or credit where a claim is filed outside the prescribed periods.

D. As noted, petitioner paid \$26,286.00 in tax with the filing of the return by the April 15, 2008 deadline. Additionally, the \$968.00 in withholding is deemed to have been paid on April 15, 2008 (*see* Tax Law § 687[i]). Since the return was filed on the same date as the tax was paid, the three-year limitations period is applicable and such period expired on April 15, 2011. Petitioner's amended 2007 return, by which she claimed the refund at issue, was filed on July 20, 2012, well beyond the expiration of the three-year period. The Division therefore properly denied petitioner's claim as untimely pursuant to Tax Law § 687(a).

E. In her petition, petitioner conceded that the refund claim was late-filed. She alleged, however, that she did not live or work in New York during 2007; that her employer erroneously issued her a W-2 reporting New York wages; that she paid the balance due with her return as a good faith payment; that she relied on tax professionals who told her that she needed a corrected W-2 showing that she did not have New York income before filing an amended tax return; that her employer severely delayed in complying with her request for a corrected W-2; and that when she received the corrected W-2 she promptly filed her amended return. Petitioner thus asserted that she acted in good faith and that the delay in filing her amended return was beyond her control.

Assuming the veracity of her allegations, petitioner's circumstances are certainly sympathetic. They do not, however, provide a means by which to extend or bypass the statute of

limitations, for it is well established that periods of limitations “must be strictly adhered to” (*Kavanagh v. Noble*, 332 US 535, 539 [1947]) and are “not open to discretionary change by the courts no matter how compelling the circumstances” (*Cohen v. Pearl River Union Free School Dist.*, 70 AD2d 94, 99 [2d Dept 1979] *revd on other grounds* 51 NY2d 256 [1980]).

F. In its motion papers, the Division argued against the application of the special refund authority under Tax Law § 697(d) under the present facts and circumstances. Petitioner, however, did not raise the issue of the special refund authority in her petition and, as noted, chose not to respond to the Division’s motion for summary determination. The issue of whether the special refund authority requires the granting of petitioner’s refund claim has thus not been joined and is therefore not addressed herein.

G. The petition of Mayra Guffin is denied, and the Division of Taxation’s Notice of Disallowance dated November 20, 2012 is sustained.

DATED: Albany, New York
January 23, 2014

/s/ Timothy Alston
ADMINISTRATIVE LAW JUDGE