

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MICHAEL AND MARIA T. SIMOFF	:	DETERMINATION
	:	DTA NO. 850142
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 2014.	:	
	:	

Petitioners, Michael and Maria T. Simoff, 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 2014.

A hearing was held in Brooklyn, New York, on March 19, 2024, before Jennifer L. Baldwin, Administrative Law Judge, with all briefs to be submitted by June 25, 2024, which date commenced the six-month period for the issuance of this determination. Petitioners appeared by the Law Office of Edmund J. Mendrala (Edmund J. Mendrala, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Amy Seidenstock, Esq., of counsel).

ISSUE

Whether petitioners have proven that they timely filed their 2014 New York State personal income tax return such that they are entitled to the refund claimed therein.

FINDINGS OF FACT

1. On April 13, 2015, petitioners, Michael and Maria T. Simoff, electronically filed form IT-370, application for automatic six-month extension of time to file for individuals, for tax year

2014, extending the time to file their New York State personal income tax return for tax year 2014 until October 15, 2015.

2. The Division of Taxation (Division) reviewed petitioners' tax filings for tax year 2014 and, on January 9, 2019, notified petitioners that there was no record of a personal income tax filing for them for tax year 2014. The letter stated, in relevant part:

“We have not received your New York State income tax return for [2014.]

Our records indicate you:

- filed an IT-370, Application for Automatic Six-Month Extension of Time To File for Individuals, and
- may be required to file New York State income tax returns for [2014].

However, we have no record that you filed a New York return for [2014].

What to do next

Within **30 days** from the date of this letter, you must respond by either filing a New York State income tax return or explaining why you do not have to file.

If you do not respond, we will send you a bill that will include penalties and interest.”

3. The Division's systems indicated that a form IT-203, nonresident and part-year resident income tax return, for tax year 2014 for petitioners was filed on February 7, 2019 (2014 return). The 2014 return requested a refund of \$29,971.00.

4. On February 14, 2019, in response to the Division's January 9, 2019 letter, petitioners provided a copy of the 2014 return and a copy of a “Receive Electronic Filing Acknowledgments Log” (acknowledgments log). The copy of the 2014 return was not signed by petitioners and stated “[s]ee instructions for where to mail your return” on the signature page. The copy of the 2014 return also included a form IT-370. The acknowledgments log included the statement, “04/13/2015 19:02:00-Retrieve Electronic Filing Status from the Intuit Host Server for EFIN [],”

and provided what appears to show the filing status for 15 documents. At issue here is the following:

“c:\users\edmund j mendrala\documents\prowin_2014_data\simoff_m.14i (NY)
Return Accepted - The taxing agency accepted this return on Apr. 13, 2015.”

There is another, similar entry that shows “(NJ)” instead of “(NY).”

The cover letter to petitioners’ response explained, in relevant part:

“Your letter dated January 9, 2019 addressed to [petitioners] alleging non-filing of their 2014 New York income tax return has been forwarded to [petitioners’ representative] for reply. Please be advised that the subject return was electronically filed and confirmation of submission of the return to the ProSeries software and subsequent advice that the return was ‘accepted’ by New York State follows herewith. The return was ‘accepted’ by New York State at 7:02 PM on April 13, 2015. The taxpayer’s [sic] New Jersey return was also processed simultaneously with the New York return and the New Jersey [sic] was also ‘accepted’ on April 13, 2015. Both New York and New Jersey appear on the same confirmation report attached.”

5. The Division reviewed the documentation received from petitioners and determined that the documentation did not substantiate the electronic filing of petitioners’ 2014 return. The Division also found no record of receiving petitioners’ 2014 return by electronic submission on April 13, 2015.

6. Using the February 7, 2019 filing date of the 2014 return, the Division determined that, while petitioners’ refund claim for 2014 was filed within the three-year period set forth in Tax Law § 687 (a), it was subject to the limitation on such refund to the amount of taxes paid within the three-year period immediately preceding the filing of the refund claim plus the period for any extension of time to file the return. Since petitioners had a six-month extension of time to file their 2014 return, their refund was limited to the tax paid within the three-year period plus six months preceding February 7, 2019, that is, August 7, 2015 through February 7, 2019.

According to the Division, petitioners’ claimed overpayment consisted of New York State tax

withholdings, which were deemed paid on April 15, 2015 pursuant to Tax Law § 687 (i). Such payments occurred before August 7, 2015 and, therefore, the Division determined petitioners were not entitled to a refund.

7. On August 1, 2019, the Division issued an account adjustment notice to petitioners denying in full their refund claim in the amount of \$29,971.00. The account adjustment notice explained that:

“[the Division] denied your claim for the refund or credit because it was filed too late. The tax law allows a refund or credit if the taxpayer makes the claim within three tax 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.”

8. Petitioners responded to the account adjustment notice on September 3, 2019. The response provided, in relevant part:

“On behalf of [petitioners], following is a request for reconsideration of the Account Adjustment Notice dated August 1, 2019 related to their 2014 NY nonresident income tax return. This return was timely filed via ProSeries software after the submission of an extension of time to file. Correspondence from the State states that the extension was received but not the return. The following ID numbers from ProSeries were received:

1st Ext SBM ID: 13956320151032269836
Ret. SBM ID: 13956320151021809151

Also attached is the confirmation of filing and acceptance of the return by New York State. When originally filed on April 12th, the NY return was rejected (April 13, 2015 at 14:06:08 2:06 PM) because a software update had been issued. An extension was immediately submitted (April 13, 215 [sic] at 14:07 or 2:07 PM). The software was updated and the return was resubmitted. Confirmation of the filing and acceptance of the return was issued by ProSeries on April 13, 2015 at 19:02:00 (7:02 PM on April 13th). Copy attached. Coincidentally, the taxpayers’ New Jersey return was also processed and accepted with confirmation on the same April 13, 2015 7:02 PM update which is attached.

Just as a post mark [sic] is proof of timely filing of a tax return, when efilng a return, the confirmations from the efilng service serve the same evidentiary purpose. The 2014 NY return was timely filed.”

Petitioners’ response included the acknowledgments log, as well as two “Transmit Electronic Filing Returns/Extensions/Payments Log[s]” (filing logs). The first filing log included the

statement, "04/13/2015 14:06:08-Retrieve Electronic Filing Status from the Intuit Host Server for EFIN []," and provided the following:

"c:\users\edmund j mendrala\documents\prowin_2014_data\simoff_m.14i (NY)
Return Rejected by Taxing Authority.
Error No Xpath Available: There was a processing error with the return.
Get any product updates, save and retransmit. Please review the reason
for the reject. If necessary, make the appropriate change and re-submit
this return electronically. However, if the reject continues, you may want
to file this return via U.S. Mail. To file your state return, print it and mail
to the appropriate taxing authority."

The second filing log provided the following:

"04/13/2015 14:07:06-Transmit Electronic Filing Returns/Extensions/Payments
for EFIN []
simoff_m.14i
Michael and Maria T. Simoff ([])
New York Individual:
First extension transmitted and received successfully.
04/13/2015 14:07:10-Retrieve Electronic Filing Status from the Intuit Host Server
for EFIN []
c:\users\edmund j mendrala\documents\prowin_2014_data\simoff_m.14i
(NY)
First Extension received by Intuit."

9. The Division reviewed petitioners' response to the account adjustment notice and determined that the documentation submitted did not substantiate the electronic filing of petitioners' 2014 return on April 13, 2015 and that the Division had no record of receiving the submission of petitioners' electronically filed 2014 return on that date.

10. Petitioners requested a conciliation conference before the Division's Bureau of Conciliation and Mediation Services (BCMS), which was conducted on October 27, 2021. On February 11, 2022, BCMS issued a conciliation order sustaining the account adjustment notice.

11. On May 5, 2022, petitioners filed a timely petition with the Division of Tax Appeals in protest of the conciliation order.

12. At the hearing, the Division submitted the affidavit of David Dickerson, a Taxpayer Service Specialist II in the Division's Office of Processing Services. Mr. Dickerson recounted, based on his review of the Division's records, petitioners' filings and the Division's review of petitioners' responses as described herein. Mr. Dickerson concluded that petitioners were not entitled to a refund for tax year 2014 because such refund was barred by the limitations in Tax Law § 687 (a).

13. Attached to Mr. Dickerson's affidavit was a certification by Amanda R. House, Deputy Tax Commissioner of the Division. The certification provided as follows:

"I am authorized by the Commissioner of Taxation and Finance to authenticate copies of all papers and documents in the custody of the Commissioner of Taxation and Finance.

A search has been made of our files on February 1, 2024, by an employee familiar with the recordkeeping procedures of the department for personal income tax, for 2014, for Michael Simoff, SSN [], and Maria Simoff, SSN []. A personal income tax return with a filing status of 'married filing joint' was found to have been filed on February 7, 2019, for tax year 2014. No personal income tax return for tax year 2014 was found to have been filed prior to that date for either of the above individuals."

14. At the hearing, petitioners provided a copy of the Division's online account summary for Mr. Simoff, which indicated that a form IT-370 for tax year 2014 was filed on April 13, 2015 and a form IT-203 for tax year 2014 was filed on February 7, 2019. The account summary shows no other filings for tax year 2014.

15. Petitioners also provided a copy of a response, dated October 26, 2021, which appears to have been faxed to the Division on the same date. The response recounted the events surrounding petitioners' 2014 tax filings and added the following:

"On January 14, 2019, after receiving the non-filing notice, an Electronic Filing Client Status History report was printed from the 2014 tax software. This report had the Extension Submission ID number as well as the Return Submission ID number. I [sic] did contain an unusual entry dated September 13, 2016 -- **18**

months after the filing of the return stating “Return Rejected” with no explanation of why it was rejected or what remedy should be undertaken as in normal rejection notices.”

The “Electronic Filing Client Status History” report (history report) for petitioners with a “Type” of “1040 NY” provided, under “Return History,” in relevant part:

“Status	Status Date	Description
Return Rejected	09/13/2016	Return Rejected”

The history report did not provide any reason for the rejection.

16. Both petitioners testified at the hearing. Mr. Simoff testified that he had been filing returns in New York State since 1986, never had any issues, never failed to file, and claimed “significant refunds over the years.” He believed that the Division waited nearly four years to notify him that it did not receive petitioners’ 2014 return so the statute of limitations for claiming a refund could expire.

17. Mr. Simoff testified that during the time at issue, he was a portfolio manager for a very large investment fund in New York City, working around 70 hours a week, and that his compensation could range from \$1 million to \$4 million a year. Therefore, he was not overly concerned with a \$29,000 refund. He also testified that, during this time, he was the caretaker for his now deceased mother, which was very time consuming.

18. Petitioners submitted a copy of their federal form 1040, U.S. individual income tax return, for tax year 2015 at the hearing. Mr. Simoff explained that petitioners included the \$29,971.00 refund they claimed on their 2014 return in their 2015 income for federal income tax purposes and, in turn, paid federal tax on the refund they never received from New York State.

19. Mr. Simoff further testified that petitioners’ representative, Mr. Mendrala, electronically files their tax returns, and had been filing their returns for 20 years. Mr. Simoff provides their documents to Mr. Mendrala, they discuss them, and Mr. Mendrala then prepares

the returns. Mr. Simoff reviews the returns, discusses any issues with Mr. Mendrala, if necessary, and petitioners sign an e-filing authorization form. Mr. Mendrala files petitioners' tax returns using TurboTax Professional. Mr. Mendrala calls, faxes, or notifies Mr. Simoff in some other way, that the tax returns were filed. Mr. Mendrala called Mr. Simoff and told him his 2014 tax returns, including the 2014 return at issue, were filed.

20. Mrs. Simoff testified that petitioners were very busy taking care of Mr. Simoff's mother in 2015. She also explained that she did not take care of petitioners' tax files and that she would pass along anything they received in the mail to Mr. Simoff.

21. Mr. Mendrala, who allegedly electronically filed petitioners' 2014 return on April 13, 2015, did not testify at the hearing.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 689 (e), petitioners bear the burden of establishing, by clear and convincing evidence, that the Division's denial of their claimed refund is erroneous (*see Matter of Suburban Restoration Co. v Tax Appeals Trib.*, 299 AD2d 751, 752 [3d Dept 2002]). Accordingly, it is necessary to determine whether petitioners have sustained their burden of establishing that they filed a timely refund claim under Tax Law § 687 (a).

B. Tax Law § 687 (a) provides limitations on claims for credit or refund, in relevant part, as follows:

“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, 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 . . . 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 . . .”

Tax Law § 687 (e) provides that no refund shall be allowed unless a claim is filed within the prescribed period.

C. Petitioners assert that Mr. Mendrala timely filed their 2014 return on April 13, 2015. In support of this assertion, petitioners provided the acknowledgments log, which they allege shows that the Division accepted their electronically filed 2014 return on April 13, 2015 at 7:02 PM. The acknowledgments log provided the statement, “04/13/2015 19:02:00-Retrieve Electronic Filing Status from the Intuit Host Server for EFIN [],” and the following:

“c:\users\edmund j mendrala\documents\prowin_2014_data\simoff_m.14i (NY)
Return Accepted - The taxing agency accepted this return on Apr. 13, 2015.”

This entry, alone, does not satisfy petitioners’ burden of proof. While the acknowledgments log is some indication that something with respect to petitioners occurred on April 13, 2015, it does not clearly and convincingly show that petitioners’ 2014 return was electronically filed with the Division on April 13, 2015. Mr. Mendrala did not testify at the hearing, thus, there is no basis to conclude that the “[r]eturn [a]ccepted” was petitioners’ 2014 return.¹ Mr. Simoff testified at the hearing but only stated that Mr. Mendrala called him to let him know that petitioners’ 2014 return was filed. Furthermore, petitioners did not provide anything from the software provider explaining what the acknowledgments log or that entry, in particular, represented. Without more, petitioners have not proven that they electronically filed their 2014 return on April 13, 2015 (*see Azam v Commr.*, TC Memo 2018-72 [2018] [wherein the United States Tax Court

¹ There is some indication in the record that possibly the same return was rejected in September 2016. While petitioners argue that the delay in rejecting the return was necessarily caused by the Division, it is equally as possible, without any evidence otherwise, that the software provider delayed in notifying Mr. Mendrala that the return was rejected.

found that an email from a software provider that did not contain an electronic postmark or the year to which the return related did not prove timely filing of the return]).

D. Petitioners argue that the acknowledgments log comports with the Division's regulations with respect to filing rules and proves timely filing. Such regulations provide, in relevant part, that "any document that is filed electronically with the [Division] in the manner and time provided by the commissioner is deemed to be filed on the date of the electronic postmark. Thus, if the electronic postmark is timely, the document is considered filed timely although it is received after the last date prescribed for filing" (20 NYCRR 2399.2 [e] [1]). "[E]lectronic postmark" is defined as "a record of the date and time (in a particular time zone) that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system" (*id.* § 2399.2 [e] [2] [i]). There is no reference on the acknowledgments log to an "electronic postmark." Moreover, even if "04/13/2015 19:02:00" could be considered the "electronic postmark," the acknowledgments log does not prove, as noted, that "c:\users\edmund j mendrala\documents\prowin_2014_data\simoff_m.14i (NY)" is, in fact, petitioners' 2014 return.

E. The Division conducted a search of its files for petitioners' 2014 return. The Deputy Tax Commissioner certified that the Division could not find a return for petitioners for tax year 2014 before the 2014 return filed on February 7, 2019. This certification is prima facie evidence that no other 2014 return was filed by petitioners as claimed (*see* Tax Law § 691 [d]; *Matter of Accidental Husband Intermediary, Inc.*, Tax Appeals Tribunal, April 11, 2019). While petitioners are correct that when petitioners filed their 2014 return is determinative, not necessarily what is or is not in the Division's records, the acknowledgments log and Mr. Simoff's testimony do not overcome the Division's evidence.

F. There is no dispute that petitioners electronically filed form IT-370 on April 13, 2015, requesting an extension to file their 2014 return, and that, on February 7, 2019, petitioners filed a 2014 return. On the 2014 return, petitioners claimed a refund of \$29,971.00, therefore, petitioners' refund claim was filed within three years from the time the return was filed pursuant to Tax Law § 687 (a). Nonetheless, Tax Law § 687 (a) limits the amount of such refund to the amount of taxes paid within the three years immediately preceding the filing of the refund claim plus the period for any extension of time for filing the return. Petitioners' 2014 return was filed on February 7, 2019, therefore, the three-year period plus the period of their extension, according to Tax Law § 687 (a), was August 7, 2015 through February 7, 2019. Petitioners' claimed overpayment consisted of New York State tax withholdings, which were deemed paid on April 15, 2015 pursuant to Tax Law § 687 (i). There is no evidence in the record, or claim for that matter, that petitioners made any tax payments apart from the withholdings. Accordingly, petitioners' tax payments are outside the aforementioned period and, in turn, their refund is limited to zero. The Division properly denied petitioners' refund claim for tax year 2014.

G. The petition of Michael and Maria T. Simoff is denied, and the account adjustment notice, dated August 1, 2019, is sustained.

DATED: Albany, New York
December 19, 2024

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE