

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PATRICIA LEBRON	:	DETERMINATION
	:	DTA NO. 850644
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 2016.	:	

Petitioner, Patricia Lebron, 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 2016.

A formal hearing by videoconference was held before Winifred M. Maloney, Administrative Law Judge, on March 27, 2025, with all briefs to be submitted by August 12, 2025, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Amy Seidenstock, Esq., of counsel).

ISSUE

Whether petitioner established that the Division of Taxation improperly denied her claim for credit or refund of New York State personal income tax for the year 2016 on the basis that the claim was filed after the expiration of the applicable statute of limitations.

FINDINGS OF FACT

Pursuant to section 3000.15 (d) (6) of the Rules of Practice and Procedure of the Tax Appeals Tribunal and section 307 (1) of the State Administrative Procedure Act, the Division of Taxation (Division) submitted eight proposed findings of fact. The Division's proposed findings

of fact 1 and 3 through 7 are supported by the record and have been incorporated herein.

Proposed finding of fact 2 is rejected as conclusory. Proposed finding of fact 8 is rejected as irrelevant.

1. On December 28, 2020, petitioner, Patricia Lebron, filed form IT-201, New York State resident income tax return, for tax year 2016 (2016 return). Petitioner reported wage income of \$76,869.00, rental real estate (schedule E) loss of \$11,517.00, New York adjusted gross income of \$65,352.00 and total New York State tax due of \$2,075.00. After reporting New York State tax withheld in the amount of \$3,940.00, petitioner claimed a refund in the amount of \$1,865.00 and for it to be direct deposited into a personal checking account.

2. On January 25, 2021, the Division issued to petitioner an account adjustment notice – personal income tax (account adjustment notice) denying petitioner’s refund claim of \$1,865.00 for tax year 2016. The explanation section of the account adjustment notice stated, in part, the following:

“We 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 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.”

3. On June 21, 2022, the Division issued to petitioner a notice of disallowance that denied the \$1,865.00 refund claimed by petitioner for tax year 2016, as untimely filed, for the reasons provided in the account adjustment notice.

4. Petitioner requested a conciliation conference before the Division’s Bureau of Conciliation and Mediation Services (BCMS), which was conducted by teleconference on May 12, 2023. By conciliation order, dated June 30, 2023 (CMS number 000343827), the conferee sustained the notice of disallowance.

5. On August 29, 2023, petitioner timely filed a petition with the Division of Tax Appeals in protest of the conciliation order.

6. At the hearing, the Division submitted the affidavit of Samatha Hepp, a Taxpayer Services Specialist 2, in the Individual Liability Resolution Center (ILRC) of the Division's Office of Processing and Taxpayer Services (OPTS). Ms. Hepp has been employed by the Division since 2007 and has held her current position as Taxpayer Services Specialist 2 since April 2023. The ILRC unit handles personal income tax assessments and adjusted refunds. Ms. Hepp's duties in the ILRC unit include supervising resolvers who handle protests of personal income tax assessments and adjusted refunds. As part of her duties, Ms. Hepp facilitates reviews "to ensure that the New York State Tax Law is being abided by during the review process and through any adjustments to the taxpayer accounts." Ms. Hepp also acts as an advocate for conciliation conferences before BCMS and has worked on BCMS cases and advocated at BCMS conferences since November 2012. In her performance of those responsibilities, Ms. Hepp reviewed the information in the Division's systems including correspondence, case contacts, filing history and other documents for petitioner, including her 2016 return.

7. Based upon her search and review of the Division's files and records, Ms. Hepp avers that the Division has no record of petitioner filing a form IT-370, application for automatic six-month extension of time to file for individuals (extension request form), to request an extension of time to file her 2016 return. Ms. Hepp also avers that the Division has no record of petitioner filing a 2016 return prior to December 28, 2020. Ms. Hepp asserts that petitioner's refund claim for tax year 2016 was filed within the three-year period set forth in Tax Law § 687 (a), but it is subject to a limitation on such refund to the amount of taxes paid within the three-year period immediately preceding the filing of the refund claim plus any period for any extension of time to

file the return. Ms. Hepp further asserts that the amount petitioner requested as an overpayment was comprised solely of payments and credits deemed paid on April 15, 2017, pursuant to Tax Law § 687 (i). Ms. Hepp claims that because petitioner did not file an extension request form for tax year 2016, petitioner's refund would be limited to tax paid within the three-year period preceding December 28, 2020, i.e., December 28, 2017 through December 28, 2020. Because petitioner's payments and credits were deemed paid on April 15, 2017, Ms. Hepp further claims that petitioner's refund claim for 2016 is untimely and is limited to \$0.00.

8. The Division conducted a search of its records and provided a certification by Deputy Tax Commissioner Amanda R. House, in the Disclosure and Exchange unit of the Division's Office of Budget and Management Analysis, that a search was made of personal income tax filings for petitioner for tax year 2016 and no personal income tax return filings were found prior to December 28, 2020.

9. Petitioner testified at the hearing. According to petitioner, she prepared her 2016 return using tax preparation software for tax year 2016 given to her by a friend during the 2017 tax filing season, which such tax software she loaded onto her laptop. Petitioner testified that she may have prepared and filed a 2016 extension request form but needed to look at her laptop to be sure. Petitioner claimed that she mailed the 2016 return three times in the year 2020 and used regular mail each time. According to petitioner, the first time she mailed the 2016 return "was right around tax time" in April 2020, by placing her 2016 return in a mailbox located in White Plains, New York. Petitioner testified that she may have mailed that 2016 return to Connecticut but was not sure. Because of the COVID-19 pandemic restrictions in place in the year 2020, petitioner testified that she patiently waited for approximately four months for her claimed 2016 refund. Petitioner testified that when she had not received her claimed refund by approximately

August 2020, she mailed her 2016 return shortly before her birthday on September 11, 2020, by placing the 2016 return in a mailbox located near her former employer in Port Chester, New York. Petitioner further testified that on December 28, 2020, she went into a United States Postal Service (USPS) location in Westchester, New York, to mail her 2016 return where she observed the USPS employee place a postmark on the envelope containing her 2016 return. Petitioner claims that the COVID-19 pandemic restrictions in place, in 2020, may have impacted the processing of her 2016 return by the USPS. Petitioner also claims that she tried on several occasions, in 2020, to call the Division regarding the status of her claimed 2016 refund but was never able to speak with any Division employee because of the COVID-19 pandemic restrictions in place for most of the year 2020.

10. At the conclusion of the hearing, petitioner requested and was granted additional time, until April 14, 2025, to submit documents in support of the filing of her 2016 return. In addition, the Division was granted the right to submit rebuttal documents by April 30, 2025.

11. Petitioner timely submitted the two pages of screen shots of the contents of a USB Drive. One page shows a “TurboTax 2016 Home & Business” folder and the other page shows the contents of a “TurboTax 2016” folder within the above folder, which was last modified “2/27/2018,” which documentation was received into evidence as petitioner’s exhibit 1. In the letter transmitting the post-hearing documentation, petitioner asserts that this was the only documentation that she has related to when she was working on her 2016 return.

12. A review of the two screen shots indicates that neither screen shot provides proof of the date of mailing of the 2016 return.

13. Petitioner did not submit any proof that she filed a 2016 extension request form.

CONCLUSIONS OF LAW

A. The period of limitations for claiming a credit or refund of personal income tax is set forth in Tax Law § 687 (a) that provides, in part, as follows:

“[c]laim 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 [or] (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 . . .”

B. The Division “denied [petitioner’s] claim for the refund or credit because it was filed too late.” However, petitioner filed her 2016 return on December 28, 2020, and made the refund claim on that 2016 return. Therefore, petitioner’s refund claim was filed within the three-year period set forth in Tax Law § 687 (a) and is considered timely filed because the refund was claimed with the filing of petitioner’s 2016 return (*see Matter of Diaz*, Tax Appeals Tribunal, March 17, 2011; *Matter of Petrovich*, Tax Appeals Tribunal, January 20, 2000). However, any refund of an overpayment is limited by the provisions of Tax Law § 687 (a) to the amount of tax paid within the three-year period immediately preceding the filing of the claim for refund plus any extension of time to file the return.

C. Although petitioner testified that she may have filed an extension request form for tax year 2016, she failed to provide any proof to substantiate her claim. Petitioner testified that she mailed the 2016 return three times in the year 2020 and used regular mail each time. Petitioner vaguely testified that the first time she mailed the 2016 return was sometime just before April 15, 2020, but thought she may have mailed the 2016 return to Connecticut. Petitioner also vaguely testified that she mailed the 2016 return a second time sometime before her birthday on September 11, 2020. Petitioner testified that she mailed the 2016 return a third time on

December 28, 2020, when she went to a USPS location in Westchester, New York, and observed the USPS employee place a postmark on the envelope containing her 2016 return. The Division has no record of petitioner filing her 2016 return prior to December 28, 2020. Petitioner's unsupported, vague testimony is insufficient, as a matter of law, to prove mailing of the 2016 return prior to December 28, 2020 (*see Matter of Dattilo*, Tax Appeals Tribunal, May 11, 1995, *confirmed Matter of Dattilo v Urbach*, 222 AD2d 28, 30 [3d Dept 1996]). As such, petitioner's 2016 return was filed on December 28, 2020. Petitioner asserts that due to the COVID-19 pandemic declaration in 2020, the filing deadline to file a tax return was extended. As such, petitioner requests that due to the COVID-19 pandemic declaration, the Division of Tax Appeals grant her petition and reverse the denial of her 2016 refund. Petitioner's assertion is without merit. The Division's *Announcement Regarding Relief from Certain Filing and Payment Deadlines due to the Novel Coronavirus, COVID-19*, Notice N-20-2 (March 2020) (DTF Notice N-20-2), specifically extended the due date for New York State personal income tax and corporation tax returns originally due on April 15, 2020. Petitioner's 2016 return was originally due on April 18, 2017¹ and, thus, not subject to the three-month extension granted in DTF Notice N-20-2 (*see* Tax Law § 651 [a] [providing the time for filing an income tax return as the fifteenth day of the fourth month following the close of the taxable year]; *see also Matter of Goldenberg*, Tax Appeals Tribunal, July 10, 2025 [holding that the limitations period for claiming a personal income tax refund for tax year 2016 was unaffected by the filing deadline extension for tax year 2019 personal income tax returns originally due on April 15, 2020]). Because petitioner did not file an extension request form for tax year 2016, petitioner's refund is

¹ April 15, 2017 fell on a Saturday and Emancipation Day, a legal holiday in Washington, D.C., was observed on Monday, April 17, 2017. The national tax filing deadline for tax year 2016 was Tuesday, April 18, 2017, the next business day (*see* General Construction Law § 25-a [1]).

limited by Tax Law § 687 (a) to the amount of tax paid within the three years immediately preceding the December 28, 2020, refund claim, i.e., December 28, 2017 through December 28, 2020.

D. Pursuant to Tax Law § 687 (i), any tax paid by a taxpayer, income tax withheld from a taxpayer and any amount paid by a taxpayer as estimated income tax for a taxable year is deemed paid on the fifteenth day of the fourth month following the close of the taxable year with respect to which such amount constitutes a credit or payment. The 2016 payments that comprise petitioner's refund claim were deemed paid on April 15, 2017. Petitioner's refund claim for tax year 2016, though timely filed, exceeds the amount of tax paid within the three-year period immediately preceding that claim and, thus, is limited by Tax Law § 687 (a) to \$0.00.

E. The petition of Patricia Lebron is denied, and notice of disallowance, dated June 21, 2022, is sustained.

DATED: Albany, New York
February 12, 2026

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE