

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
DASRATH RAMKISSOON : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 820310
Personal Income Tax under Article 22 of the Tax :
Law for the Years 1996, 1997, 1998 and 1999. :

Petitioner, Dasrath Ramkissoon, 459 Third Avenue, Brooklyn, New York 11215, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1996, 1997, 1998 and 1999.

On August 18, 2005 and August 31, 2005, respectively, petitioner, appearing *pro se*, and the Division of Taxation, appearing by Christopher C. O'Brien, Esq. (Margaret T. Neri, Esq., of counsel), consented to have the controversy determined on submission without a hearing. All documentary evidence and briefs were submitted by April 11, 2006, which date began the six-month period for issuance of this determination. After due consideration of the record, Joseph W. Pinto, Jr., Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioner's refund claims for the years 1996, 1997, 1998 and 1999 on the basis that the claims were untimely.

FINDINGS OF FACT

1. Petitioner filed his 1996, 1997, 1998 and 1999 New York State personal income tax returns on May 18, 19, 22 and 25, 2004, respectively, by which he sought a refund of the overpayments allegedly made in each of the four years. There was no dispute that all of the

returns were filed late. The following chart indicates the date the refund request was received by the Division of Taxation and the amounts of each claim for refund for the specified year:

DATE RECEIVED	TAX YEAR	REFUND REQUESTED
5/25/2004	1996	\$1,355.50
5/22/2004	1997	1,263.00
5/19/2004	1998	1,276.00
5/18/2004	1999	1,182.00

2. On December 10 and 13, 2004, the Division of Taxation sent four letters to petitioner, one for each year, in which it denied the refund requests. Each letter contained the following language:

The New York State Tax Law does not permit us to allow the refund or credit claimed on your return(s).

The Tax Law provides for the granting of a refund or credit if the request is filed 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.

Our records show the return on which you requested a refund or credit was filed beyond the statute of limitations as prescribed by the Tax Law.

Unfortunately, we must deny your claim for refund or credit.

3. Petitioner submitted no evidence of the amount or date of payments of tax for the years in issue or any evidence of tax paid for the years between the years in issue and the date he filed the returns.

4. Petitioner suffered from various physical and mental maladies during the years 2002 and 2003, including diabetes and massive injuries from an automobile accident.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 687(a), a limitations period is imposed upon taxpayers who wish to claim a refund of an overpayment of income tax as follows:

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

B. In light of the foregoing, a claim for credit or refund 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. If it is presumed that petitioner paid the tax for the years in issue by April 15 of the succeeding year - - and it must be presumed since no evidence of payment was submitted by petitioner - - then the claims for refund were not filed within two years of payment and are barred by the statute. (Tax Law § 687[a], [i].)

In this matter, petitioner filed his claims for refund or credit for the years 1996, 1997, 1998 and 1999 with the returns he filed on May 18, 19, 22 and 25, 2004, respectively. Therefore, the claims were made within three years of filing the return as prescribed by the statute. However, the limitation on the *amount* of the credit permitted is the tax paid in the three years immediately preceding the filing of the claim plus any extension period, i.e., three years immediately preceding May 18, 19, 22 and 25, 2004, or May 18, 19, 22 and 25, 2001. Since there is no evidence that any tax was paid by petitioner in that period, there can be no recovery.

C. Tax Law § 687(e) prohibits the payment of refunds where a claim is not filed within the prescribed time period. With two exceptions not relevant here, that provision provides:

No credit or refund shall be allowed or made . . . after the expiration of the applicable period of limitation 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 limitation specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes paid under this article.

D. Petitioner argued that he was prevented from filing his returns in a timely manner due to physical and mental illness, including complications from diabetes and massive injuries from a automobile accident. However, the documentation he submitted indicated that his health issues occurred in 2002 and 2003, which does not explain why returns for the years in issue were not filed earlier.

Further, there are no exceptions in the Tax Law which allow for consideration of individual circumstances. Essentially, petitioner seeks an equitable tolling of the statute of limitations set forth in Tax Law § 687(a) based on his disabilities. However, this notion of an equitable tolling was rejected by the United States Supreme Court when interpreting Internal Revenue Code (“IRC”) § 6511, which provides statutory time limitations for filing refund claims similar to Tax Law § 687(a). (*United States v. Brockamp*, 519 US 347.) In *Brockamp*, the Court held that the statutory time limitations for the filing of a refund claim could not be tolled for nonstatutory equitable reasons. In that case, the petitioner had argued that senility had caused the delay in filing the claim and that the statutory time limitation should be extended because of the existence of a mental disability. The Court rejected the petitioner’s contentions, saying that there was neither an explicit nor implied equitable tolling exception in IRC § 6511. Likewise, there is no reason to interpret the provisions of Tax Law § 687(a) differently, notwithstanding very compelling personal reasons.

E. The petition of Dasrath Ramkissoon is denied and the four denials of refund, dated December 10, 2004 and December 13, 2004, are sustained.

DATED: Troy, New York
September 14, 2006

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE