



Advisory Opinion: TSB-A-24(12)I

The Department of Taxation and Finance (“Department”) received a Petition for Advisory Opinion [REDACTED] (“Petitioners”). Petitioners ask whether the Department can waive the statute of limitations with respect to refund claims filed by Petitioners more than three years after their returns were filed.

We conclude that a waiver of the statute of limitations is not necessary because Petitioners’ refund claims are timely filed under Tax Law § 687(c).

Facts

Petitioners have residences in the United States and Switzerland and stay in both countries every year. Petitioners represent that they paid “full” taxes in the United States and “limited” taxes in Switzerland.

Petitioners requested competent authority assistance under Article 25 (Mutual Agreement Procedure) of the United States-Switzerland Income Tax Treaty. Specifically, Petitioners requested assistance regarding the double taxation of Petitioners’ worldwide income for the years 2011 through 2017. Petitioners’ first request was made in 2013.

By letter dated November 16, 2018, the United States Competent Authority notified Petitioners that the competent authorities of the United States and Switzerland could not conclusively determine Petitioners’ country of residence and, as such, both competent authorities agreed to split Petitioners’ worldwide income based on the time Petitioners spent in the United States and Switzerland. The letter then informed Petitioners that the United States would relieve juridical double taxation by refunding the United States taxes paid on that portion of Petitioners’ worldwide income that was taxable in Switzerland and instructed Petitioners on how to file refund claims with the Internal Revenue Service.

In December 2018, Petitioners filed amended returns with the Department requesting refunds of New York State personal income taxes paid for tax years 2012 through 2017 as a result of the changes to their federal taxable income set forth in the November 16, 2018, letter.

Analysis

In general, Tax Law § 687(a) provides that a claim for credit or refund of an overpayment of personal income tax must 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 is later. See Tax Law § 687(a). This statute is extended, however, by a notice of federal change or correction under Tax Law § 687(c):

A claim for credit or refund of any overpayment of tax attributable to a federal change or correction required to be reported pursuant to section six hundred fifty-nine shall be filed by the taxpayer within two years from the time the notice of such

change or correction or such amended return was required to be filed with the commissioner of taxation and finance. If the report or amended return required by section six hundred fifty-nine is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

Tax Law § 659 provides, in relevant part, as follows:

If the amount of a taxpayer's federal taxable income, total taxable amount or ordinary income portion of a lump sum distribution or includible gain of a trust reported on his federal income tax return for any taxable year, or the amount of a taxpayer's earned income credit or credit for employment-related expenses set forth on such return, or the amount of any federal foreign tax credit affecting the calculation of the credit for Canadian provincial taxes under section six hundred twenty or six hundred twenty-A of this article, or the amount of any claim of right adjustment, is changed or corrected by the United States internal revenue service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, or the amount an employer is required to deduct and withhold from wages for federal income tax withholding purposes is changed or corrected by such service or authority or if a taxpayer's claim for credit or refund of federal income tax is disallowed in whole or in part, the taxpayer or employer shall report such change or correction or disallowance within ninety days after the final determination of such change, correction, renegotiation or disallowance, or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous.

On November 16, 2018, the United States Competent Authority notified Petitioners of changes to their federal taxable income for the years 2011 through 2017. The office of the United States Competent Authority lies within the Large Business and International Division of the Internal Revenue Service. Therefore, Petitioners were required to report those changes to the Department within ninety days of notice. See Tax Law § 659. In turn, Petitioners had two years and ninety days from November 16, 2018, to file any claims for credit or refund based on those changes with the Department. See Tax Law § 687(c). Petitioners filed their refunds claims in December 2018. The claims are timely filed under Tax Law § 687(c).

Dated: April 24, 2024

/s/

Brian McCann
Principal Attorney

Note: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.