

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(3)I
Income Tax
March 3, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I081008B

On October 8, 2008, a Petition for Advisory Opinion was received from [REDACTED]

The Petition asks whether interest on the overpayment of New York State personal income tax for taxable year 1994 is owed from the date of the original tax return filing, when an amended state tax return reflecting federal changes and requesting a refund was subsequently filed within 90 days of the filing of an amended federal return, as prescribed by Tax Law §659 and §687. We conclude that interest on the overpayment of tax is due only from the date of the filing of the amended return.

Petitioners filed an amended New York State tax return for tax year 1994 on January 3, 2007, claiming an overpayment as a result of federal changes. The amended return was filed within 90 days of the filing of petitioners' amended federal return, as prescribed by Tax Law §659 and §687. The refund was paid on May 7, 2007. No interest on the overpayment was paid to Petitioners for the period between the original state tax return filing and the amended state tax return filing. Interest was allowed for the period from the date the amended state return was filed to the date the refund was paid.

Tax Law §687(c), as in effect for taxable year 1994, provided that a claim for credit or refund for payment of a tax later determined to be an overpayment of tax as a result of federal changes must be filed by the taxpayer within two years from the time the notice of change or correction or an amended return was required to be filed with the Tax Department pursuant to Tax Law §659. Section 687(c) provided that no interest will be paid on the overpayment if the notice of change or correction or amended return was not filed within 90 days as provided in section 659. Tax Law §688 contains the interest provisions concerning the overpayment of taxes. Tax Law §688(a)(3), as in effect for taxable year 1994, provided that in the case of an overpayment of tax claimed on a late filed return, an amended return of tax, or a claim for credit or refund, "no interest shall be allowed or paid for any day before the date on which such return or claim is filed." No interest was allowed on the overpayment if it was refunded within forty-five days of filing of the amended return.

In the present case, as a result of federal changes, Petitioners filed an amended tax return for taxable year 1994 requesting a refund within the 90-day period prescribed by Tax Law §659. The filing of Petitioners' amended tax return for tax year 1994 placed the Tax Department on notice of Petitioners' refund claim. No notice of refund claim was made before the filing of Petitioners' amended tax return for tax year 1994. Accordingly, filing Petitioners' amended tax return for tax year 1994 triggered the accrual of interest on overpayment pursuant to §688(a)(3), as in effect for tax year 1994. Interest started

accruing on the overpayment on the date the amended tax return was filed. Petitioners are not entitled to interest on overpayment of tax dating from the original tax return filing.

DATED: March 3, 2009

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

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.