

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Thomas C. & Delores McGill : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1972.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of January, 1982, he served the within notice of Decision by certified mail upon Thomas C. & Delores McGill, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas C. & Delores McGill
16 Bay Place
Huntington, NY 11743

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of January, 1982.

Cornie A. Staplund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 29, 1982

Thomas C. & Delores McGill
16 Bay Place
Huntington, NY 11743

Dear Mr. & Mrs. McGill:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THOMAS C. MCGILL AND DELORES M. MCGILL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

Petitioners, Thomas C. McGill and Delores M. McGill, 16 Bay Place, Huntington, New York 11743, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 20293).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 23, 1980 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioners are liable for penalties provided by section 685, subdivision (a)(1) and 685(a)(2) of the Tax Law.

FINDINGS OF FACT

1. On June 27, 1977, the Audit Division issued a Notice of Deficiency against the petitioners for subject year imposing personal income tax of \$1,342.38, interest of \$422.84 and section 685, subdivisions (a)(1) and (a)(2) penalties of \$557.09, for a total due of \$2,322.22. The Notice was issued on the grounds that petitioner Thomas C. McGill failed to file a New York State personal income tax return and report his earnings thereon.

2. Petitioners stipulated at the hearing that the tax and interest were properly imposed.

3. Petitioners prepared their Federal and New York State personal income tax returns concurrently and placed each in its respective envelope. The envelopes together with its contents were addressed to the Internal Revenue Service and New York State Department of Taxation respectively, and bore the return address of the petitioners. The envelopes and its contents were then placed in a United States mail box.

Since petitioner Thomas C. McGill's transfer to New York State by his employer in 1965 to the year at issue, he and his spouse filed their own tax returns claiming the standard deduction. The returns were then mailed to the appropriate tax department for calculation of the tax due. Petitioners did not deem it necessary to retain copies of their tax returns as they had only claimed the standard deduction.

CONCLUSIONS OF LAW

A. That penalties imposed pursuant to section 685(a)(1) and 685(a)(2), are cancelled. That petitioners alleged failure to file a New York State personal income tax return for 1972 was due to reasonable cause and not due to willful neglect. The petitioners have established a custom of timely preparation and mailing of returns from the time they became domiciliaries of New York State in 1965. In Walter M. Ferguson, Jr. 14 T.C. 846 (1950) and in Jones v. United States, 55-2 USTC ¶9676, 226 F.2d 24 (C.A. 9, 1955), it was held, in relevant part, that:

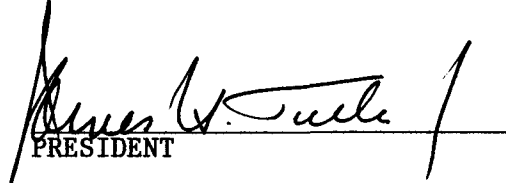
"It is unnecessary to decide whether there was a filing. This would not be the first time that a collector has lost a return. Even if no return was filed, the failure was due to reasonable cause (failure of the mails) and not to willful negligence, so in no event would the penalty be proper."

B. That the petition of Thomas C. McGill and Delores M. McGill is granted to the extent determined in Conclusion of Law "A", supra. The Audit Division is hereby directed to modify accordingly the Notice of Deficiency, issued on June 27, 1977. Except as so granted, the petition is in all other respects denied.

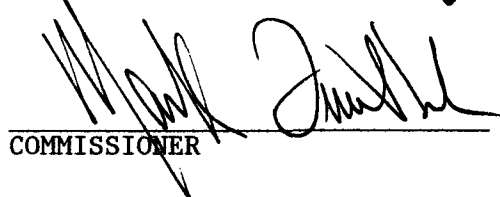
DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER