

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Jan G. Williams :

: 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

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Jan G. Williams, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jan G. Williams
63 Anderson Place
Buffalo, NY 14222

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
6th day of May, 1983.

David Parchuck

Annice R. Vignola

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Frederick B. Cohen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frederick B. Cohen
Borins, Halpern, Snitzer, Levy, Fradin & Loonsk
640 Statler Hilton Building
Buffalo, NY 14202

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
6th day of May, 1983.

David Parchuck

James R. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Jan G. Williams
63 Anderson Place
Buffalo, NY 14222

Dear Ms. Williams:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Frederick B. Cohen
Borins, Halpern, Snitzer, Levy, Fradin & Loonsk
640 Statler Hilton Building
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JAN G. WILLIAMS
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1972.

DECISION

Petitioner, Jan G. Williams, 63 Anderson Plaza, Buffalo, New York 14222, 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. 15107).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on December 15, 1981 at 9:15 A.M. Petitioner Jan G. Williams appeared with Frederick B. Cohen, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency should be dismissed on the grounds of laches.

II. Whether the State Tax Commission Rules of Practice and Procedure are unconstitutional since they do not require the State to act within a reasonable period of time after an assessment is made.

III. Whether the award from the Ford Foundation received by petitioner is includible in gross income.

FINDINGS OF FACT

1. Petitioner Jan G. Williams and Diane W. Williams, his wife, timely filed a New York State Combined Income Tax Return for 1972. On said return the

petitioner included in other income and then subtracted out as an adjustment an award from the Ford Foundation.

2. On October 30, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner on the grounds that "[B]ased upon information submitted the fellowship received from the Ford Foundation is not excludible from gross income as a scholarship or fellowship under section 117(a) of the Internal Revenue Code." Accordingly, the Income Tax Bureau issued a Notice of Deficiency on March 29, 1976 against petitioner asserting personal income tax of \$188.21, plus interest of \$41.69, for a total due of \$229.90 for 1972.

3. Petitioner Jan G. Williams is a musician and a concert artist. Petitioner received an award of \$5,000.00 from the Ford Foundation. He was selected without any action on his part. The primary purpose of the award was to recognize and further petitioner's career on the concert stage and to enable the petitioner to rehearse and perform a commission work by an American composer of his choice.

4. Each artist so selected for the award was asked to suggest an American composer to write a work for the artist which the artist would have exclusive right of performance for the first two seasons after its completion. The petitioner was required to make his own performance arrangements, with a minimum objective of three performances within a twelve month period beginning with the first concert date. In the event that petitioner did not perform the commission work, he was not required to return his award.

5. Payment of the award to the petitioner would be made in two installments, \$2,500.00 upon receipt of a request of payment and \$2,500.00 after arrangements have been completed in the selection of a composer and in his acceptance of the commission. Petitioner received \$2,500.00 of the award in 1972.

6. Petitioner argued that his case is prejudiced by the unavailability of witnesses since all the people connected with the program for concert artists had left the Ford Foundation. Petitioner further argued that the State Tax Commission Rules of Practice and Procedure are unconstitutional since they do not require the State to act within a reasonable period of time after an assessment is made.

CONCLUSIONS OF LAW

A. That section 74 of the Internal Revenue Code provides the following:

(a) GENERAL RULE - Except as provided in subsection (b) and in section 117 (relating to scholarships and fellowship grants), gross income includes amounts received as prizes and awards.

(b) EXCEPTION - Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if-

(1) the recipient was selected without any action on his part to enter the contest or proceeding; and

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award.

The language of the section is clear and unequivocal. The petitioner is not required to include the amounts received from the Ford Foundation in his gross income.


B. That in light of Conclusion of Law "A", issue I concerning laches and issue II concerning the constitutionality of the State Tax Commission's rules of practice and procedure are hereby rendered moot.

C. That the petition of Jan G. Williams is granted and the Notice of Deficiency issued March 29, 1976 for 1972 is hereby cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER