

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Roberta Flack :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1972 - 1977. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Roberta Flack, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Roberta Flack
c/o David F. Rock
P.O. Box 550047
Atlanta, GA 30305

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
21st day of August, 1985.

David Parchuck

Shirley A. Hargrave
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
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AFFIDAVIT OF MAILING

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon David F. Rock, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David F. Rock
Rock & Von Gal
P.O. Box 550047
Atlanta, GA 30305

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
21st day of August, 1985.

David Parchuck

James J. Hagelback
Authorized to administer oaths
pursuant to Tax Law section 174

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

August 21, 1985

Roberta Flack
c/o David F. Rock
P.O. Box 550047
Atlanta, GA 30305

Dear Ms. Flack:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
David F. Rock
Rock & Von Gal
P.O. Box 550047
Atlanta, GA 30305
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERTA FLACK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1972 through 1977.	:	

Petitioner, Roberta Flack, c/o David F. Rock, P.O. Box 550047, Atlanta, Georgia 30305, 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 1972 through 1977 (File No. 27107).

A hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 2, 1985 at 2:50 P.M. Petitioner appeared by Rock & Von Gal, P.C. (David F. Rock, Esq. and Christopher Von Gal, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether petitioner's failure to file New York State nonresident personal income tax returns and to pay the taxes required to be shown thereon was due to reasonable cause and not to willful neglect on her part.

FINDINGS OF FACT

1. Petitioner, Roberta Flack, who was a resident of Virginia during the taxable years 1972, 1973, 1974 and 1975, did not file New York State nonresident personal income tax returns for such years.

2. On September 22, 1978, the Audit Division issued to petitioner a Statement of Audit Changes, proposing personal income tax, interest, and penalties pursuant to Tax Law sections 685(a)(1), (a)(2) and (b), for the years 1972 through 1975, scheduled as shown below.

	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>TOTAL</u>
Personal income tax	\$606.96	\$4,897.00	\$11,630.30	\$15,541.56	\$32,675.82
Penalties, section 685(a)(1) and (a)(2)	288.31	3,710.94	5,001.03	5,750.38	14,750.66
Penalty, section 685(b)	30.35	390.63	581.52	777.08	1,779.58
Interest					9,468.41
					<u>\$58,674.47</u>

On March 30, 1979, the Audit Division issued to petitioner a Notice of Deficiency, asserting personal income tax for the years 1972 through 1975 in the aforementioned amounts, plus interest and penalties computed to the date of the Notice. The Notice purported to subject to tax salary and royalty income paid to petitioner by Roberta Flack Enterprises, Inc., a corporation which was organized under the laws of the District of Columbia but maintained no offices in this state.

Immediately prior to the hearing, petitioner's representatives conceded on her behalf the principal amounts of tax asserted for 1972, 1973 and 1974; the Audit Division's representative conceded that no tax is due for 1975¹ and in addition, conceded to waiver of the negligence penalty under Tax Law section 685(b). Remaining in dispute, therefore, are the delinquency penalties imposed

1 The Audit Division also conceded that petitioner bears no liability for personal income tax in 1976 and 1977. Apparently because of this concession, the Audit Division did not offer, and the record does not contain, a Statement of Audit Changes or a Notice of Deficiency for 1976 and 1977.

against petitioner for the years 1972, 1973 and 1974 pursuant to section 685(a)(1) and (a)(2).

3. Ms. Flack is a well-known vocal artist and entertainer. In her own words, the years under consideration, the taxable years 1972, 1973 and 1974, were her "biggest" years, the period during which the recordings "Killing Me Softly" and "Where Is the Love" (the latter sung with Donny Hathaway) were released, and the National Academy of Recording Arts and Sciences conferred upon her two Grammy awards. Ms. Flack toured the United States, giving concerts, making personal appearances and promoting her record albums. A short excerpt from her itinerary appears below.

<u>DATE</u>	<u>POINT OF ORIGIN AND DESTINATION</u>
July 1, 1972	Home to Atlanta, Georgia
July 2, 1972	Atlanta to Wildwood, New Jersey
July 3, 1972	Wildwood to Los Angeles, California
July 7, 1972	Los Angeles to Houston, Texas
July 8, 1972	Houston to New York, New York
July 9, 1972	New York to Cleveland, Ohio
July 10, 1972	Cleveland to home
July 13, 1972	Home to Birmingham, Alabama
July 14, 1972	Birmingham to Hampton, Virginia
July 15, 1972	Hampton to Philadelphia, Pennsylvania
July 16, 1972	Philadelphia to Washington, D.C.
July 18, 1972	Home to Ravinia, Illinois
July 19, 1972	Ravinia to Columbia, South Carolina

4. Because of the pressures of her appearance and recording schedule, and because she received no formal education in business or law, Ms. Flack entrusted her business affairs, especially all legal matters, to one David Franklin, a tax attorney who represented many entertainers and politicians. Mr. Franklin prepared all petitioner's tax returns and discussed them with her as he felt necessary. He specifically advised her that as a nonresident of the State of New York, she was not required to file tax returns with the state; so definitively did he state this position that she had no reason to doubt or question it.

5. In 1972, Ms. Flack's health began to fail and after considerable diagnostic testing conducted in Virginia and in New York, she was found to have a tumor of the pituitary gland. Despite the detrimental effects this condition had on her voice, and the continuous testing and treatment which she underwent, Ms. Flack maintained her business schedule. She revealed her condition to very few people in the entertainment community and at present still receives treatment for the tumor.

CONCLUSIONS OF LAW

A. That section 685(a)(1) of Article 22 imposes a penalty for failure to file a return on or before the prescribed date (determined by taking into consideration any extension of time granted for filing), unless it is established that such failure is due to reasonable cause and not to willful neglect. Section 685(a)(2) imposes a penalty for failure to pay the amount shown as tax on a return required to be filed on or before the prescribed date (determined by taking into consideration any extension granted for payment); again, the penalty may be waived where the taxpayer demonstrates that the delinquency was due to reasonable cause and not to willful neglect.

B. That under the extenuating circumstances presented, including her ill health, petitioner's failure to timely file New York State personal income tax returns and to pay the tax required to be shown thereon was due to reasonable cause and not due to her willful neglect. Petitioner retained the services of a respected tax attorney to oversee her business affairs and to file all required returns, and discussed with him the question of whether New York law mandated her filing of returns. She thus did "all that ordinary business care and prudence can reasonably demand." (Haywood Lumber & Mining Co. v. Commr., 178 F.2d 769, 771 [2d Cir. 1950].)

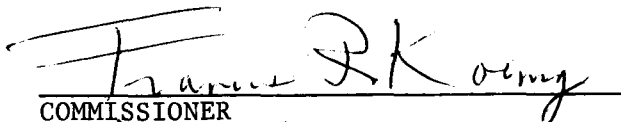
C. That the petition of Roberta Flack is granted to the extent indicated in Conclusion of Law "B"; the Notice of Deficiency issued on March 30, 1979 is to be modified in accordance therewith and also to take account of the Audit Division's concessions (Finding of Fact "2"); and except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1985


PRESIDENT


COMMISSIONER


COMMISSIONER