

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE A. & RUTH M. BETTS

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1966

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon GEORGE A. & RUTH M. BETTS (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: George A. & Ruth M. Betts
346 Hasbrouck Avenue
Kingston, New York 12401
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

29th day of December, 1971.

Rae Zimmerman

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

GEORGE A. & RUTH M. BETTS : DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1966.

George A. and Ruth M. Betts filed a petition for a redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1966. In lieu of a hearing, petitioners agreed to submit the case on the file of the Income Tax Bureau. Said file has been duly examined and considered.

ISSUE

The issue in this case is whether petitioners, Mr. and Mrs. Betts, were residents or nonresidents in December, 1966 when Mr. Betts received a certain lump sum severance payment from the armed forces.

FINDINGS OF FACT

1. The deficiency is based upon the receipt by petitioners of \$25,075.33 from the United States Government upon which Federal, but not New York, taxes were withheld.

2. Mr. George Betts was born and raised in Saugerties, New York. He entered the U.S. Armed Forces on August 1, 1952. (He was married on December 13, 1952.) He left the service on December 1, 1966.

3. From July, 1953 to January, 1955 Mr. Betts was on duty in Korea. His wife stayed in Kingston, New York.

4. From January, 1955 to July, 1959, Mr. Betts was stationed successively at the Aberdeen Proving Ground, Albuquerque, New Mexico, El Paso, Texas, and two and one-half years in Italy. During all this time he lived with his family off the military base.

5. From July, 1959 to December, 1959, Mr. Betts was again assigned to the Aberdeen Proving Ground but resided on the base.

6. In December, 1959, Mr. Betts was transferred to Joliet, Illinois where he lived with his family off the base until May, 1961, when he moved onto the base for one month. During this time he gave some thought to leaving the service and to buying a house in Illinois but he was unable to get a mortgage and decided to remain in the service.

7. From June, 1961 to July, 1963, he was stationed in California where he attended an armed forces training school and lived on the base. He obtained a California driver's license and operator's license. He never filed a California income tax return. From July, 1963 to July, 1966, Mr. Betts was stationed in Germany where he lived on a military base. From July, 1966 until his discharge in December, 1966, he was stationed in New York where he again lived on a military base.

8. Mr. Betts voted in New York, declaring his address to be the address of a sister. He maintained a checking account in Kingston, New York, throughout his military career.

9. Mr. Betts did not file New York income tax returns because of advice received from the armed forces lawyers.

10. The deficiency in issue is dated February 10, 1969, and is in the amount of \$1,382.50 plus \$141.07 interest for a total of \$1,533.37.

CONCLUSIONS OF LAW

Petitioners were residents of New York in December, 1966 and are taxable on income from all sources as determined under section 612 of the Tax Law by reference to federal adjusted gross income.

Petitioners never changed their domicile from New York to any other jurisdiction. There is insufficient evidence of either an unequivocal intention to change their home or of any action showing a commitment to make their home in another jurisdiction.

Furthermore, petitioners did not maintain a permanent place of abode outside of New York during 1966 and they spent more than 30 days of 1966 in New York State.

DECISION

The deficiency is correct as stated in paragraph ten and is found due together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
December 29, 1971.

STATE TAX COMMISSION

Norman Gallivan
COMMISSIONER

Bruce Hanley
COMMISSIONER

Milton Koenig
COMMISSIONER