

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN S. LITHERLAND

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) 1965

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

State of New York  
County of Albany

Martha Funaro , 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 22nd day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon John S. Litherland

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: John S. Litherland  
7 Gooseberry Lane  
Liverpool, New York 13088

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

22nd day of August , 1972.

Lynn Wilson

Martha Funaro

C



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**August 22, 1972**

**John S. Litherland**  
**7 Gooseberry Lane**  
**Liverpool, New York 13088**

**Dear Mr. Litherland:**

Please take notice of the **DECISION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**Nigel G. Wright**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOHN S. LITHERLAND	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1965.	:	

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John S. Litherland filed a petition for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1965. The petitioner has consented, in lieu of a hearing, to a review by the State Tax Commission of the file of the Income Tax Bureau with respect to such deficiency. Such file has been duly examined and considered.

ISSUE

The issue in this case is whether receipts from Federal Government pensions are includable in the income taxable to New York of a person who became a New York resident for the first time after he retired from Federal service.

FINDINGS OF FACT

1. Petitioner, while a nonresident, served in the armed forces and retired. He became a resident of New York State prior to 1965 and in 1965 received retirement pay from the armed forces.
2. Although the terms of the Federal pension are not in evidence, it is presumed that payments are to be made only during the life of petitioner or the life of his close relatives.

CONCLUSIONS OF LAW

A. The retirement pay in question is taxable to petitioner, a resident of New York, even though it is attributable to services performed before petitioner became a New York resident. A resident of New York is taxed upon his adjusted gross income as defined in the Federal Internal Revenue Code (section 611, 612 of the Tax Law).

Although a person becoming a resident of New York will not be taxed on income accruing to him prior to his beginning such residence the income in question is retirement pay presumably contingent upon petitioner's survival and is not subject to accrual.

Furthermore, the petitioner's argument that he is entitled to the same benefits as recipients of pensions from the State of New York is not well taken. The exemption of State pensions is explicitly recognized in section 612(c)(3) of the Tax Law and in section 110(1) of the Retirement and Social Security Law and cannot be extended to other pensions. Furthermore, the exemption of State pensions has a basis in constitutional law (See New York Constitution Article 5 section 7 and Article 16 section 5 and United States Constitution, Article 1 section 10). Any claim that the distinction between State pensions and Federal pensions violates the equal protection clause of the United States Constitution cannot be passed upon by the State Tax Commission.

DATED: Albany, New York  
*August 22, 1972*

STATE TAX COMMISSION

*Norman J. Sullivan*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Stanley*  
\_\_\_\_\_  
COMMISSIONER

*Walter Krenn*  
\_\_\_\_\_  
COMMISSIONER