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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JAMES C. BENNETT

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

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, 1967 & :  
1968

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 5th day of April, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon James C. Bennett

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

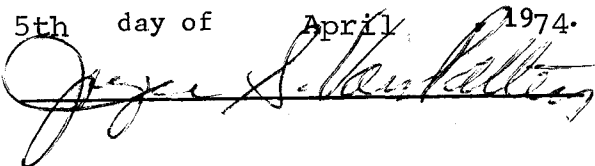
wrapper addressed as follows: Mr. James C. Bennett  
30 West Street  
Nunda, New York 14517

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

5th day of April, 1974.





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
Mario A. Procaccino  
~~XXXXXXXXXX~~, PRESIDENT

A. BRUCE MANLEY  
MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**April 5, 1974**

**Mr. James C. Bennett**  
**30 West Street**  
**Nunda, New York 14517**

**Dear Mr. Bennett:**

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,

~~XXXXXXXXXXXX~~  
**Edward Rook**  
**Secretary to the**  
**State Tax Commission**

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JAMES C. BENNETT : DECISION  
for Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the Years 1966, 1967 and 1968. :

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Petitioner, James C. Bennett, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1966, 1967 and 1968.

A formal hearing was held at the offices of the State Tax Commission, Room 1300, 1 Marine Midland Plaza, Rochester, New York, on March 15, 1973, before L. Robert Leisner, Hearing Officer. The petitioner appeared pro se, and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Is the taxpayer denied equal protection under the law by New York State's allowance of the deduction of State, County and Municipal pensions from New York State income tax but not the deduction of U.S. Government Military Pension?

FINDINGS OF FACT

1. Petitioner, James C. Bennett, timely filed New York State income tax returns for the years 1966, 1967 and 1968.
2. A Notice of Determination of deficiencies in personal income taxes for the years 1966, 1967 and 1968, was issued on March 16, 1973, against the taxpayer under File No. 8-15315904.
3. The taxpayer petitioned for redetermination of the deficiencies.
4. The taxpayer contends that Tax Law section 612(c)(3) is unconstitutional as it denies him equal protection under the law.

Tax Law section 612(c) (3) allows the deduction from gross income for New York State tax purposes of pensions to officers and employees of this State, its subdivisions and agencies. It does not allow the deduction of the taxpayer's U.S. Government Military Pension or any other pension.

CONCLUSIONS OF LAW

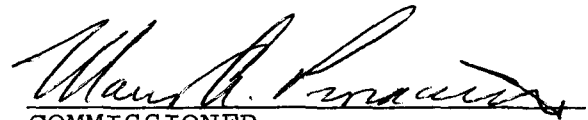
A. The constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to decide the constitutionality of a law.

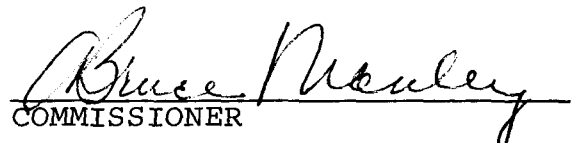
B. The petition is denied and the determination of the deficiency in income tax is sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York  
April 5, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER