

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN W. and ELIZABETH B. MUNRO

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 (8) 22 of the
Tax Law for the Year(s) 1967, 1968,
1969 and 1970

State of New York
County of Albany

Donna Scranton, 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 13th day of May, 1976, she served the within Notice of Decision (~~xxx xxx xxx xxx~~) by (certified) mail upon John W. and Elizabeth B. Munro (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. John W. Munro
Dutch Hill Road
Fayetteville, New York 13066
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

13th day of May, 1976.

Janet Mack

Donna Scranton

STATE OF NEW YORK
STATE TAX COMMISSION

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JOHN W. and ELIZABETH B. MUNRO

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a Refund of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year(s) 1967, 1968,
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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of May, 1976, she served the within
Notice of Decision ~~for Redetermination~~ by (certified) mail upon John T.

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

wrapper addressed as follows: John T. Hunter, Esq.
Hancock, Estabrook, Ryan, Shove & Hust
One Mony Plaza
Syracuse, New York 13202

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

13th day of May, 1976.

Janet Mack

Donna Scranton



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
May 13, 1976

Mr. and Mrs. John W. Munro
Dutch Hill Road
Payetteville, New York 13066

Dear Mr. and Mrs. Munro:

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

Please take further notice that pursuant to
Section (a) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

JOHN W. and ELIZABETH B. MUNRO :

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years
1967, 1968, 1969 and 1970. :

Petitioners, John W. and Elizabeth B. Munro, Dutch Hill Road, Fayetteville, New York 13066, have petitioned for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967, 1968, 1969 and 1970. (File No. 0-54739593).

The petitioners waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Had amounts paid to petitioner, John W. Munro, as retirement payments from an Illinois partnership accrued to the petitioner prior to his change of residence to New York State?

FINDINGS OF FACT

1. The petitioners, John W. and Elizabeth B. Munro, timely filed Federal and New York State income tax returns for the years in question.

2. On April 12, 1971, a Statement of Audit Changes was issued against the petitioners for the year 1967, asserting that the following adjustments in the petitioners' taxable income should be made. \$9,600.00 should be added to reflect retirement payments received by petitioner, John W. Munro, from an Illinois partnership. \$96.00 should be added to reflect the amount by which the petitioners' deduction of life insurance premiums exceeded the maximum life insurance premium allowed by law. Finally, \$1,837.00 should be added to reflect an adjustment suggested by a Federal audit of the petitioners' Federal return concerning a sale of property and property expenses. Said Statement of Audit Changes asserted that \$1,123.56 was due in additional taxation.

3. On October 1, 1970, the adjustment suggested by a Federal audit totalling \$1,837.00 was reduced to \$365.00 by a stipulation executed in the United States Tax Court.

4. On April 10, 1972, a Statement of Audit Changes was issued against the petitioners for the years 1968, 1969 and 1970. For the year 1968, it was asserted that \$11,826.50 in additional income

should have been reported representing \$9,600.00 received as retirement payments by petitioner, John W. Munro, from an Illinois partnership and \$2,226.50 that was disallowed as a prior year loss carry over by a Federal audit. For the years 1969 and 1970, it was asserted that \$9,600.00 in additional income should have been reported in both years reflecting receipt of further retirement payments.

5. Prior to July, 1966, the petitioners were residents of Illinois. Petitioner, John W. Munro, was associated with the law firm of McDermott, Will & Emery located in Chicago, Illinois, and served as a partner in that firm from 1954 until December 31, 1965. Petitioner, John W. Munro, retired from said firm pursuant to the terms of a partnership agreement which provided in section 9.6(b):

"... On the retirement of an Income Partner, an amount equivalent to three times his then current monthly rate of drawing account advances will be paid to him. Thereafter, a monthly payment equal to one-half of such current monthly rate of drawing account advances will be paid to him for sixty consecutive months beginning on the first day of the fourth month following his retirement, except that such payments will be discontinued if, without the written approval of the Management Committee, the retired

Income Partner engages in the public practice of law within three hundred miles of the County Building of Cook County, Chicago, Illinois."

6. The petitioners, John W. and Elizabeth B. Munro, moved to New York State in July, 1966, and have been residents of this State since that time. Petitioner, John W. Munro, has been receiving monthly retirement payments in the amount of \$800.00 since July 1, 1966, from McDermott, Will & Emery.

CONCLUSIONS OF LAW

A. That, the right to receive retirement payments had accrued to petitioner, John W. Munro, prior to his change of residence to New York State. This right was fully vested in the petitioner by the terms of the partnership agreement subject to a condition subsequent in the form of a covenant not to compete. The accrual of this right occurred upon the retirement of petitioner, John W. Munro, from the partnership in question while he was a nonresident. Therefore, such retirement payments as items of income accrued prior to the petitioners becoming residents of New York State pursuant to section 654(c)(2) of the Tax Law are not subject to income tax.

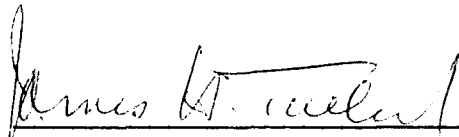
B. That, for the year 1967, adjustments to the petitioners' total income of \$96.00 and \$365.00 are sustained. For the year

1968, an adjustment of \$2,226.50 to petitioners' total income is sustained.

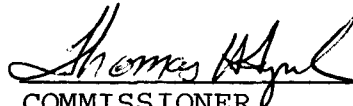
C. That, the petition is granted insofar as no tax liability derived from retirement payment income shall be imposed upon the petitioners. The petitioners' tax due and interest thereon attributable to adjustments other than adjustments for retirement payments shall be recomputed in accordance with this decision.

DATED: Albany, New York
May 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER