

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS PILOTO, SR. and MARY PILOTO

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article ~~(x)~~ 22 of the  
Tax Law for the Year ~~(x)~~ 1968.

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

State of New York  
County of Albany

MARY GROFF, 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 3rd day of February, 1976, she served the within  
Notice of Decision ~~(xx) Determination~~ by (certified) mail upon THOMAS PILOTO, SR. and  
MARY PILOTO ~~x(representative of the)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. and Mrs. Thomas Piloto, Sr.  
195 Belvidere Avenue  
Jersey City, New Jersey 07306  
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 the)~~  
~~xx~~ 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

3rd day of February, 1976

Janet Mack

Mary Groff

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS PILOTO, SR. and MARY PILOTO

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article ~~(9)~~ 22 of the  
Tax Law for the Year ~~(x)~~ 1968.

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

State of New York  
County of Albany

MARY GROFF, 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 3rd day of February, 1976, she served the within  
Notice of Decision ~~(or Determination)~~ by (certified) mail upon R.C. SCHUMANN

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Mr. R.C. Schumann  
121 Willow Street  
East Brunswick, New Jersey 08816

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

3rd day of February, 1976.

Janet Mack

Mary Groff



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

DATED: Albany, New York  
February 3, 1976

Mr. and Mrs. Thomas Piloto, Sr.  
195 Belvidere Avenue  
Jersey City, New Jersey 07306

Dear Mr. and Mrs. Piloto:

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 GREENBERG  
~~HEARING OFFICER~~  
ACTING DIRECTOR  
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative  
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THOMAS PILOTO, SR. and MARY PILOTO	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

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Petitioners, Thomas Piloto, Sr. and Mary Piloto, 195 Belvidere Avenue, Jersey City, New Jersey 07306, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 13164697). Petitioners waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file.

ISSUE

Was severance pay granted to petitioner, Thomas Piloto, Sr., income subject to taxation?

FINDINGS OF FACT

1. The petitioners timely filed a New York State income tax nonresident return for the year 1968.

2. On February 1, 1971, a Statement of Audit Changes was issued against the petitioners involving severance pay that had not been reported as taxable income. On September 27, 1971, a second Statement of Audit Changes was issued abating the imposition of penalties on the claimed deficiency in reported tax. A Notice of Deficiency was issued on September 27, 1971 covering tax allegedly deficient and interest thereon in the total amount of \$527.17.

3. Petitioner, Thomas Piloto, Sr., was an employee of the Penn Central Transportation Company who performed services within New York State. In 1968, Mr. Piloto resigned from said employment and received a lump sum severance payment from Penn Central. Although Federal taxes and railroad retirement contributions were withheld, Penn Central did not withhold New York State income tax for nonresident terminating employees. When income tax liability was imposed on the petitioners, Penn Central provided the information necessary for the allocation of severance pay to New York sources.

#### CONCLUSIONS OF LAW

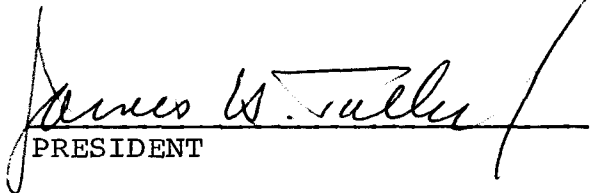
A. That the severance pay allocated to New York sources of income was taxable. A lump sum severance payment is wages for past services rendered. No evidence was presented to indicate that the


allocation formula was incorrect. Therefore, the attribution of the severance payment to New York sources of income must be deemed proper. The fact that Penn Central failed to properly withhold New York State income taxes does not relieve the petitioners of liability for the tax due.

B. That, the petition is denied.

DATED: Albany, New York  
February 3, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER