

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND F. and RUTH J. WINTERS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (s) 22 of the
Tax Law for the Year(s) ~~xxxPeriod(s)~~
1972 and 1973.

State of New York
County of Albany

Carmen Mottolese, 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 30th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Raymond F. and Ruth J. Winters ~~(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. & Mrs. Raymond F. Winters
29 Hakes Road
Troy, New York 12180

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 Postal Service within the State of New York.

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

30th day of September, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

September 30, 1976

TELEPHONE: (518) ~~457-3850~~

Mr. & Mrs. Raymond F. Winters
29 Hakes Road
Troy, New York 12180

Dear Mr. & Mrs. Winters:

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

Please take further notice that pursuant to
Section(**X**) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RAYMOND F. and RUTH J. WINTERS : DECISION
for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Years :
1972 and 1973. :

Petitioners, Raymond F. and Ruth J. Winters, 29 Hakes Road, Troy, New York 12180, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1972 and 1973. (File No. 3-46117262). A small claims hearing was held July 28, 1976, at 9:15 A.M. before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York. The petitioner, Raymond F. Winters, appeared pro se and for his wife, Ruth J. Winters. The Income Tax Bureau appeared by Peter J. Crotty, Esq., (Michael Weinstein, Esq., of counsel).

ISSUES

I. Did amounts received by petitioner, Raymond F. Winters, as a military pension based upon years of service, constitute amounts properly excludible from Federal gross income for the years 1972 and 1973?

II. If the amounts received as a military pension are not excludible from Federal gross income for such years, may such amounts be subtracted from Federal adjusted gross income in determining New York adjusted gross income for the years in question?

III. Were petitioners, Raymond F. and Ruth J. Winters, residents of New York State for the tax years 1972 and 1973?

IV. Does New York State have the constitutional right to tax the military pension received by the petitioner, Raymond F. Winters, in the years 1972 and 1973?

FINDINGS OF FACT

1. Petitioners, Raymond F. and Ruth J. Winters, timely filed resident New York State income tax returns for 1972 and 1973. They filed a joint return on Form IT-201 for 1972 and separate returns on Form IT-208 for 1973. On each of these returns, the amount of United States Air Force retirement pension for each such year was included in Federal gross income and Federal adjusted gross income, but was subtracted from Federal adjusted gross income in arriving at New York adjusted gross income.

2. On July 31, 1970, petitioner, Raymond F. Winters, was released from active duty from the United States Air Force after 20 years and five days service. He, thereafter, has received a retirement pension from the United States Air Force. On July 20, 1970, petitioners, Raymond F. and Ruth J. Winters, rented a house in

New York and has resided there to this date. Petitioners moved their furniture and all other belongings into the house. Petitioners, Raymond F. and Ruth J. Winters, do not own or rent any property outside of New York. They vote in New York, their car is registered in New York and they have worked in New York.

CONCLUSIONS OF LAW

A. That although section 112 of the Internal Revenue Code provides for an exclusion from Federal gross income with respect to certain combat pay, this exclusion does not apply to pensions and retirement pay in accordance with section 112(c)(4) of the Internal Revenue Code. Therefore, the retirement pay is properly includible in Federal gross income and Federal adjusted gross income for the years in question.

B. That under section 612(a) of the Tax Law, the New York adjusted gross income of a resident individual is his Federal adjusted gross income plus or minus specific modifications. However, since section 612(c) of the Tax Law does not provide for a modification to reduce Federal adjusted gross income by amounts received as a military retirement pension, the subtraction modifications claimed for 1972 and 1973 are not allowable.

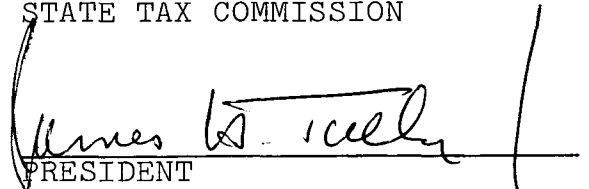
C. That petitioners, Raymond F. and Ruth J. Winters, were residents of New York under the meaning and intent of section 605 of the Tax Law for 1972 and 1973.

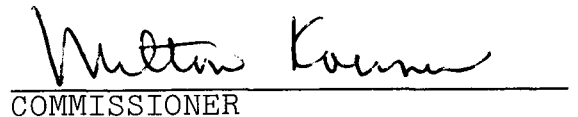
D. That the constitutionality of the laws of the State of New York are presumed by the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that the relevant sections of the law are constitutional to the extent that they relate to the imposition of income tax liability on the petitioners.

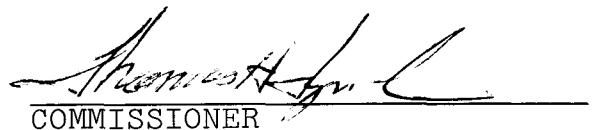
E. That the petitions of Raymond F. and Ruth J. Winters for 1972 and 1973 are denied and the Notices of Deficiency are sustained.

DATED: Albany, New York
September 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER