

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES C. BENNETT

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) ~~xxxxxx~~ :
1969 and 1970.

State of New York
County of Albany

Bruce Batchelor , 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 14th day of January , 1977, she served the within
Notice of Decision 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, NY 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 Postal Service within the State of New York.

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

14th day of January , 1977.

Bruce Batchelor

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

January 14, 1977

TELEPHONE: (518) **457-1723**

Mr. James C. Bennett
30 West Street
Nunda, NY 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(**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.

~~xxxxxx Bureau's Representative~~

Taxing Bureau's Representative:

STATE TAX COMMISSION

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

Petitioner, James C. Bennett, residing at 30 West Street, Nunda, New York 14517, has 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 1969 and 1970. (File No. 0-54277188).

A small claims hearing was held September 14, 1976, at 2:45 p.m., at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, before Harry Huebsch, Hearing Officer. The petitioner, James C. Bennett, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq. of counsel).

ISSUES

Was it proper for petitioner, James C. Bennett, to subtract the amount of his United States military pension from his Federal adjusted gross income in determining his New York adjusted gross income for the taxable years 1969 and 1970?

FINDINGS OF FACT

1. Petitioner, James C. Bennett, filed 1969 and 1970 New York State income tax returns excluding Federal military retirement pay from total New York income. The Income Tax Bureau held that the Federal pension was taxable and issued a Notice of Deficiency dated July 31, 1972, for these years in the amount of \$262.60 additional tax due, plus \$31.48 interest for a total of \$294.08.

2. Petitioner testified that he understands that there is no jurisdiction at the administrative level to decide the constitutionality of the New York State Income Tax Law with respect to the taxability of United States military pensions. However, it is his desire to bring to the attention of the State Tax Commission the fact that he believes the inclusion of Federal pensions as taxable income to the State of New York to be discriminatory when New York State pensions are excludible.

CONCLUSIONS OF LAW

A. That section 612(c)(3) of the Tax Law provides for a subtraction from Federal adjusted gross income of pensions of officers of New York State and its political subdivisions (to the extent includible in Federal gross income), but the New York Tax Law makes no provision for such a subtraction with respect to a United States military pension. Therefore, the subtractions claimed with respect to the United States military pension for the taxable years 1969 and 1970 are not proper subtraction in computing petitioner's New York adjusted gross income.

B. That the constitutionality of the laws of the State of New York are presumed at the administrative level of 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 section 612(c)(3) of the Tax Law is constitutional to the extent that it relates to pensions which may be subtracted from Federal adjusted gross income in computing New York adjusted gross income which is the subject of this proceeding.

C. That the petition of James C. Bennett is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York
January 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER