

In the Matter of the Petition

of

JAMES F. FAGAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~(x)~~ 22 of the  
Tax Law for the Year ~~(xxxx Period)~~ 1971.

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26th day of April, 1977, he served the within  
Notice of Decision by (certified) mail upon James F. Fagan

~~(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 F. Fagan  
28 Wiltshire Drive  
Commack, New York 11725

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)~~  
~~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

26th day of April, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

April 26, 1977

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

Mr. James F. Fagan  
28 Wiltshire Drive  
Commack, New York 11725

Dear Mr. Fagan:

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 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*  
**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 :  
JAMES F. FAGAN : DECISION  
for Redetermination of Deficiency or for :  
Refund of Personal Income Taxes under :  
Article 22 of the Tax Law for the Year 1971. :

---

Petitioner, James F. Fagan, 28 Wiltshire Drive, Commack, New York, has filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1971. (File No. 1-84310432). A small claims hearing was held before Joseph Chyrywat, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1976 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Was the pension received from the United States Navy by the petitioner includable in total New York income?

FINDINGS OF FACT

1. Petitioner, James F. Fagan, originally filed a joint IT-201, New York State income tax resident return for 1971 with his wife, Blanche Fagan. Subsequently, he filed two amended IT-208, New York

State combined income tax returns for 1971. On the last amended return he did not include retirement income received from the United States Navy.

2. On February 24, 1975, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against the petitioner, James F. Fagan, for the taxable year 1971 in the sum of \$892.63 for tax and interest due. The total New York income on the Statement of Audit Changes included the petitioner's United States Navy retirement income.

3. Petitioner, James F. Fagan, contended that section 612(c)(3) of the Tax Law was contrary to Amendment XIV of the United States Constitution.

CONCLUSIONS OF LAW

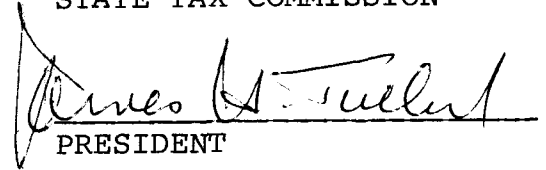
A. That the United States Navy pension received by the petitioner, James F. Fagan, is to be included in New York adjusted gross income and that there is no modification provision to exclude such pension.

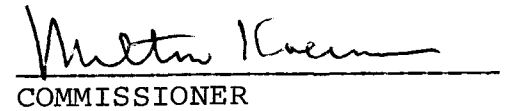
B. That the constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administration level to declare such laws unconstitutional. Therefore, it must be presumed that the Tax Law is constitutional to the extent that it relates to the imposition of income tax liability on the petitioner.

C. That the petition of James F. Fagan is denied and the Notice of Deficiency issued February 24, 1975 is sustained.

DATED: Albany, New York  
April 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER