

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT F. TEGEN, and

ELLA F. TEGEN

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (3) 22 of the :
Tax Law for the Year ~~(Sixty-Nine)~~ 1969 :

AFFIDAVIT OF MAILING

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 April , 1977, she served the within
Notice of Decision by (certified) mail upon Albert F. Tegen, and
Ella F. Tegen ~~(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. Albert F. Tegen
50 East Road, Apt. 10-D
Delray Beach, Florida 33444
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)~~ petitioner.

Sworn to before me this

14th day of April , 1977.

Bruce Batchelor

Janet Mach

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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ELLA F. TEGEN

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (3) 22 of the :
Tax Law for the Year ~~(Sixty Period)~~ :
1969

AFFIDAVIT OF MAILING

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 April, 1977, she served the within

Notice of Decision by (certified) mail upon Jerome R. Hellerstein,

Esq. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Jerome R. Hellerstein, Esq.

as follows: c/o Guggenheimer & Untermeyer
80 Pine Street
New York, New York 10005

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

14th day of April, 1977.

Bruce Batchelor

Janet Trach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

April 14, 1977

ADDRESS YOUR REPLY TO

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

Mr. and Mrs. Albert F. Tegen
50 East Road, Apt. 10-D
Delray Beach, Florida 33444

Dear Mr. and Mrs. Tegen:

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

Please take further notice that pursuant to
Section ~~690~~ **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,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALBERT F. TEGEN, and	:	
ELLA F. TEGEN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for the	:	
Year 1969.	:	

Petitioners, Albert F. Tegen and Ella F. Tegen, residing at 50 East Road, Apt. 10-D, Delray Beach, Florida 33444, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969. (File No. 00551).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 28, 1976, at 9:15 A.M. Petitioners appeared by Jerome R. Hellerstein, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Arthur Rosen, Esq., of counsel).

ISSUES

I. Whether petitioners, Albert F. Tegen and Ella F. Tegen, were nonresidents of New York State, upon receipt of a lump sum payment from a pension plan.

II. Whether the lump sum payment from a pension plan, where the payments were originally paid in monthly installments and where they qualified as an annuity if paid to a nonresident, constitutes a retirement benefit subject to personal income tax.

FINDINGS OF FACT

1. Petitioners, Albert F. Tegen and Ella F. Tegen, filed both New York State resident and nonresident income tax returns for 1969. These returns indicated petitioners were New York residents for the period from January 1, 1969 to February 28, 1969. On an attachment to the 1969 resident return, petitioner, Albert F. Tegen, informed the Income Tax Bureau of his receipt of a single-sum distribution of his General Public Utility Corporation (hereinafter GPU) pension on March 11, 1969, in the sum of \$993,220.83. He explained therein that his basis for not including said distribution as New York taxable income was that such a payment to a nonresident is not includible in New York taxable income.

2. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, Albert F. Tegen and Ella F. Tegen, stating additional personal income tax due of \$69,249.67, plus interest. Accordingly, a Notice of Deficiency was issued to petitioners, Albert F. Tegen and Ella F. Tegen, on November 26, 1973 in the sum of \$69,249.67, plus interest to date of \$15,013.33 (misstated on the Notice to total \$54,263.00, rather than \$84,263.00).

3. Petitioner, Albert F. Tegen, was employed in New York State by GPU for many years. He reached the normal retirement age of 65 under the retirement plan of GPU on August 1, 1967. He then retired as president of GPU and became Chairman of the Board. He was paid a salary as Chairman, but under the GPU retirement plan, he was no longer required to make contributions. Petitioner, Albert F. Tegen, began to receive monthly pension payments beginning August 1, 1967. Option "H" provided for the receipt of pension payments in a fixed and regular amount specified by the employee until exhaustion of the pension accounts, which payments could reasonably be expected to exhaust the pension accounts within twenty years from the date of retirement or the "Normal Retirement Date" under the plan. Petitioners, Albert F. Tegen and Ella F. Tegen, paid New York State income tax as residents on the monthly pension payments received from August 1, 1967 to February 1969.

4. During the period from August 1967 to February 1969, petitioner, Albert F. Tegen, also conducted a financial consulting business entitled Corporate & Financial Agency, with offices at 250 Park Avenue, New York, New York. In November of 1968, the furniture, files, equipment and other articles from the office in New York City were shipped to a warehouse in Delray Beach, Florida. In February of 1969, petitioner, Albert F. Tegen, leased an office for Corporate and Financial Agency in Delray Beach, Florida. The office in New York City was closed March 31, 1969.

5. During the period August 1967 to February 1969, and during prior years, the petitioners resided in apartment B 1906, at Manhattan House, 200 East 66th Street, New York, New York. Under a lease which was to expire October 1, 1969, the petitioners maintained this apartment until August 1969, at which time petitioners leased a one bedroom apartment in the same building for three years. This second apartment was surrendered in two years. Petitioners shipped some valuables to Florida, but maintained the New York apartment in a furnished state.

6. In July of 1968, petitioner, Albert F. Tegen, purchased shares in a cooperative corporation which owned Highland Towers Apartments, located in Delray Beach, Florida, giving petitioners the right to a proprietary lease of Apartment 501.

7. Petitioners then purchased furniture, rugs and furnishings during 1968, and had new locks installed in September of that year.

8. In October of 1968, petitioner, Albert F. Tegen, shipped his boat to Delray Beach, Florida.

9. Petitioners, Albert F. Tegen and Ella F. Tegen, returned to New York in the fall of 1968. They notified department stores, credit card companies and the trustee under the GPU pension plan that they had moved to Highland Beach, Florida. By letter of November 26, 1968, the Trust Officer of the GPU Savings and Retirement Income Plan was advised to send all future monthly payments to petitioner, Albert F. Tegen's account at the Delray Beach National Bank in Florida.

10. By letter of February 19, 1968, petitioners returned their credit identification card to Chemical Bank New York Trust Company. On February 20, 1969, petitioner, Ella F. Tegen, advised B. Altman & Company and Best & Co. to change petitioners' address to their Delray Beach, Florida address.

11. In December 1968, petitioners wrote separate letters to the Board of Elections in the City of New York to cancel their voting privileges in New York.

12. On February 3, 1969, petitioner, Albert F. Tegen, submitted his written resignation as Chairman of the Board of GPU, effective February 28, 1969. In a separate letter, also dated February 3, 1969, to the Retirement Board under the Savings and Retirement Income Plan of GPU, petitioner, Albert F. Tegen, effective March 1, 1969, elected to receive within one calendar year, distributions in cash equal to the amount in his pension accounts (Option "B" under GPU Plan). This election is provided for by the GPU plan in section 37, which provides that an employee, with the consent of the GPU Board of Directors, may from time to time change from one option to another option.

13. On March 11, 1969, petitioner, Albert F. Tegen, received a single-sum distribution of his pension in the sum of \$993,220.83.

CONCLUSIONS OF LAW

A. That petitioners, Albert F. Tegen and Ella F. Tegen, were domiciled in New York at the time they received the single-sum distribution from the GPU pension plan, and that they were

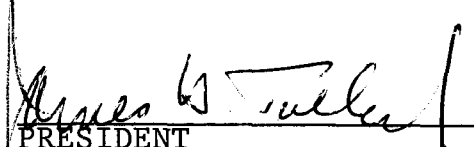
resident individuals, maintaining a permanent place of abode in New York, within the meaning of section 605(a)(1) of the Tax Law.

B. That as New York residents, petitioners are liable for personal income tax on said single-sum distribution as asserted in the Notice of Deficiency issued by the Income Tax Bureau, dated November 26, 1973, and such Notice is sustained and the petition is denied.

C. That this Commission need not determine herein whether petitioners, Albert F. Tegen and Ella F. Tegen, in receiving the single-sum distribution, received a retirement benefit which constituted an annuity.

DATED: Albany, New York
April 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER