

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Thomas & Margaret Noone :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Year 1973. :

State of New York  
County of Albany

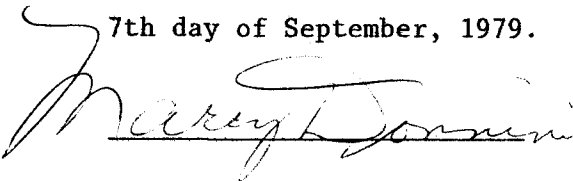
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of September, 1979, he served the within notice of Decision by certified mail upon Thomas & Margaret Noone, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

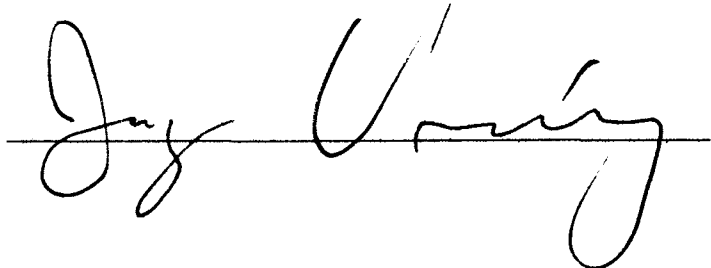
Thomas & Margaret Noone  
6056 Netherland Ave.  
Bronx, NY 10471

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
7th day of September, 1979.

  
Mary L. Dominici

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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Personal Income Tax :

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for the Year 1973. :

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County of Albany

Jay Vredenburg, 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 7th day of September, 1979, he served the within notice of Decision by certified mail upon John P. Boyle the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

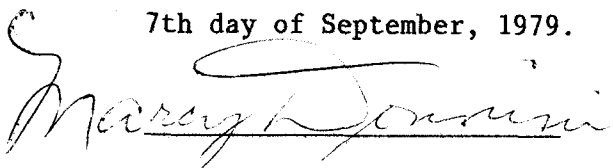
Mr. John P. Boyle  
569 South Broadway  
Yonkers, NY 10705

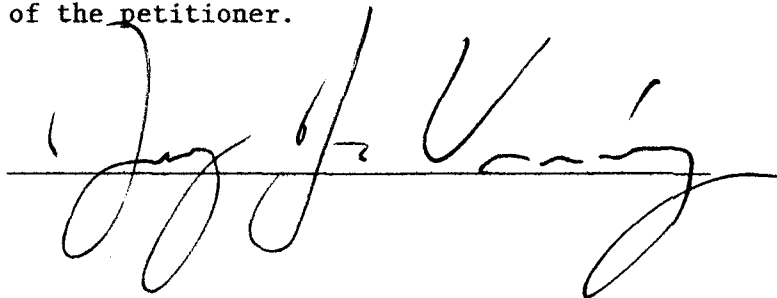
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

7th day of September, 1979.

  
Mary H. Donnan

  
Jay Vredenburg



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 7, 1979

Thomas & Margaret Noone  
6056 Netherland Ave.  
Bronx, NY 10471

Dear Mr. & Mrs. Noone:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative  
John P. Boyle  
569 South Broadway  
Yonkers, NY 10705  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THOMAS NOONE and MARGARET NOONE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

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Petitioners, Thomas Noone and Margaret Noone, 6056  
Netherland Avenue, Bronx, New York 10471, 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 1973  
(File No. 14008).

A small claims hearing was held before Carl P. Wright,  
Hearing Officer, at the offices of the State Tax Commission,  
Two World Trade Center, New York, New York, on June 20, 1978  
at 10:45 A.M. Petitioners appeared by John P. Boyle, accountant.  
The Income Tax Bureau appeared by Peter Crotty, Esq. (William  
Fox, Esq., of counsel).

ISSUE

Whether the pension received by petitioner Thomas Noone  
from the Manhattan and Bronx Surface Transit Operating Authority

(MABSTOA) constituted a pension payable by a state and/or municipal retirement system and as such, exempt from taxation pursuant to section 612(c)(3) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Thomas Noone and Margaret Noone, timely filed a New York State income tax resident return for 1973. On March 20, 1975, the Income Tax Bureau received an amended return from petitioners, excluding the pension received from the Manhattan and Bronx Surface Transit Operating Authority (hereinafter "MABSTOA").

2. On October 20, 1975, the Income Tax Bureau received a Claim for Credit or Refund of Personal Income Tax (Form IT-113X), which was filed by petitioners to protect the refund of \$171.46 claimed on their amended income tax return. A Waiver of Statutory Notification of Claim Disallowance was mailed to petitioners by the Income Tax Bureau on November 12, 1975 and was not returned by them.

3. MABSTOA was a public-benefit corporation and a subsidiary of the New York City Transit Authority. The statute creating MABSTOA provided that its "officers and employees shall not become members of the New York City employees retirement system" (Public Authorities Law section 1203-a, subdivision 3(b)).

4. The pension rights of the MABSTOA employees were fixed in the collective bargaining agreement between MABSTOA and the union. The agreement provided that the pension benefits of the MABSTOA employees would be the same as those of members of the New York City employees retirement system, but that the MABSTOA employees would not acquire a civil service status.

5. During the period at issue, employees who retired from MABSTOA were paid pensions from its current operating revenues. No trust was set up and the payments were to continue for the life of the collective bargaining agreement.

6. Petitioner spent most of his time as an employee of the omnibus line, in a period when it was in private hands and not under the control of MABSTOA.

#### CONCLUSIONS OF LAW

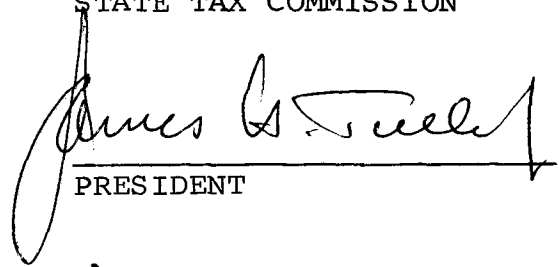
A. That the pension received by petitioner Thomas Noone from the Manhattan and Bronx Surface Transit Operating Authority did not constitute a pension payable by a state and municipal retirement system; therefore, no modification can be allowed, pursuant to section 612(c)(3) of the Tax Law and 20 NYCRR 116.3.

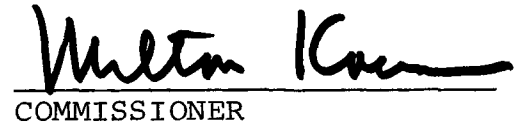
B. That the claim for refund and the petition of  
Thomas Noone and Margaret Noone are denied.

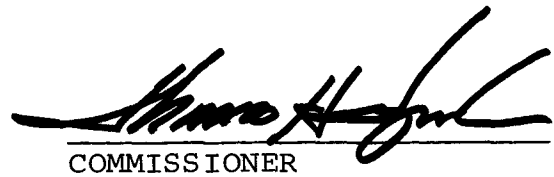
DATED: Albany, New York

SEP 7 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER