

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Clifford D. Deane :
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 :
1975. :
_____:

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, 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 2nd day of April, 1982, she served the within notice of Decision by certified mail upon Clifford D. Deane, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clifford D. Deane
P.O. Box 1001
Empire, CA 95319

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
2nd day of April, 1982.

Connie A. Hagelund

Kathy Pfaffenbach

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

April 2, 1982

Clifford D. Deane
P.O. Box 1001
Empire, CA 95319

Dear Mr. Deane:

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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CLIFFORD D. DEANE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Clifford D. Deane, P.O. Box 1001, Empire, California 95319, 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 1975 (File No. 26667).

By a signed statement dated May 25, 1981, petitioner has waived a hearing, and submits his case for decision by the State Tax Commission based on the record as it exists. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether military retirement pay received by petitioner and reported on his Federal income tax return in 1975 should have been included in income on his New York State income tax return for that year.

FINDINGS OF FACT

1. Petitioner, Clifford D. Deane, and his wife, Marlene J. Deane, timely filed a New York State Combined Income Tax Return (Form IT-208) for the year 1975.

2. By a Statement of Audit Changes dated May 31, 1976, and a subsequent Notice of Deficiency dated April 11, 1979, the Audit Division asserted a deficiency against petitioner in the amount of \$376.18 plus interest for the year 1975.

3. The Statement of Audit Changes stated the basis for the asserted deficiency against petitioner as follows:

"Error in reporting total income - amount of total income in Federal return does not agree with corresponding item in State return. Military retirement pension is taxable in the same way on your State return as it is on your Federal return. If your domicile (legal residence) was in New York State at the time you entered military services, assignment to duty outside the State does not change your New York domicile."

4. Petitioner has retired and receives a pension from the United States Air Force. The income received from this pension, which petitioner reported on his Federal income tax return but failed to include on his New York State return, forms the basis for the asserted deficiency against petitioner.

5. Petitioner was a resident of Indiana when he entered military service and never lived or was stationed in New York State before or during his active duty with the service.

6. Petitioner states, in a letter to the Audit Division dated April 30, 1979, that he became a resident of New York State one (1) year after his retirement and retained such resident status for approximately two and one-half ($2\frac{1}{2}$) years. Petitioner does not specify the date on which his retirement commenced or the date on which his New York residency commenced or ended.

7. The New York State Combined Income Tax Return (Form IT-208) filed by petitioner and his wife in 1975 states on its face that it is "[f]or resident married persons filing a joint Federal Return who elect to file separate New York State Returns".

CONCLUSIONS OF LAW

A. That petitioner, Clifford D. Deane filed his income tax return as a New York State resident for 1975, and has not produced evidence to refute his status as a resident for that year.

B. That section 611(a) of the Tax Law states: "General. The New York taxable income of a resident individual shall be his New York adjusted gross income...". In addition, section 612(a) of the Tax Law defines the New York adjusted gross income of a resident individual as that individual's federal adjusted gross income subject to certain modifications thereto specified in section 612.

C. That even though petitioner may not have been a New York State resident before his entry into or during his active duty in the Air Force, military retirement pay received from such services and included as part of petitioner's federal adjusted gross income in 1975 should have been reported as income to New York State within the meaning and intent of section 612(a) of the Tax Law.

D. That the petition of Clifford D. Deane is hereby denied and the Notice of Deficiency is sustained.

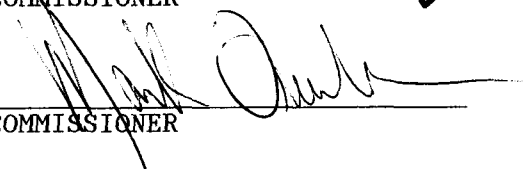
DATED: Albany, New York

APR 02 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

PI

REQUEST FOR BETTER ADDRESS

Requested by <i>J. Weedenburg</i>	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>4-15-82</i>
--------------------------------------	---	-----------------------------------

Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>314-30-3661</i>	Date of Petition <i>Dec. 50. 4-9-82</i>
Name <i>Clifford D. Deane</i>	
Address <i>P.O. Box 1001 Empire, Calif. 95319</i>	

Results of search by Files

<input type="checkbox"/> New address:	<i>most current above</i> <i>RP</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

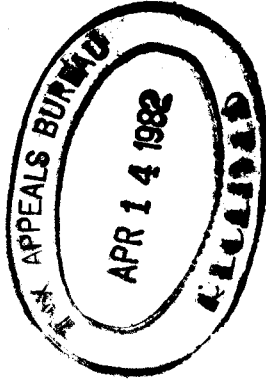
TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227



Clifford D. Deane
P.O. Box 1001
Empire, CA 95319



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

April 2, 1982

Clifford D. Deane
P.O. Box 1001
Empire, CA 95319

Dear Mr. Deane:

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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CLIFFORD D. DEANE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Clifford D. Deane, P.O. Box 1001, Empire, California 95319, 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 1975 (File No. 26667).

By a signed statement dated May 25, 1981, petitioner has waived a hearing, and submits his case for decision by the State Tax Commission based on the record as it exists. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether military retirement pay received by petitioner and reported on his Federal income tax return in 1975 should have been included in income on his New York State income tax return for that year.

FINDINGS OF FACT

1. Petitioner, Clifford D. Deane, and his wife, Marlene J. Deane, timely filed a New York State Combined Income Tax Return (Form IT-208) for the year 1975.

2. By a Statement of Audit Changes dated May 31, 1976, and a subsequent Notice of Deficiency dated April 11, 1979, the Audit Division asserted a deficiency against petitioner in the amount of \$376.18 plus interest for the year 1975.

3. The Statement of Audit Changes stated the basis for the asserted deficiency against petitioner as follows:

"Error in reporting total income - amount of total income in Federal return does not agree with corresponding item in State return. Military retirement pension is taxable in the same way on your State return as it is on your Federal return. If your domicile (legal residence) was in New York State at the time you entered military services, assignment to duty outside the State does not change your New York domicile."

4. Petitioner has retired and receives a pension from the United States Air Force. The income received from this pension, which petitioner reported on his Federal income tax return but failed to include on his New York State return, forms the basis for the asserted deficiency against petitioner.

5. Petitioner was a resident of Indiana when he entered military service and never lived or was stationed in New York State before or during his active duty with the service.

6. Petitioner states, in a letter to the Audit Division dated April 30, 1979, that he became a resident of New York State one (1) year after his retirement and retained such resident status for approximately two and one-half ($2\frac{1}{2}$) years. Petitioner does not specify the date on which his retirement commenced or the date on which his New York residency commenced or ended.

7. The New York State Combined Income Tax Return (Form IT-208) filed by petitioner and his wife in 1975 states on its face that it is "[f]or resident married persons filing a joint Federal Return who elect to file separate New York State Returns".

CONCLUSIONS OF LAW

A. That petitioner, Clifford D. Deane filed his income tax return as a New York State resident for 1975, and has not produced evidence to refute his status as a resident for that year.

B. That section 611(a) of the Tax Law states: "General. The New York taxable income of a resident individual shall be his New York adjusted gross income...". In addition, section 612(a) of the Tax Law defines the New York adjusted gross income of a resident individual as that individual's federal adjusted gross income subject to certain modifications thereto specified in section 612.

C. That even though petitioner may not have been a New York State resident before his entry into or during his active duty in the Air Force, military retirement pay received from such services and included as part of petitioner's federal adjusted gross income in 1975 should have been reported as income to New York State within the meaning and intent of section 612(a) of the Tax Law.


D. That the petition of Clifford D. Deane is hereby denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

APR 02 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER