

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Walter C. Yurkus :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Year 1976. :

State of New York  
County of Albany

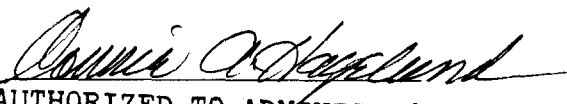
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Walter C. Yurkus, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

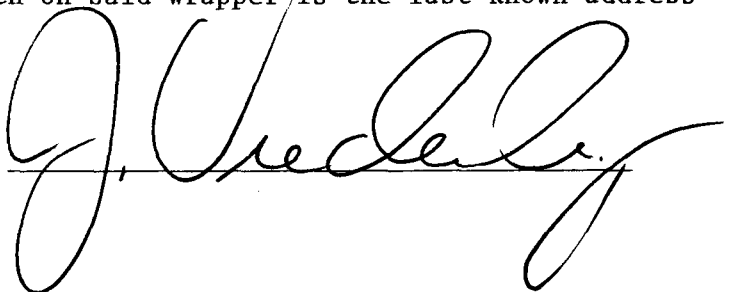
Walter C. Yurkus  
85-67 Forest Pkwy.  
Woodhaven, NY 11421

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  
14th day of December, 1982.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 14, 1982

Walter C. Yurkus  
85-67 Forest Pkwy.  
Woodhaven, NY 11421

Dear Mr. Yurkus:

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 & 1312 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

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In the Matter of the Petition	:	
of	:	
WALTER C. YURKUS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Year 1976.	:	

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Petitioner, Walter C. Yurkus, 85-67 Forest Parkway, Woodhaven, New York 11421, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 29899).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 21, 1982 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (James F. Morris, Esq., of counsel).

ISSUE

Whether petitioner's Navy retirement pension is subject to New York State and New York City personal income taxes and if so, whether the Tax Law is discriminatory.

FINDINGS OF FACT

1. Walter C. Yurkus (hereinafter petitioner) timely filed a combined New York State Income Tax Resident Return (with New York City personal income tax) with his wife for the year 1976 whereon their combined total New York income

reported was \$3,998.00 less than their gross income reported for Federal purposes.

2. On November 8, 1979 the Audit Division issued a Statement of Audit Changes to petitioner wherein his New York taxable income was increased by \$3,998.00 to conform to the income reported on his Federal return. Said action was taken since petitioner failed to respond to the Audit Division's inquiry letters. Accordingly, a Notice of Deficiency was issued against petitioner on February 6, 1980 asserting additional New York State personal income tax of \$389.58, additional New York City personal income tax of \$119.72, plus interest of \$121.55, for a total due of \$630.85.

3. The income which petitioner failed to report for New York State and New York City tax purposes was received in the form of a retirement pension. Such pension, in the amount of \$3,998.82, was derived from the United States Navy for completion of twenty years of service.

4. Petitioner contended that a portion of his pension constituted disability compensation. Since such portion would be excludable from gross income under section 104(a)(4) of the Internal Revenue Code, additional time was allowed subsequent to the hearing held herein for petitioner to submit documentation establishing the extent, if any, to which said pension did constitute disability compensation. Subsequently, petitioner submitted a statement from the Navy Finance Center which, contrary to petitioner's contention, reported the entire \$3,998.82 as taxable.

5. Petitioner argued that since New York State and New York City retirement pensions are exempt from personal income taxes, his Federal pension should also be deemed exempt.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding section of Article 30.

B. That section 612(c) of the Tax Law provides that:

"There shall be subtracted from federal adjusted gross income:

(3) Pensions of officers and employees of this state, its subdivisions and agencies, to the extent includible in gross income for federal income tax purposes."

Accordingly, since the Tax Law makes no provision for exclusion of Federal pensions, such pensions are taxable for New York State and New York City personal income tax purposes and it is not within the jurisdictional powers of the State Tax Commission to determine whether the Tax Law is discriminatory.

C. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that any portion of his 1976 U.S. Navy retirement pension of \$3,998.82 constituted disability compensation. Accordingly, said pension is fully taxable for New York State and New York City personal income tax purposes.

D. That the petition of Walter C. Yurkus is denied and the Notice of Deficiency dated February 6, 1980 is hereby sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

*Robert M. Bruchand*  
ACTING PRESIDENT

*Francis R. Koeng*  
COMMISSIONER

*Mark J. [illegible]*  
COMMISSIONER