

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Israel & Sadie Resnick : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS & NYC Personal :
Income Taxes under Article 22 of the Tax Law and :
Chapter 46, Title T of the Administrative Code of :
the City of New York for the Year 1978. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Israel & Sadie Resnick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

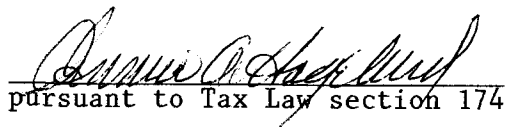
Israel & Sadie Resnick
85-15 253 Street
Bellerose, NY 11426

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Israel & Sadie Resnick
85-15 253 Street
Bellerose, NY 11426

Dear Mr. & Mrs. Resnick:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ISRAEL RESNICK and SADIE RESNICK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Article 22 of the	:	
Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the Year 1978.	:	

Petitioners, Israel Resnick and Sadie Resnick, 85-15 253 Street, Bellerose, New York 11426, 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 Chapter 46, Title T of the Administrative Code of the City of New York for the year 1978 (File No. 37322).

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 May 26, 1983 at 10:45 A.M. Petitioner Israel Resnick appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether a Federal pension received by petitioner Israel Resnick is taxable for New York State and City personal income tax purposes.

FINDINGS OF FACT

1. Israel Resnick and Sadie Resnick timely filed a New York State Income Tax Resident Return (with City of New York Personal Income Tax) for the year 1978 under filing status "married filing separately on one return". On such return, Israel Resnick (hereinafter "petitioner") reduced his total income by

\$17,487.00, said amount representing a pension he received from the Federal government which was includible in his Federal gross income.

2. On March 15, 1982, the Audit Division issued a Statement of Audit Changes to petitioner wherein his Federal pension was held taxable for New York State and City purposes and accordingly added back to his reported total New York Income. Subsequently, on April 6, 1982, a Notice of Deficiency was issued against both petitioners asserting additional New York State personal income tax of \$2,055.65, additional New York City personal income tax of \$670.71, plus interest of \$778.43, for a total due of \$3,504.79.

3. Petitioner contended that the actions of the State and City of New York in imposing income taxes on pensions received from the United States government, while granting immunity and exemption from such taxation to pensions received from the New York State Retirement System or political sub-divisions of the State, is in violation of the 14th Amendment of the United States Constitution.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that:

The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section.

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.

C. That with respect to the city adjusted gross income of a New York City resident individual, sections T46-112.0(a) and T46-112.0(c)(3) of Chapter 46,

Title T of the Administrative Code of the City of New York are substantially identical to Tax Law sections 612(a) and 612(c)(3).

D. That during the year in issue, there was no provision in the Tax Law or Chapter 46, Title T that exempted a Federal pension, properly includible in Federal adjusted gross income, from New York State or City personal income taxes. Accordingly, said pension is taxable for New York State and New York City personal income tax purposes.

E. That there is no jurisdiction to determine issues of constitutionality at the administrative level of the State Tax Commission.

F. That Sadie Resnick's name was erroneously included on the Notice of Deficiency and accordingly should be removed.

G. That except as so provided in Conclusion of Law "F" supra, the petition of Israel Resnick and Sadie Resnick is denied and the Notice of Deficiency dated April 6, 1982 is sustained together with such additional interest as may be lawfully owing.

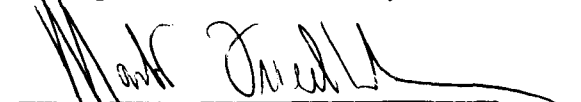
DATED: Albany, New York

JAN 18 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER