

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD D. & LOUISE M. TIERNEY

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1967

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

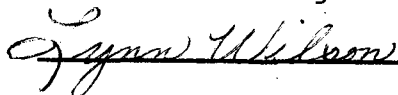
State of New York
County of Albany

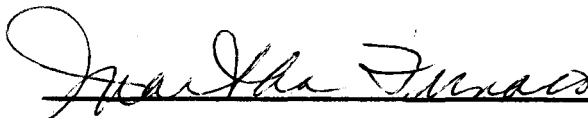
Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Edward D. & Louise M. Tierney (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edward D. & Louise M. Tierney
1308 Bayview Drive, Apt. 1D
Fort Lauderdale, Florida 33314
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

8th day of August , 1972


J. J. Wilson


Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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For a Redetermination of a Deficiency or
a Refund of Personal Income
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Tax Law for the (Year(s) 1967

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro, 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 8th day of August, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Matthew G.

Nizza, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Matthew G. Nizza, Esq.

165 Woodfield Road

P.O. Box 536

West Hempstead, New York 11552

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

8th day of August, 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 8, 1972

Edward D. & Louise M. Tierney
1308 Bayview Drive, Apt. 1D
Fort Lauderdale, Florida 33314

Dear Mr. & Mrs. Tierney:

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

Please take further notice that pursuant to section(s)
690 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 Months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
EDWARD D. & LOUISE M. TIERNEY : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1967. :

A petition was filed under section 689 of the Tax Law for the redetermination of a deficiency dated September 29, 1969, in personal income taxes under Article 22 of the Tax Law for the year 1967.

A hearing was held on February 8, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Matthew G. Nizza, Esq., represented the petitioner. Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the amounts taxable to a person in the year of his retirement when he also changes his domicile to another State and he receives a pension.

FINDINGS OF FACT

1. Mr. Tierney worked for the Anaconda Company since 1930, mostly in Chile and Montana. On August 1, 1966, he was transferred to New York and lived and worked here until June 30, 1967, when he retired from the company. On July 1, 1967, he moved to and made his domicile in Fort Lauderdale, Florida. He died in Montana in 1971.

2. From January 1, 1967 through June 30, 1967, petitioner received from Anaconda \$4,166.66 a month totaling \$24,999.96. This amount was reported to New York on a resident tax return.

3. From July, 1971 through December, 1971, petitioner Edward D. Tierney, received from Anaconda \$2,520.83 a month totaling \$15,124.98. This sum was made up of a retirement allowance of \$2,083.33 a month totaling \$12,500.00 and of salary previously earned payable at \$437.50 a month for a total of \$2,624.98. The petitioner reported this on his federal tax return taking a credit under U.S. Treasury Regulation section 1.911.2(g) of 66.8% of the \$12,500.00 amounting to \$8,349.99, leaving a difference of \$4,149.99. He filed a New York nonresident return but indicated no New York income.

4. The computation of the exclusion under section 911 of the Internal Revenue Code shows 243 months worked outside of the United States out of a total of 364 months worked since 1937 for an exclusion ratio of 66.8%. It also shows 43 months of foreign service which does not qualify for the exclusion, 67 months in the United States other than New York and 11 months in New York.

5. The deficiency in issue is \$384.99 with interest of \$33.61 to the date thereof for a total of \$418.60.

CONCLUSIONS OF LAW

A. The New York income for the first half of 1967 includes the sum of \$2,624.98. For absence of proof, such sum was payable at that time and should have been accrued when petitioner changed his domicile to Florida.

B. The sums received by petitioner, Edward D. Tierney, while a nonresident totaling \$12,500.00, are attributable in part to services performed in New York State. The portion of that sum included in federal adjusted gross income, \$4,149.99, is taxable to New York on the basis of a ratio as stated in Regulations 20 NYCRR 131.18 and 131.21. The numerator of such ratio is the amount

earned in New York which will include the sums of \$24,999.96 and \$2,624.98 for 1967 and will total \$51,374.94. The denominator of such fraction has been agreed to be \$489,058.92 as the petitioner has been allowed to calculate over a ten year period under Regulation 20 NYCRR 131.21. Neither this numerator or this denominator takes account of exclusions under section 911 of the Internal Revenue Code as in any event such information has not been furnished. Such ratio is 10.5% and the amount taxable to New York for 1967 is \$435.75.

DECISION

The petition is granted and the deficiency is recomputed to be \$276.07 with \$24.08 interest to the date thereof together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

August 8, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Mauley

COMMISSIONER

Wilton Kuersten

COMMISSIONER