

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM F. ZIMMERMAN

and

COLETTA C. ZIMMERMAN

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year(s) 1967, 1968 and
1969.

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

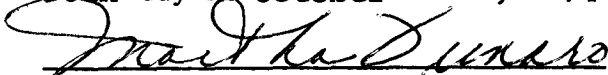
State of New York
County of Albany

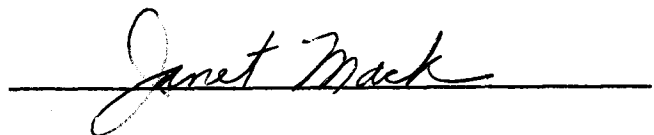
Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of October , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon William F. Zimmerman
and Coletta C. Zimmerman ~~XXXXXXXXXXXX~~ (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. William F. Zimmerman
7009 Culver Avenue
Fort Worth, Texas
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~~
~~xx~~ 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

30th day of October , 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
October 30, 1974

Mr. & Mrs. William F. Zimmerman
7009 Culver Avenue
Fort Worth, Texas

Dear Mr. & Mrs. Zimmerman:

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

Please take further notice that pursuant to
Section (x) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

WILLIAM F. ZIMMERMAN :

and :

COLETTA C. ZIMMERMAN :

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, 1968 and 1969. :

William F. Zimmerman and Coletta C. Zimmerman filed a petition for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the years 1967, 1968 and 1969. (File No. 9-44156657). The petitioners have consented, in lieu of a hearing, to a review by the State Tax Commission of the file of the Income Tax Bureau with respect to such deficiency. Such file has been duly examined and considered.

ISSUE

The issue in this case is whether receipts from Federal Government pensions are includible in the income taxable to New York of a person who became a New York resident for the first time after he retired from Federal service.

FINDINGS OF FACT

1. Petitioners, William F. Zimmerman and Coletta C. Zimmerman, filed New York State income tax resident returns for the year 1967 on April 15, 1968, for the year 1968 on April 13, 1969, and for the year 1969 on April 13, 1970. They did not include on said returns retirement pay received due to William F. Zimmerman's service in the United States Armed Forces.

2. On April 12, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, William F. Zimmerman and Coletta C. Zimmerman, imposing New York State personal income tax on retirement pay received by them. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued in the sum of \$2,191.85.

3. Petitioner, William F. Zimmerman, while a nonresident of New York State, served in the armed forces of the United States and retired. He became a resident of New York State in February 1967 and in 1967, 1968 and 1969, received retirement pay from the United States.

4. Although the terms of the Federal pension are not in evidence, it is presumed that payments are to be made only during the life of petitioner or the life of his close relatives.

CONCLUSIONS OF LAW

A. That the retirement pay in question is taxable to petitioner, William F. Zimmerman, a resident of New York, even though it is attributable to services performed before petitioner became a New York resident. A resident of New York is taxed upon his adjusted gross income as defined in the Federal Internal Revenue Code (section 611, 612 of the Tax Law).

Although a person becoming a resident of New York will not be taxed on income accruing to him prior to his beginning such residence, the income in question is retirement pay presumably contingent upon petitioner's survival and is not subject to accrual.

Furthermore, the petitioner's argument that he is entitled to the same benefits as recipients of pensions from the State of New York is not well taken. The exemption of State pension is explicitly recognized in section 612(c)(3) of the Tax Law and in section 110(1)

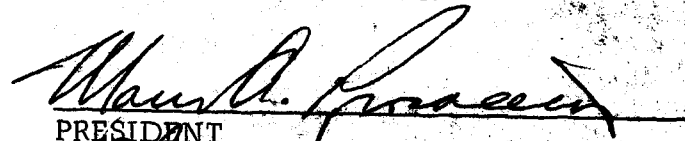
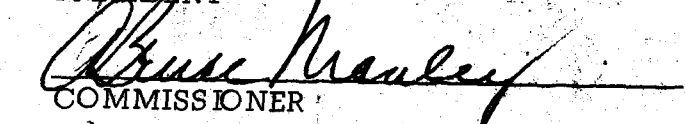
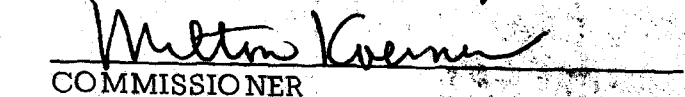
of the Retirement and Social Security Law and cannot be extended to other pensions. Furthermore, the exemption of State pensions has a basis in constitutional law (see New York Constitution Article 5, section 7 and Article 16, section 5 and United States Constitution, Article 1, section 10). Any claim that the distinction between State pensions and Federal pensions violates the equal protection clause, the due process clause or the Fourth Amendment of the United States Constitution cannot be passed upon by the State Tax Commission.

B. Petitioners filed their 1967 Income Tax return on April 15, 1968. The statement of audit changes for 1967, 1968 and 1969 was sent to petitioners on April 15, 1971 which was within the Statute of Limitations.

C. That the petition of William F. Zimmerman and Coletta C. Zimmerman is denied and the Notice of Deficiency issued on April 12, 1971, is sustained.

DATED: Albany, New York
October 30, 1974

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER