

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RAYMOND F. WINTERS and
RUTH J. WINTERS

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

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)~~ 1971

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 26th day of November, 1975, she served the within
Notice of Decision ~~(xxx) (xxxxxx) (xxxxxx)~~ by (certified) mail upon Raymond F. Winters
and Ruth J. Winters ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. and Mrs. Raymond F. Winters
29 Hakes Road
Troy, New York 12180

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)~~
~~xxx~~ 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

26th day of November, 1975.

Mary Groff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

Albany, New York

DATED: November 26, 1975

ADDRESS YOUR REPLY TO

Mr. Wright
Mr. Coburn
Mr. Leisner

(518) 457-3336

Mr. and Mrs. Raymond F. Winters
29 Hakes Road
Troy, New York 12180

Dear Mr. and Mrs. Winters

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

Please take further notice that pursuant to
Section (s) ~~690~~ **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,

L. Robert Leisner

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	:	
RAYMOND F. WINTERS and RUTH J. WINTERS	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Year 1971.	:	

Petitioners, Raymond F. Winters and Ruth J. Winters, 29 Hakes Road, Troy, New York 12180, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1971.

A formal hearing was held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on April 29, 1975, before L. Robert Leisner, Hearing Officer. The taxpayer appeared pro se. A veteran's organization member accompanied him. The Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Is the taxpayer denied equal protection under the law by New York State's allowance of the deduction of state, county and municipal pensions from New York State income tax but not the deduction of U.S. Government military pension?

FINDINGS OF FACT

1. Petitioner, Raymond F. Winters and Ruth J. Winters, timely filed a New York State income tax return for the year 1971.
2. A Notice of Determination of deficiencies in personal income tax for the year 1971 was issued on May 22, 1974, under File No. 1-84068729.
3. The taxpayers petitioned for a redetermination of the deficiencies.
4. Petitioner, Raymond F. Winters, was a Pennsylvania citizen residing at Box 33, Wallaceton, Pennsylvania, when he enlisted in the United States Air Force at Altoona, Pennsylvania, in 1952.
5. Petitioner reenlisted in Saratoga Springs, New York; Rome, New York, and Otis, Massachusetts and was discharged in Portland, Maine, in 1970. He had been a security policeman for 18 years while in the service and for the last two years was a recruiter.
6. Petitioners, Raymond F. Winters and Ruth J. Winters, settled in New York State after his discharge in 1970. Petitioners were resident individuals of New York State for the entire year 1971.
7. Petitioners on their New York State income tax return for 1971 did not report the \$3,360.88 which petitioner, Raymond F. Winters, received as U.S. Air Force retirement income.

8. At the formal hearing held by the State Tax Commission, petitioner asserted that veterans' pensions should not be taxed by New York State. Citing Article V, § 7, of the New York State Constitution petitioner contended that to allow military pensions to be taxed while state, county and municipal pensions are not taxed denies him the equal protection of the laws guaranteed by Amendment 14 of the United States Constitution.

9. Petitioner, Raymond F. Winters position is that the contract signed by a man enlisting in the service is what entitles him to his pension and that, through taxation, New York State is attempting to intervene in the affairs of the Executive Branch of the government. Petitioner asserts that by taxing a military retirement pension New York State is taking an unauthorized distributive share of a contract made between an individual and the United States Government.

10. In support of his argument he cited two United States Supreme Court cases on the subject of government pensions, U.S. ex rel Burnett v. Teller, 17 Otto 64 (1882) and Walton v. Cotton, 19 How. 355 (1856). Walton v. Cotton dealt with distribution of a government pension among the heirs of the pensioner. In the decision the Supreme Court said that a pension "was a bounty of the Government arising from personal considerations of gratitude for services rendered, is not liable to the claims of creditors and should not be extended, by

construction to persons not named in the Act." 19 How. 355 at 357. Burnett v. Teller, supra, was an action brought by a veteran in an attempt to collect both special and general disability pensions to which he felt he was entitled. "No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government which Congress has the right to give, withhold, distribute or recall at its discretion." 17 Otto at 67.

CONCLUSIONS OF LAW

A. The constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to decide the constitutionality of a law.

B. The petition is denied and the determination of the deficiency in income tax is sustained.

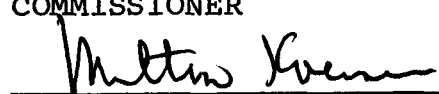
C. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York
November 26, 1975

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER