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STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

ESTATE OF JACOB REISMAN

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) 1964

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

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State of New York  
County of Albany

Lynn Wilson , 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 27th day of February , 19 73, she served the within Notice of Decision (or Determination) by (certified) mail upon DONALD J. BALL c/o SANFORD E. LAVINE (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: <sup>Donald J. Ball</sup> c/o Sanford E. Lavine  
Lavine, Leffert & Lustick  
501 E. Fayette Street  
Syracuse, New York 13202  
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

27th day of February , 1973.

Frank J. Thomas

Lynn Wilson



STATE OF NEW YORK  
 DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**February 27, 1973**

**Estate of Jacob Reisman  
 Marshall Reisman, Executor  
 c/o Sanford E. Lavine  
 501 E. Fayette Street  
 Syracuse, New York 13202**

**Dear Mr. Lavine:**

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

Please take further notice that pursuant to **section 690**  
 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 relat-  
 ing 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

cc Petitioner's Representative  
 Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ESTATE OF JACOB REISMAN : DECISION  
for a Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year 1964 :

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The petitioner, the Estate of Jacob Reisman, filed a petition for a redetermination of personal income tax for the year 1964. The taxpayer was represented by Sanford E. Lavine, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel). The petitioner submitted the case for a decision on information in the file.

ISSUE

In a condemnation award where interest is also received, may part of the legal expenses be offset against the interest or ordinary income?

FINDINGS OF FACT

1. Petitioner timely filed a New York State income tax return for the year 1964.
2. A notice of determination of deficiency in income tax was issued under file no. 26515986 against the Estate of Jacob Reisman for the year 1964.
3. The Income Tax Bureau determined that legal expenses, incurred in connection with a condemnation action, were capital expenditures to be subtracted from the principal amount received for

the property, and no part of the legal expense was allocable to the collection of interest.

4. The attorney's fee in the condemnation action was one-third of the excess of \$25,000.00 paid to taxpayer. Taxpayer's recovery was \$43,608.88. Part of this sum constituted interest. Taxpayer contended that a proportionate part of the legal fee should be allocated to such interest.

CONCLUSIONS OF LAW

A. In a condemnation award where interest is also received, no part of the legal expense may be offset against the interest, or ordinary income. Johnson & Co. v. U.S., 149 Fed. 2d 851; Petit v. Com'r., 8 T.C. 228.

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

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

DATED: Albany, New York  
February 27, 1973

STATE TAX COMMISSION

Worron Gallman  
COMMISSIONER

Bruce Manley  
COMMISSIONER

Melton Krenn  
COMMISSIONER