

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ANTON I. PETROVICH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(x) 22 of the :
Tax Law for the Year(s) ~~on Period(s)~~ :
1966, 1967 and 1968

State of New York
County of Albany

Jean Wager , 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 13th day of August , 1976 , she served the within
Notice of Decision by (certified) mail upon Anton I.

Petrovich (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Anton I. Petrovich
504 Winston Drive
Vestal, New York 13850

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 Postal Service within the State of New York.

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

13th day of August , 1976.

Janet Mack

Jean Wager



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 13, 1976

TELEPHONE: (518) 457-3850

Anton I. Petrovich
504 Winston Drive
Vestal, New York 13850

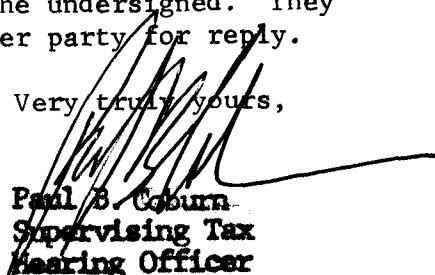
Dear Mr. Petrovich:

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

Please take further notice that pursuant to
Section(g) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANTON I. PETROVICH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1966, 1967 and 1968.	:	

Anton I. Petrovich, 504 Winston Drive, Vestal, New York 13850, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1966, 1967 and 1968.

A formal hearing was held at the offices of the State Tax Commission, Binghamton, New York, on October 9, 1974 before L. Robert Leisner, Hearing Officer. The taxpayer appeared on his own behalf and the Income Tax Bureau was represented by Saul Heckelman, Esq., (James Scott, Esq., of counsel).

ISSUES

I. Was the write-off of technical books for a professional staff advisory engineer and physicist on fast moving projects on a yearly basis permitted?

II. Where the taxpayer travelled to scientific libraries in Wilmington, Delaware and Philadelphia, Pennsylvania, were his travel expenses deductible?

FINDINGS OF FACT

1. Petitioner, Anton I. Petrovich, timely filed New York State income tax returns for the years 1966, 1967 and 1968.

2. A Notice of Deficiency for the years 1966, 1967 and 1968 was issued on March 29, 1971 against the taxpayer, Anton I. Petrovich, under File No. 8-24219443. The taxpayer petitioned for redetermination of the deficiency.

3. The taxpayer, Anton I. Petrovich, is a staff advisory engineer to IBM at Binghamton, New York. He was hired as a professional to advise and facilitate the work of others doing scientific technical and engineering assignments at IBM. IBM uses a fast moving project system.

The taxpayer was in a staff position as an advisory engineer or scientist and he was asked for certain information by the scientific, technical and engineering personnel assigned to the project.

In the taxpayer's contract with IBM, he was to provide the information for the project personnel. He has surveyed science libraries such as Cornell, Syracuse, Buffalo and also out-of-

state cities south of Binghamton. The personnel who consulted him for advice were line people executing work projects and it was not their concern as to the work or difficulties of the staff in its advisory and informational functions.

4. The taxpayer, Anton I. Petrovich, holds three degrees in chemistry with work on "In Thesis Infinito Chemistry" dealing with constituents of plans pertaining to organic and other chemistry sciences. For his Masters degree he worked in colloid chemistry and service science. The taxpayer received his Doctor's in physical chemistry with work on the application of physics to other sciences. He reads Russian, German and some other languages. He has bought books in Russian. He has worked for IBM in Binghamton for about thirteen years and lives in Vestal in the Binghamton area.

5. Prior to working in Binghamton, the taxpayer, Anton I. Petrovich, had worked near Philadelphia and had memberships in libraries with great scientific collections of books. He had a membership in the Wilmington, Delaware library which had special scientific books in chemistry and metallurgy. DuPont is headquartered at Wilmington and had supported the library in its acquisition of these highly special scientific books. This library allowed the taxpayer to take these books for four or five weeks. He also had a membership in the Franklin Institute library at

Philadelphia. He took out from eight to fifteen scientific books every week from the Wilmington and Philadelphia libraries.

6. The range of taxpayer, Anton I. Petrovich's, studies was from metallurgy to crystallography, the determination of atomic structure of materials, gymology relating to welding, ultrasonic welding, etc.

7. The taxpayer, Anton I. Petrovich, also purchased scientific and technical books at a Philadelphia book store. The taxpayer had bought books for twenty-five years at three or four hundred dollars a year. The frequency of new editions was not a decisive factor. The research topics changed rapidly so that at the end of the year the books had no further value to him.

8. All items on the return were substantiated. The Income Tax Bureau asserted that the technical books should be put on a five year depreciation basis instead of deducting the entire purchase price in the year of purchase. It asserted that travel expenses should be disallowed because if IBM wanted the taxpayer to incur those expenses IBM would have reimbursed him. The Income Tax Bureau also asserted that Mr. Petrovich owned a house jointly with his wife in Chester, Pennsylvania, and it must be inferred that there was some personal involvement in his trips to Chester, Pennsylvania.

9. In all of taxpayer, Anton I. Petrovich's, years of residence in Binghamton, Jean Petrovich had stopped only once at his residence while she was enroute to Canada and, further, when in Chester, Pennsylvania, he took no meals with her. The taxpayer further testified that they had not had a marital relationship for twenty years. This evidence is further confirmed by the separate residence of the taxpayer in New York State and of Jean Petrovich in Pennsylvania for many years. There was no personal involvement in his trips to Chester, Pennsylvania.

10. The taxpayer, Anton I. Petrovich, made the trips to Philadelphia and Wilmington entirely for business purposes.

CONCLUSIONS OF LAW

A. That the items in question are Federal deductions used to determine taxable income. Accordingly, the application of Federal income tax law on these deductions is mandatory. The assumption by the Income Tax Bureau of personal involvement in the travel is refuted by the evidence that there was no marital relationship for twenty years. The statement that travel expenses were disallowed because if the employer wanted the employee to incur the expenses, the employer would have reimbursed the employee, is an erroneous test. The requirements under Section 162(a)(2) of the Internal Revenue Code are:

(1) The traveling expense must be a reasonable and necessary traveling expense. This refers to the transportation fares and food and lodging expenses incurred while traveling.

(2) The expenses must be incurred while away from home.

Here the taxpayer's place of abode, and principal place of work or business was at Vestal in the Binghamton area, and travel was to Philadelphia and Wilmington.

(3) The expense must be incurred in the pursuit of business.

Here the taxpayer's work was to give scientific information and advice to the project personnel. His trips to highly specialized scientific libraries and book stores were in pursuit of that work and business. Therefore, the taxpayer, Anton I. Petrovich's, travel expenses were deductible.

B. That where the taxpayer, Anton I. Petrovich, bought books in about the same number consistently each year for about the same amount, for twenty years, a five year depreciation schedule for the annual purchases of books having a short useful life would have no meaning over a five or ten year period. A professional man may deduct amounts currently expended for books, the useful life of which is short. Internal Rev. Reg. 1.162-6, Professional Expenses. Here the nature of taxpayer's work, advice on fast-moving projects, clearly demonstrates that the useful life of the

books was extremely short, being desired merely for projects. Indeed taxpayer's frequent use of scientific libraries demonstrates the same need for quick, intensive research for a short length of time. His expenses for the purchase of scientific books having a short useful life were deductible in the year purchased.

C. That the taxpayer, Anton I. Petrovich's, petition is granted. There is no deficiency in income tax. His excess payments of income tax shall be refunded to him pursuant to the Tax Law with interest and the Notice of Deficiency shall be cancelled.

DATED: Albany, New York
August 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER