

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Thomas & Maureen Cox :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Year :  
1973.

---

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of December, 1981, he served the within notice of Decision by certified mail upon Thomas & Maureen Cox, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas & Maureen Cox  
236 W. Central Ave.  
Pearl River, NY 10965

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
11th day of December, 1981.

*Connie A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

December 11, 1981

Thomas & Maureen Cox  
236 W. Central Ave.  
Pearl River, NY 10965

Dear Mr. & Mrs. Cox:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
THOMAS A. COX and MAUREEN C. COX	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

---

Petitioners, Thomas A. Cox and Maureen C. Cox, 236 West Central Avenue, Pearl River, New York 10965 filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 21088).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 24, 1981 at 10:45 A.M. Petitioner Thomas A. Cox appeared pro se and for his wife, petitioner Maureen C. Cox. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the rental of a beach cottage was an activity engaged in for profit.

FINDINGS OF FACT

1. Petitioners, Thomas A. Cox and Maureen C. Cox, timely filed a joint New York State Income Tax Resident Return for the year 1973 on which a rental loss of \$5,542.47 was reported.

2. On October 19, 1976, the Department of Taxation and Finance validated a consent signed by petitioners, Thomas A. Cox and Maureen C. Cox, extending the period of limitation for the year 1973 to April 15, 1978.

3. On November 28, 1977, the Audit Division issued a Notice of Deficiency for the year 1973 for \$385.16 plus interest, along with an explanatory Statement of Audit Changes on which;

- a. The rental loss of \$5,542.47 was reduced to 1,353.53, which consisted of rental income of \$2,000.00, less mortgage interest of \$2,329.00 and real estate taxes of \$1,024.53.
- b. A modification in accordance with section 612(b)(11) of the Tax Law was imposed. (This adjustment was not challenged by petitioner.)

4. Petitioners, Thomas A. Cox and Maureen C. Cox, purchased a three bedroom frame beach cottage on May 25, 1972 for \$46,000.00. Petitioner Thomas Cox contended that the property was purchased with a profit motive and as a source of additional income.

5. Petitioners rented the beach cottage during July and August, 1973 for \$2,000.00. The cottage was not rented, and was not available for rent during the winter months. Petitioners contended that the cottage was strictly rental property and never used during the year 1973 for personal or recreational purposes.

6. Petitioner Thomas A. Cox testified that during 1973 he was not "concerned with whether he made a profit" and that he felt that the property would "eventually make a profit" due to inflation. He further testified that his rental income increased by \$400.00 or \$500.00 in 1974, and \$300.00 or \$400.00 in 1975, but never realized a profit. Subsequent to the year 1975, the property was no longer available for rent and was used exclusively for personal and recreational purposes.

7. During the year 1973, petitioners reported total rental expenses of \$4,462.96, (which included the fixed expenses of mortgage interest, and real estate taxes, totaling \$3,353.53) and depreciation of \$3,079.51. Petitioners

contended that without depreciation, they would realize a profit in subsequent years. However, specific facts and figures were not provided for any year subsequent to 1973.

CONCLUSIONS OF LAW

A. That the rental activities of petitioners, Thomas A. Cox and Maureen C. Cox, during the year 1973 was not an activity engaged in for profit in accordance with the meaning and intent of section 183 of the Internal Revenue Code and Article 22 of the Tax Law.

B. That the petition of Thomas A. Cox and Maureen C. Cox is denied and the Notice of Deficiency issued November 28, 1977 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 11 1981

PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Miller*  
COMMISSIONER

*Abstract  
James W. Miller*