

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
George Romanowich, Jr. : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Years :  
1973-1975.

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State of New York }  
ss.:  
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon George Romanowich, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

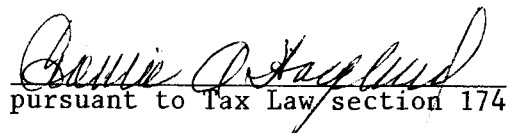
George Romanowich, Jr.  
2816 E 28 St., Box 345  
Brooklyn, NY 11235

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
18th day of January, 1984.



  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

George Romanowich, Jr.  
2816 E 28 St., Box 345  
Brooklyn, NY 11235

Dear Mr. Romanowich:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GEORGE ROMANOWICH, JR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1973, 1974	:	
and 1975.	:	

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Petitioner, George Romanowich, Jr., 2816 East 28th Street, Box 345, Brooklyn, New York 11235, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973, 1974 and 1975 (File No. 20490).

A small claims hearing was held before Anthony J. Ciarlone, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 12, 1983 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner had unreported income from fishing.

FINDINGS OF FACT

1. Petitioner, George Romanowich, Jr., timely filed New York State resident income tax returns for 1973, 1974 and 1975. He reported on said returns wages from his employment as a New York City policeman. No income was reported from fishing.

2. As a result of a field audit, the Audit Division determined that petitioner had unreported income from fishing during the years at issue. On

October 5, 1976 the Audit Division issued to petitioner a Statement of Audit Changes computing fishing income as follows:

	<u>1973</u>	<u>1974</u>	<u>1975</u>
Fishing Income	\$1,994.85	\$2,865.68	\$3,446.85
Less: Estimated expenses attributable to fishing income (1/3)	<u>664.95</u>	<u>955.23</u>	<u>1,148.95</u>
Net unreported taxable income	\$1,329.90	\$1,910.45	\$2,297.90

Accordingly, on September 26, 1977, the Audit Division issued to petitioner a Notice of Deficiency asserting personal income tax of \$596.17, penalty pursuant to section 685(b) of the Tax Law of \$29.81, interest of \$106.72 for a total due of \$732.70.

3. During the years at issue Mr. Romanowich owned a nineteen foot ski boat with a 135 horsepower outboard motor. He and some of his friends would go fishing on their days off. While Mr. Romanowich did not charge his friends a fee for the fishing trips, they would share the expenses of the trip. Since Mr. Romanowich and his friends were quite proficient at catching fish, they would catch more fish than they could use personally. Therefore, it was decided to sell the fish to cover the expenses of running the boat instead of sharing the expenses.

4. Petitioner, George Romanowich, Jr., testified that since he was employed as a full time policeman, he did not consider himself engaged in a business of fishing. Therefore, he kept no books because he considered his fishing activities as recreational; he fished only on his days off and on his vacations and he sold the fish only to cover the expenses of his fishing trips. He agreed with the Audit Division's determination of his fishing income. However, he claimed that his expenses were in excess of the income and as a result he had no unreported income from fishing.

5. Mr. Romanowich submitted numerous checks and bills for each year at issue. He claimed that the bills matched with the checks substantiated that his expenses exceed the income. The cancelled checks and bills were not in any meaningful order. All of the checks had notations in the memo section purported to be a fishing expense. However, some notations were illegible; some checks did not contain sufficient information to indicate whether the payment was a fishing expense and the majority of the checks did not have a bill to substantiate the check's notation. The majority of the bills were from Bay End Dock Co. (Bay End). Petitioner had a running charge account at Bay End. He would charge his gas and ice. He rented dock space during the season and stored the boat at Bay End during the off season. Bay End did repairs and maintenance on the boat. The owner of Bay End prepared a schedule of debits and credits for the period December 1, 1974 to August 26, 1975. The schedule indicated various items charged by petitioner and petitioner's payment to Bay End of \$1,083.92 during the period.

6. When considered in its entirety, the evidence submitted supports the following expenditures:

	<u>1973</u>	<u>1974</u>	<u>1975</u>
Expenses Paid to Bay End	\$457.70	\$1,437.17	\$1,344.92
Other Miscellaneous Expenses	98.43	145.92	62.05
Equipment Purchases	482.06	110.00	1,339.09

The equipment purchased consisted of items that had a useful life of more than one year.

7. Petitioner submitted a cancelled check dated December 15, 1982 in the amount of \$596.17. He claimed that this check was in payment of the personal income tax due shown on the Notice of Deficiency. He also submitted a payment document dated January 26, 1983 for 1975 which indicated a payment of \$137.25

and a balance due of \$316.25 and a payment document dated May 18, 1983 for 1975 which indicated petitioner's refund of \$242.00 had been applied to the unpaid tax liability.

8. Petitioner did not raise as an issue the negligence penalty imposed pursuant to section 685(b) of the Tax Law.

#### CONCLUSIONS OF LAW

A. That gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services (Treasury Regulations §1.61-1). The Audit Division properly determined that petitioner, George Romanowich, Jr., had unreported income from fishing.

B. That in the case of an activity not engaged in for profit there shall be allowed a deduction equal to the amount of the deductions which would be allowable for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income exceeds the deductions (section 183(b)(2) of the Internal Revenue Code).

C. That based on the documentary evidence submitted, petitioner is allowed expenses of \$556.13, \$1,583.01 and \$1,406.97 for 1973, 1974 and 1975, respectively. While petitioner has established that he made purchases of equipment during the years at issue, he failed to establish the useful life of the equipment. Taking into consideration the nature of petitioner's activities and the equipment purchased, a useful life of four years is deemed reasonable and appropriate. Accordingly, petitioner is entitled to a deduction for depreciation in the amounts of \$120.51, \$148.01 and \$482.78 for 1973, 1974 and 1975, respectively.

D. That the Audit Division is directed to recompute the Notice of Deficiency by allowing the deductions determined in Conclusion of Law "C", supra, in lieu of the expenses shown in Finding of Fact #2, supra, and by verifying the payments made by petitioner as shown in Finding of Fact #7, supra and giving credit for any payment properly applicable to this deficiency.

E. That penalties imposed pursuant to section 685(b) of the Tax Law are sustained, since petitioner made no argument for the cancellation of the penalty.

F. That the petition of George Romanowich, Jr., is granted to the extent indicated in Conclusion of Law "C", supra, and in all other respects denied and the Notice of Deficiency dated September 26, 1977 is sustained as modified in accordance with this decision.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

Richard A. Clev  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. J. J.  
COMMISSIONER