

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>ROBERT J. AND LINDA M. JARVIS</b>	:	DECISION
	:	DTA NO. 820588
for Redetermination of Deficiencies or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Years 1998 and 1999.	:	

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Petitioners, Robert J. and Linda M. Jarvis, filed an exception to the determination of the Administrative Law Judge issued on June 5, 2008. Petitioners appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Peter B. Ostwald, Esq., of counsel).

Petitioners did not file a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners did not file a reply brief. Petitioners' request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision. Commissioner Jenkins took no part in the consideration of this matter.

***ISSUES***

I. Whether the Division of Taxation properly determined petitioners' tax liability for the years 1998 and 1999.

II. Whether reasonable cause exists to abate the penalties assessed.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. We have also made an additional finding of fact. The Administrative Law Judge's findings of fact and the additional finding of fact are set forth below.

Petitioners, Robert J. and Linda M. Jarvis, filed applications for automatic extension of time to file for individuals (forms IT-370) for the years 1998 and 1999. The Division of Taxation (Division) searched its records and was unable to locate petitioners' New York State income tax returns for the years 1998 and 1999. As a result, on or about December 11, 2002, the Division sent a letter to petitioners requesting that they file income tax returns for the years 1998 and 1999. Petitioners did not respond to that letter.

On March 20, 2003, the Division issued two statements of proposed audit changes to petitioners, one for the year 1998 and the other for the year 1999, each of which contained the following explanation:

Your New York State audit covers more than one year. A separate bill will be issued for each individual tax year covered in our previous letter. You may not receive all of the bills on the same day.

A search of our files fails to show a New York State income tax return filed under your name or social security number. Therefore, your New York State income tax is estimated as allowed by New York State Income Tax Law.

Under section 683(c) of the New York State Tax Law, tax may be assessed at any time if no return is filed.

If you previously filed a New York State return for the above [applicable] tax year, please forward a complete copy including wage and tax statements. . . .

\* \* \*

You have been allowed the appropriate [\$13,000.00] New York standard deduction.<sup>1</sup>

Penalty for late filing has been applied at 5% per month up to a maximum of 25% (section 685(a)(1) of the New York State Tax Law).

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<sup>1</sup> A standard deduction based upon married filing joint return filing status was allowed.

A negligence penalty of 5% is imposed on the total correct tax. The penalty is applied to total correct tax before prepayments, rather than the balance due, because you did not file a return (section 685(m) of the New York State Tax Law).

In addition to the 5% negligence penalty, an amount equal to 50% of any interest due on a deficiency or portion of a deficiency attributable to negligence or intentional disregard of the Tax Law has been imposed (section 685(b)(2) of the New York State Tax Law).

All taxpayers must prepay each year's tax, either by having tax withheld or by paying estimated tax.

Since no prepayments have been made through withholding tax or estimated tax, a penalty for underpayment of estimated tax has been imposed.

Interest is due for late payment or underpayment at the applicable rate, interest is required under the New York State Tax Law.

Petitioners' New York State personal income tax was calculated on each of the statements as follows:

Federal adjusted gross income	\$59,600.00
New York adjusted gross income	\$59,600.00
New York deduction	\$13,000.00
Dependent exemptions	0.00
New York taxable income	\$46,600.00
New York State tax	\$ 2,400.00
Total New York State tax	\$ 2,400.00

As set forth in the explanation on each of the statements, penalties and interest were also asserted. The Division based its estimation of tax asserted to be due for each of the years at issue on information obtained from a search of its information return master file for sources and amounts of income received by petitioners in 1999, which amounts were reported to the Division by various payors.

Petitioners never responded to either the Statement of Proposed Audit Changes for the year 1998 or the Statement of Proposed Audit Changes for the year 1999. Consequently, the Division issued to petitioners two notices of deficiency, one for each year at issue. The first Notice of Deficiency (Notice No. L-022104678-2), dated May 15, 2003, asserts New York State personal income tax due for 1998 in the amount of \$2,400.00, plus penalty of \$1,197.47 and interest of \$765.96, for a total amount due of \$4,363.43. The second Notice of Deficiency (Notice No. L-022104665-5), dated May 15, 2003, asserts New York State personal income tax due for 1999 in the amount of \$2,400.00, plus penalty of \$1,096.15 and interest of \$550.73, for a total amount due of \$4,046.88. On each of these notices, the Division imposed penalties pursuant to Tax Law § 685(a)(1)(a) for failure to file the return, Tax Law § 685(b) for negligence and Tax Law § 685(c) for failure to pay estimated income tax.

Petitioners have two children, Laura, born in May 1981, and Christopher, born in December 1982. Prior to and during the years at issue, petitioners and their minor children resided in Loudonville, New York. For the years 1998 and 1999, Laura filed New York State resident income tax returns on which she claimed a filing status of single and a New York standard deduction in the amount of \$3,000.00, i.e., the standard deduction allowed a single person who can be claimed as a dependent on another taxpayer's federal income tax return (dependent filer's standard deduction). For the year 1999, Christopher filed a New York State resident income tax return on which he claimed filing status of single and a dependent filer's standard deduction in the amount of \$3,000.00.

For the year 1998, Mrs. Jarvis received wage income in the amount of \$25,259.39 from the South Colonie Central School District (South Colonie Schools), which issued a Form W-2, Wage and Tax Statement, to her. On this 1998 wage and tax statement, the South Colonie Schools also

reported Mrs. Jarvis's public employee contributions (414[H] contributions) of \$887.48 and New York State tax withheld in the amount of \$575.70.

For the year 1999, Mrs. Jarvis received wage income in the amount of \$25,470.78 from the South Colonie Schools. On her 1999 wage and tax statement, the South Colonie Schools also reported Mrs. Jarvis's public employee contributions (414[H] contributions) of \$798.64 and New York State tax withheld in the amount of \$551.31.

Statements of interest income (1099-INT forms) for the year 1998 show that petitioners received interest income from Trustco Bank, Troy Savings Bank, Capital Communications Federal Credit Union, Marine Midland Bank and Greenwood Trust Company in the respective amounts of \$36.89, \$18.87, \$4.33, \$1.59 and \$50.78, or a total of \$112.46 in interest income for the year.

Statements of interest income (1099-INT forms) for the year 1999 show that petitioners received interest income from Trustco Bank, Troy Savings Bank, Capital Communications Federal Credit Union, HSBC (the successor to Marine Midland Bank) and Greenwood Trust Company in the respective amounts of \$11.08, \$19.85, \$30.07, \$4.55 and \$49.22, or a total of \$114.77 in interest income for the year.

Robert Jarvis, a patent attorney, provided patent maintenance services to Beeche Systems Corp. (Beeche) for its domestic and foreign patents during the years at issue. In early 1998, Mr. Jarvis rendered professional services to Beeche for renewal of its Australian, Belgian, Swiss, United Kingdom and United States patents. A billing statement, dated May 20, 1998, indicated that the total amount due for the renewal of these patents, including costs and disbursements, was \$4,465.00. In mid to late 1998, Mr. Jarvis rendered services to Beeche for renewal of its Austrian, Canadian, French, German, Italian, Luxembourg, Netherlands, Swedish and Japanese

patents, and for initiating and applying for Hong Kong patent registration of an invention. A billing statement for these services, dated December 14, 1998, indicated that the total amount due, including costs and disbursements, was \$13,423.00.

In 1999, Mr. Jarvis rendered professional services to Beeche for renewal of its Austrian, Canadian, French, German, Italian, Luxembourg, Netherlands, Swedish, Japanese, Australian, Belgian, Swiss, United Kingdom and Korean patents. A review of the billing statements indicates that in 1999, Mr. Jarvis billed Beeche a total of \$33,186.00 for the services he rendered in connection with the renewal of its foreign patents, including costs and disbursements.

During the audit, the Division searched its information return master file for sources and amounts of income earned by petitioners during the years 1998 and 1999, which amounts were reported to the Division by various payors. As part of its documentary submission, the Division included a printed copy of its search results in its audit work papers. A review of the Division's printed search results indicates that Beeche paid Mr. Jarvis the amount of \$4,465.00 and \$33,186.00, in the years 1998 and 1999, respectively. However, the record does not include copies of the actual information returns issued to Mr. Jarvis by Beeche for the years 1998 and 1999.

With respect to the renewal of foreign patents for Beeche, Mr. Jarvis was charged by various foreign servicing agents for their part in renewing the patents involved, including the government office fees and their service charges. The record includes copies of the billing statements issued to Mr. Jarvis by patent attorneys in Australia, Belgium, Switzerland, Canada, France, Germany, Italy, Luxembourg, the Netherlands, Sweden, Japan, the United Kingdom, Austria, and Korea for services they rendered for him during the years 1998 and 1999. Undated handwritten notations appear on these billing statements. The record does not include copies of

receipts for fees allegedly charged by a bank for the issuance of international bank drafts during the years 1998 and 1999.

The record does not include any type of bookkeeping ledger or journal in which legal fees collected from clients were recorded by Mr. Jarvis during the years 1998 and 1999. The record also does not include any business bank statements for the years 1998 and 1999.

Petitioners' Loudonville, NY address was listed as Mr. Jarvis's business address on the billing statements issued to Beeche by him during the years at issue. This address was also listed as his business address on the attorney registration form issued to him by the New York State Office of Court Administration for the biennial registration period 1999 through 2000. Neither the total square footage of petitioners' Loudonville, NY home nor the square footage of the space within the Loudonville, NY home allegedly used for Mr. Jarvis's business is part of the record.

On or about April 26, 1999, Mr. Jarvis renewed his biennial registration as an attorney licensed to practice law in New York State and paid his \$300.00 registration fee by check drawn on petitioners' joint personal Trustco Bank checking account.

Petitioners had a mortgage serviced by Troy Savings Bank (lender) on their Loudonville, NY home prior to and during the years at issue. The annual statement issued by the lender for the year 1998 shows petitioners' payment of mortgage interest in the amount of \$7,485.67 and real estate taxes in the amount of \$4,284.71. For the year 1999, the annual statement issued by the lender shows petitioners' payment of mortgage interest in the amount of \$7,031.05 and real estate taxes in the amount of \$4,290.92.

The record includes several billing summary pages for electric and gas service provided to petitioners' Loudonville, NY home by Niagara Mohawk during the year 1999. A review of these

billing summary pages indicates that petitioners made budget payments totaling \$2,632.00 in the year 1999.

The record includes the account summary pages from billing statements issued to Mr. Jarvis by Bell Atlantic during 1999. A review of these Bell Atlantic account summary pages indicates that a total of \$258.49 was deducted from Mr. Jarvis's unidentified bank account automatically during 1999. Further review of these Bell Atlantic account summary pages indicates that charges for Bell Atlantic basic local services totaled \$185.63 in 1999. It is noted that the telephone number listed on the Bell Atlantic account summary pages is the same telephone number listed as his business telephone number on all billing statements issued to Beeche by Mr. Jarvis during 1999 and the Office of Court Administration's attorney registration form issued to Mr. Jarvis for the biennial registration period 1999 through 2000.

A review of the Division's information return master file search results indicate that Mr. Jarvis also earned income from S & S Long Term Interest in the amount of \$119.00 and \$14.00, in the years 1998 and 1999, respectively. The record does not include copies of the actual information returns issued to Mr. Jarvis by that entity for the years at issue.

For tax year 1998, Mrs. Jarvis made a \$100.00 contribution to her individual retirement account maintained at the Cohoes Savings Bank. For the same tax year, Mr. Jarvis made a \$250.00 contribution to his individual retirement account maintained at Prudential Securities.

For calendar year 1998, Greenwood Trust Company issued a Statement For Recipients of Interest Income (Substitute form 1009-INT) to Mrs. Jarvis and Nellie Caputo, under Mrs. Jarvis's social security number, reporting a total of \$50.78 in deposit interest earned on two savings accounts, account A deposit interest in the amount of \$23.88 and account B deposit interest in the



amount of \$26.90.<sup>2</sup> In a letter to Greenwood Trust Company, dated March 30, 1999, Mrs. Jarvis advised the bank that it erroneously reported deposit interest earned in the amount of \$26.90 on savings account B under her social security number, rather than under Ms. Caputo's social security number, the other joint owner of this account. Mrs. Jarvis's letter further requested that Greenwood Trust Company issue a corrected Substitute form 1099-INT for calendar year 1998 for account B. A corrected Substitute form 1099-INT is not part of the record. The total interest earned by Mrs. Jarvis on Greenwood Trust Company accounts A and B in 1998 is noted above.

For calendar year 1999, Greenwood Trust Company issued a Substitute form 1099-INT to Mrs. Jarvis and Nellie Caputo, under Mrs. Jarvis's social security number reporting a total of \$49.22 in deposit interest earned on two savings accounts, account A in the amount of \$23.59 and account B in the amount of \$25.63. A handwritten notation appears on the Substitute form 1099-INT issued to Mrs. Jarvis by Greenwood Trust Company for the calendar year 1999, which states that account B "is Nellie Caputo's, and should have been reported under her [social security number]." The record does not include a letter advising Greenwood Trust Company of this alleged error for calendar year 1999 or a corrected Substitute form 1099-INT issued by Greenwood Trust Company for calendar year 1999. The total interest earned by Mrs. Jarvis on Greenwood Trust Company accounts A and B in 1999 is noted above.

In April 1999, petitioners received an income tax refund in the amount of \$1,111.30 for the year 1991 from the Division, which issued a Statement of Tax Overpayment (form 1099-G) to petitioners reporting the amount of \$819.50 to the Internal Revenue Service.

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<sup>2</sup> For purposes of this proceeding these two Greenwood Trust Company savings accounts will be designated as account A and account B.

In accordance with the initial document and briefing submission schedule set in this matter, the Division's documents were received by the Division of Tax Appeals on August 18, 2006. After six extensions, the record in this matter closed on October 1, 2007, the final date set for submission of petitioners' documents and initial brief. As noted above, the various documents submitted by petitioners do not include their federal income tax returns for the years 1998 and 1999 or their New York State resident income tax returns for the years 1998 and 1999. The Division did not undertake an audit review of the documents submitted by petitioners in this proceeding.

We make the following additional finding of fact:

By notice of motion, dated July 7, 2008, petitioners moved for an order "vacating the Determination . . . in this matter dated June 5, 2008; reopening the record herein for the submission of additional evidence; and granting the parties an opportunity to reargue this case and to submit additional arguments in support of their positions." Petitioners' motion was supported by the affirmation of petitioner Robert J. Jarvis. No additional documents were attached to petitioners' motion. The Division filed a letter in opposition to petitioners' motion to reopen record and for reargument. Petitioners filed a letter in reply to the Division's letter.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

In the determination, the Administrative Law Judge found that the assessments issued as described should be allowed except for minor adjustments. The Administrative Law Judge stated that the evidence, such as it was, offered by the petitioners did not overcome the presumption of correctness attached to the notices of assessment. It was determined that petitioners' New York State adjusted gross income for the years 1998 and 1999 was correctly determined by the Division.

However, for both of the years in question, the Administrative Law Judge determined that the Division should have allowed dependent exemptions for the petitioners' two minor children

residing with them. Further, the Administrative Law Judge determined that petitioners should be allowed a credit for the taxes withheld in 1999. The Administrative Law Judge also allowed a reduction of \$372.86, the amount of the expenses determined to be ordinary and necessary business expenses for that year. In all other matters, the conclusions of the Administrative Law Judge affirm the findings of the Audit Division.

### ***ARGUMENTS ON EXCEPTION***

In their exception, petitioners argue that:

The Division incorrectly found that Mrs. Jarvis' 414[H] contribution was \$887.48 when it actually was \$787.48; that the interest income received from the Greenwood Trust Company was actually \$23.88 and not \$50.78, as found by the Administrative Law Judge for 1998; and that the amount in 1999 was \$25.63 and not \$49.22.

Petitioner's also contend that the Division had not used all information available to it, that it had not reasonably or rationally calculated the tax due, and that there was no evidence to support the finding that petitioners had not filed New York State tax returns for 1998 and 1999.

Petitioners assert that the Administrative Law Judge erred in indicating that certain requirements under the Internal Revenue Code provisions were required under New York Tax Law.

Further, petitioners argue that the Division improperly used 1999 information and applied it to 1998. Petitioners also disagree with the Administrative Law Judge's finding that the deductions made regarding the home office expenses were not proven and assert that the Administrative Law Judge should have determined that petitioners qualified for the household credit. Petitioners state also that the Administrative Law Judge erred in not reducing from

income in 1999 the \$819.00 that was a tax refund from a previous year. They further object to the basis for the penalties and interest.

In the attachment to their exception, petitioners also object to the Administrative Law Judge's Order dated November 6, 2008, which disallowed additional evidence that petitioners proposed to introduce.

### ***OPINION***

Tax Law § 651(a)(1) provides, in pertinent part, as follows:

(a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, an income tax return under this article shall be made and filed by or for:

(1) every resident individual (A) required to file a federal income tax return for the taxable year, or (B) having federal adjusted gross income for the taxable year, increased by modifications under subsection (b) of section six hundred twelve, in excess of four thousand dollars, or in excess of his New York standard deduction, if lower, or (C) subject to tax under section six hundred two, or (D) having received during the taxable year a lump sum distribution any portion of which is subject to tax under section six hundred three. . . .

Generally, New York income tax must be assessed within three years of the date of filing of the return (*see*, Tax Law § 683[a]). If no return is filed, however, then the tax may be assessed at any time (*see*, Tax Law § 683[c][1][A]).

Tax Law § 681(a) provides, in pertinent part, as follows:

If upon examination of a taxpayer's return under this article the tax commission determines that there is a deficiency of income tax, it may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer.

In the instant matter, the Division commenced its audit of petitioners in December 2002 after a review of its records failed to disclose any New York State income tax returns for the

years 1998 and 1999. The Division made a written request to petitioners for documentation to address the issue of petitioners' failure to file their personal income tax returns for the years at issue. Petitioners failed to supply any documentation. Indeed, petitioners did not file personal income tax returns for the years 1998 and 1999 prior to the issuance of the notices of deficiency. The Division was, therefore, authorized to estimate petitioners' personal income tax liability "from any information in its possession" (Tax Law § 681[a]; *see also, Lysek v. Commr.*, 34 TCM 1267 [1975], *affd* 583 F2d 1088 [9<sup>th</sup> Cir 1978]). Here, the Division had in its possession information returns issued to petitioners by various payors of items of income in the year 1999. Pursuant to Tax Law § 681(a), the Division was authorized to use this information to estimate petitioners' personal income tax liability for the years at issue.

Where, as here, the Division properly issues a Notice of Deficiency to a taxpayer, a presumption of correctness attaches to such notice (*see, Matter of Land Transp. Corp.*, Tax Appeals Tribunal, June 29, 2000; *Matter of Atlantic & Hudson Ltd. Partnership*, Tax Appeals Tribunal, January 30, 1992). In proceedings for review of a properly issued notice of deficiency, the burden of proof is on the taxpayer to demonstrate that the deficiency is erroneous (*see*, Tax Law § 689[e]). The starting point for determining New York personal income tax liability is a taxpayer's federal adjusted gross income (Tax Law § 612[a]; 20 NYCRR 112.1). Since the New York State personal income tax law is patterned after the Federal income tax laws, the Internal Revenue Code (IRC) provides guidelines with respect to the treatment of income and the deductibility of various expenses.

As noted above, petitioners failed to submit any documentation for the years 1998 and 1999 to the Division prior to the issuance of the notices of deficiency at issue in this matter. After six extensions, petitioners submitted documentation on October 1, 2007, the final date set

for the submission of petitioners' documentation. The Division did not undertake an audit review of the documents submitted by petitioners in this proceeding. Petitioners assert that they have submitted sufficient documentary evidence to show that the Division's determinations of tax due for the years at issue are incorrect.

The parties elected to proceed by written submission. The documentary evidence submitted by petitioners consisted of information returns issued to either Mr. Jarvis or Mrs. Jarvis by various payors for the years 1998 and 1999, Laura Jarvis's 1998 and 1999 New York State income tax returns, Christopher Jarvis's 1999 New York State income tax return, and some documents allegedly related to Mr. Jarvis's business, a legal practice conducted in New York State during the periods at issue. Petitioners did not submit a bookkeeping ledger or journal in which legal fees collected from clients by Mr. Jarvis were recorded during the years at issue. They also failed to submit any business bank statements or any receipts for international bank drafts allegedly issued during the years 1998 and 1999.

Mr. Jarvis's explanation, in his affirmation, of the significance of the documents allegedly related to his legal practice was very vague and provided limited information about the conduct of his legal practice during the years at issue. His affirmation did not include any explanation of the manner in which he maintained the books and records for his legal practice, and it also failed to identify the bank in which he maintained his business account and the bank that allegedly issued the international bank drafts during the years 1998 and 1999. Petitioners also did not submit copies of their federal or New York State income tax returns for the years at issue. Indeed, petitioners failed to file their New York State income tax returns for the years 1998 and 1999 prior to the close of the record in this matter, i.e., October 1, 2007.

Petitioners claim a deduction in the amount of \$1,313.57 representing a portion of mortgage and property tax payments for 1998 and a deduction of \$1,557.00 for similar expenses and utility expenses for 1999 that allegedly should have been allowed because his business office is housed within his home. The taxpayer is not entitled to deduct any expenses associated with the use of his home for business purposes unless they are attributable to a portion of the home (or separate structure) used exclusively on a regular basis as the principal place of business. The taxpayers did not prove the use for business purposes of a set-aside area of their home to be used as an office (*see*, IRC § 280A[c][1][A]). Additionally, petitioners claimed that they should have had IRA contributions allowed, but as they did not offer their Federal income tax returns, it is impossible to determine if such contributions were indeed made.

The petitioners also attempted to show that some of the interest income shown to have been received by Mrs. Jarvis should have been attributed to her mother. However, petitioners did not offer a corrected Form 1099. With regard to 1999, petitioners also did not offer evidence as to expenses such as payments to other attorneys. The Administrative Law Judge allowed Mr. Jarvis \$300.00 for his New York State attorney registration and allowed \$72.86 in additional telephone charges in excess of local services that might be attributed to his business. Therefore, with regard to 1999, the \$372.86 was allowed as ordinary necessary business expenses.

However, the Administrative Law Judge should not have included as income for 1999 the \$819.00, which petitioners received as a state tax refund for a previous year.

Petitioners also have argued that they should have been allowed to present additional information after the close of the record in December 2007. After the issuance of the Administrative Law Judge's determination on June 5, 2008, petitioners filed a motion to reopen the record and for reargument pursuant to 20 NYCRR 3000.16. The petitioners offered no

indication of what the new evidence would be and did not offer any evidence that such additional submission was newly discovered and could not have been discovered in the exercise of reasonable diligence at the time it should have been offered, both requirements under the afore cited regulation.

Accordingly it is ORDERED, ADJUDGED AND DECREED that:

1. The exception of Robert J. and Linda M. Jarvis is granted to the extent that their 1999 income be reduced by \$819.00, but otherwise is denied;
2. The determination of the Administrative Law Judge is modified in accordance with paragraph "1" above, but otherwise is sustained;
3. The petition of Robert J. and Linda M. Jarvis is granted in accordance with paragraph "1" above and as indicated in conclusions of law J, M and O of the determination of the Administrative Law Judge, but in all other respects is denied; and
4. The Division of Taxation is directed to modify the Notices of Deficiency dated May 15, 2003 in accordance with paragraph "1" above and the determination of the Administrative Law Judge.

DATED: Troy, New York  
July 22, 2010

/s/ James H. Tully, Jr.  
James H. Tully, Jr.  
President

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
Commissioner