

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD **G.** LEFKON

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article **22** :
of the Tax Law for the Year 1971.

Petitioner, Richard G. Lefkon, 609 West 114th Street, New York, New York
10025, 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 1971 (File No.
29924) .

A hearing was held before Joseph **W.** Pinto, **Jr.**, Hearing Officer, at the
offices **of** the State **Tax** Commission, Two World Trade Center, New York, New
York, **on** September 10, 1986 at 1:15 **P.M.**, with all briefs to be submitted by
October 1, 1986. Petitioner appeared **pro Se**. The Audit Division appeared by
John P. Dugan, **Esq.** (**Angelo**A. Scopellito, **Esq.**, of counsel).

ISSUES

I. Whether the Audit Division properly determined additional personal
income tax due from petitioner for the year 1971.

II. Whether the Audit Division properly assessed penalties pursuant to **Tax**
Law § **685(a)** (1) and (a)(2).

FINDINGS OF FACT

1. On April 23, 1979, the Audit Division issued **a** Statement of Audit
Changes to petitioner, Richard G. Lefkon, for the year 1971. Said statement
contained the following explanation:

"Since a search of our files discloses that no 1971 New York State Income Tax Return was filed, we have computed your New York Tax Liability based **on** your Federal Return.

Also, Section 685(a)(1) and (a)(2) penalties are being imposed for late filing and failure to pay tax due."

2. Based on the aforementioned statement, the Audit Division issued a Notice of Deficiency ("notice") to petitioner on January 30, 1980. Said notice asserted additional tax due of \$1,022.50, and penalties and interest of \$963.69, for a total amount due of \$1,986.19.

3. Petitioner did not **know** whether or not he had filed a New York State income tax return for the year 1971, and, in fact, no return was ever received by the Department or produced at hearing.

4. Petitioner's Federal taxable income was established by a final Federal determination of the Internal Revenue Service.

5. Based upon this determination and a copy **of** petitioner's complete Federal return and wage statement, the Audit Division determined petitioner's New York taxable income to be \$16,750.00.

6. Petitioner contends that he should be given the benefit **of** a revenue agent's report which granted him \$6,023.84 in itemized deductions but which was reversed by the Internal Revenue Service in their appeals division. A complete copy of said report was never submitted herein.

7. Petitioner submitted the following documentation of employee business expenses which he contended the Audit Division should have taken into account when determining his New York State taxable income:

| <u>DEDUCTION</u> | AMOUNT |
|-------------------------|-----------|
| Interjob transportation | \$ 214.60 |
| Tuition and dues | 484.01 |
| Subscriptions | 130.83 |

| | |
|----------------------------------|----------|
| Gifts | 122.47 |
| Books | 903.89 |
| Xeroxing | 311.80 |
| Television and library equipment | 2,125.17 |
| Tuition and dues | 470.00 |

Petitioner also submitted expenses incurred in the publishing of "Eduguides Physics in the New York Area" in the sum of \$912.47, which had already been taken into account on petitioner's Schedule C, Federal form 1040 and in the Audit Division's calculations.

8. The Audit Division disallowed the employee business expenses consistent with the final Federal determination, and determined tax due of \$1,035.00 on New York taxable income of \$16,750.00. After subtracting the statutory credit of \$12.50 applicable in 1971 and the New York State withholding of \$564.05, the corrected tax due from petitioner was determined to be \$458.45, plus applicable penalties and interest to date.

CONCLUSIONS OF LAW

A. That Tax Law § 651(a) provides 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)(A) every resident individual required to file a federal income tax return for the taxable year...."

B. That the Internal Revenue Service reached a final determination as to petitioner's tax liability for the year 1971 as the term "final determination" is defined in Tax Law § 659 and the regulations promulgated thereunder at 20 NYCRR § 153.5.

C. That once the Internal Revenue Service had made a final determination adjusting the petitioner's Federal tax liability, said petitioner had an obligation to notify the Tax Commission within ninety days of said final

determination and concede the accuracy of such determination or state wherein it was erroneous (Tax Law 5659; 20 NYCRR § 153.1).

D. That the petitioner filed neither a 1971 resident income tax return nor the notice required by the regulations at 20 NYCRR § 153.2, notifying the Commission of changes in his Federal taxable income and resulting tax liability.

E. That the **Tax** Commission is not required to accept as correct any change in a taxpayer's Federal taxable income, but may conduct its **own** independent audit or investigation in regard thereto (20 NYCRR § 153.4).

F. That petitioner's documentary proof of employee business expenses was not sufficient to warrant further modification of the Federal adjusted taxable income because said documentation was vague, failed to properly identify the itemized expenses as they related to the petitioner's business occupation and not sufficient to show that they were ordinary and necessary business expenses.

G. That, since petitioner did not file his 1971 personal income tax return, he is liable for penalties for failure to timely file his return and timely remit his payment therewith. Since no reasonable cause was offered for said failures, the penalties asserted pursuant to Tax Law §§ 685(a)(1) and 685(a)(2) are sustained.

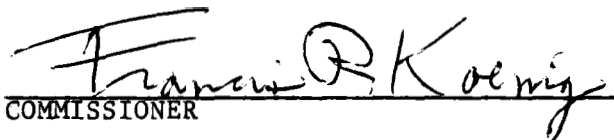
H. That the petition of Richard G. Lefkon is denied and the Notice of Deficiency dated January 30, 1980 is sustained, together with applicable penalties and interest as may be lawfully owing.

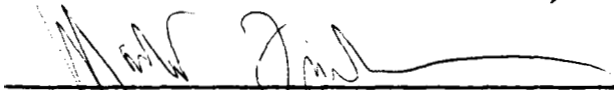
DATED: Albany, New York

STATE TAX COMMISSION

FEB 24 1987


PRESIDENT


COMMISSIONER


COMMISSIONER