

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

DOROTHY VANVALKENBURGH

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1973 and 1974.

Petitioner, Dorothy VanValkenburgh, 4348 White Road, Marion, New York 14505, 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 and 1974 (File No. 44963).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on June 5, 1986 at 1:15 P.M. Petitioner did not appear at the hearing. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division's assertion of additional personal income tax due from petitioner for the year 1973 was proper.

FINDINGS OF FACT

1. On March 4, 1983, the Audit Division issued to Larry T. and Dorothy Bigley, a Statement of Audit Changes asserting additional personal income tax due from said individuals for the years 1973 and 1974 in amounts as follows:

	<u>1973</u>	<u>1974</u>
Personal Income Tax Due	\$1,920.57	\$2,556.42
Penalty	960.29	1,278.21
Total Interest	<u>1,463.75</u>	<u>1,918.37</u>
TOTAL DUE	\$4,344.61	\$5,753.00

2. The Statement of Audit Changes explained the basis for the Audit Division's assertion of additional tax due as follows:

"Since you failed to reply to our previous letters, your 1973 personal income tax liability has been computed from information obtained from the Internal Revenue Service under authorization of federal law (Section 6103(D) of the Internal Revenue Code).

Federal adjustment is due to your failure to report other compensation income.

New York tax increase is based on federal adjustment to capital gain income.

Net long term capital gains are reportable to New York State at 60% rather than 50%. Accordingly, 20% of the capital gains deduction is added to income."

3. Petitioner, Dorothy VanValkenburgh, was married to Larry T. Bigley during the years at issue and was known at that time as Dorothy Bigley.

4. Based upon the aforementioned Statement of Audit Changes, the Audit Division issued a Notice of Deficiency to Larry T. and Dorothy Bigley on March 22, 1983 asserting additional personal income tax due together with penalty and interest for the years 1973 and 1974 in like amounts as set forth in the Statement of Audit Changes.

5. Petitioner failed to appear at the hearing in this matter.

6. At the hearing the Audit Division conceded that petitioner was not liable for the tax asserted due against her for the year 1974. The Audit Division also conceded that petitioner was not liable for the penalty which had been asserted against her for both 1973 and 1974 pursuant to section 685(e) of the Tax Law.

CONCLUSIONS OF LAW

A. That in view of petitioner's failure to appear at the hearing, her petition is denied, except to the extent of the concessions made at the hearing

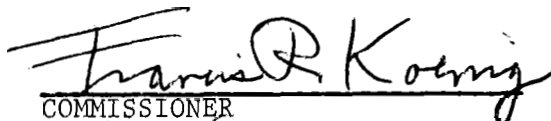
B. That the Audit Division is hereby directed to modify the Notice of Deficiency dated March 22, 1983 to the extent of the concessions set forth in Finding of Fact "6" herein and, except as so modified, the notice is in all respects sustained.

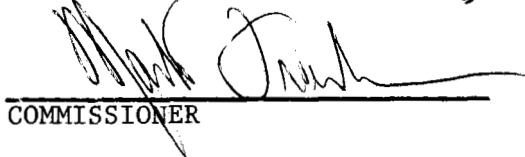
DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986


PRESIDENT


COMMISSIONER


COMMISSIONER