

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD PANGMAN AND PATRICIA PANGMAN

DECISION

for Radetermination of a Deficiency for Refund
of Personal **Income Tax** and Unincorporated
Business Tax under Articles 22 and 23 of
the Tax Law for the **years** 1979 through 1981.

Petitioners, Edward Pangman and Patricia Pangman, Route 7, Box 113A, **Howes**
Cave, New York 12092, filed a petition for redetermination of a deficiency or
for refund of personal income tax and unincorporated business tax under Articles
22 and 23 of the Tax Law for the years 1979 through 1981 (File No. 46473).

A hearing was held before Arthur Bray, Bearing Officer, at the offices of
the State Tax Commission, Building #9, **W.** Averell Harriman State Office campus ,
Albany, New York on **April** 2, 1986 at 9:15 am. with additional documents to be
submitted **by May** 8, 1986. Petitioners appeared by Victor R. Taylor, C.P.A.
The Audit Division appeared by **John** P. Dugan, **Esq.** (Thomas C. Sacca, **Esq.** , of
counsel).

ISSUE

Whether the Audit Division's bank deposit analysis audit, which included a
figure for cash living expenses of \$6,898.00 for each year under audit, **was**
incorrect"

FINDINGS OF FACT

1. Petitioners filed jointly, **on** one return, a New York State Income Tax
Resident Return for each of the years 1979 and.1980. Edward Pangman filed a
New York State Unincorporated Business Tax Return for each of the Years 1979

and 1980. No evidence was presented ~~that~~ a New York State personal income tax return or ~~an~~ unincorporated business tax return was filed for the year 1981.

2. On July 21, 1983 the Audit Division issued a Notice of Deficiency to petitioners, Edward and Patricia Pangman, asserting a deficiency of personal income tax for the years 1979 through 1981 in the amount of \$2,613.72 plus penalty of \$733.35 and interest of \$969.80 for a balance due of \$4,316.87. An examination of the Statement of Personal Income Tax Audit Changes reveals that the amount of additional personal income tax asserted to be due for the years 1979 and 1980 was, respectively, \$1,835.58 and \$433.48. For the year 1981, the Audit Division determined, in its Statement of Audit Changes, that the additional tax due was \$1,531.80. However, when the Notice of Deficiency was prepared, the Audit Division inadvertently asserted as the tax for the year 1981 the penalty of \$344.66 which was determined to be due pursuant to Tax Law §685(a)(1) for failure to file a tax return within the prescribed date. The Audit Division also asserted a penalty pursuant to Tax Law §685(b) for negligence.

3. On July 21, 1983 the Audit Division also issued a Notice of Deficiency to petitioners asserting a deficiency of unincorporated business tax for the years 1979 and 1980 in the amount of \$1,492.15 plus penalty of \$63.16 and interest of \$426.82 for a total amount due of \$1,982.13. An examination of the Statement of Unincorporated Business Audit Changes reveals that the Audit Division inadvertently included as additional tax due the penalty of \$229.09 which had been asserted for the year 1979 pursuant to Tax Law §685(a)(1) and Tax Law §722 for failure to file a tax return within the prescribed date. The Audit Division also asserted a penalty pursuant to Tax Law §685(b) and Tax Law §722 for negligence.

4. To the extent at issue herein, the asserted deficiencies were premised upon an analysis of petitioners' bank deposits and cost of living which disclosed additional gross receipts in the amounts of \$21,905.00 for 1979, \$8,372.00 for 1980 and, with respect to the asserted deficiency of personal income tax only, \$25,840.76 for 1981.

5. During the years in issue, petitioners operated a tavern-style restaurant in Cobleskill, New York.

6. At the hearing, petitioners did not dispute the audit methodology employed. However, they asserted that the audit findings were in error as a result of including the proceeds from the sale of certain personal assets in the analysis of bank deposits. Petitioners assert that the proceeds from the following were erroneously included as business income:

- a. In 1980, petitioners sold various items of personal jewelry for \$1000.00. Petitioners had paid \$1500.00 for the jewelry in prior years.
- b. On September 10, 1973, petitioners purchased a diamond from Jay Jewelers for \$5900.00 plus sales tax of \$236.00. In 1981, petitioners sold the diamond for \$6900.00.
- c. On January 22, 1979 petitioners purchased a John Deere lawn and garden tractor for \$5000.00. In 1981, petitioners sold the tractor for \$2500.00 in order to pay business expenses.
- d. In 1981, Jay Jewelers of Syracuse, New York arranged, on a commission basis, for the sale of petitioners' five carat diamond ring, set in platinum, with bouquet diamonds flanking the center diamond. Petitioner received approximately \$6500.00 at the time of the resale.
- e. In 1981, Mr. Leonard Michel loaned petitioners \$3500.00.

7. No evidence was presented that the proceeds from the items listed in Finding of Fact "6" were deposited in the particular checking account examined

8. The Audit Division based its determination of petitioners cost of living on information received from petitioners. Petitioners asserted at the hearing that the expenses utilized by the auditor were too great because petitioners were under the impression that it would be to their benefit to disclose a higher standard of Living. Petitioners' representative, on petitioners' behalf submitted a revised statement of personal and family living expenses. This schedule was prepared by petitioners' representative at Petitioners' home on the basis of those bills which petitioners were able to locate. None of these bills were offered into evidence at the hearing.

9. Petitioners' representative was advised by petitioners that contrary to the estimated cost of repair and home maintenance of \$109.00 a month determine by the audit Division, petitioners had not expended any funds on home repairs during the years in issue, This assertion was supported by petitioners' representative's observation that petitioners' home was in a state of disarray.

10. Petitioners have proposed to allocate a portion of their living expenses its an office in the home. However, no evidence was presented to substantiate the propriety of a deduction for expenses of an office in the home.

CONCLUSIONS OF LAW

A. That, with certain exceptions, which are not relevant herein, the burden of proof is upon the petitioner [Tax Law § 689(e)]. Since petitioners have not presented any evidence to show that the items listed in Finding of Fact "6" were deposited into the checking account which was examined during the audit, petitioners have failed to establish that the bank deposit analysis resulted in an incorrect determination of taxes due.

B. That petitioners have **failed to** sustain their burden **of** proof to show **that** most of **the expenses ascribed** to petitioners **were** incorrectly determined. However it is found **that** petitioners **did** not make any **home** improvements during **the** audit period, **Accordingly.** petitioners' cash living expenses are reduced by \$1,038.00 per annum¹ for **the years** 1979 and 1980. **No** adjustment for Personal living expenses **is warranted** for the year 1981 **since** as explained in **Fidning** of Fact "2" the **Audit** Division's asserted deficiency for 1981 was **well** below **what** the Audit Division intended to assert **as** due.

C. That petitioners have **not** presented **any** evidence to establish that they **are** entitled to **a** deduction **for** expanses **of** maintaining an office in their **home**


D, **That,** In accordance **with** Finding of Fact "3", the Audit Division is directed to remove **any** penalty **from** the computation **of** the asserted deficiency **of** additional unincorporated business tax.

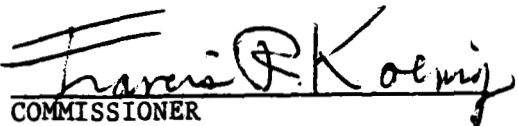
E- **That** the petition of Edward Pangman and Patricia Pangman **is** granted to the extent **of** Conclusions **of** Law "B" and "D" and the Audit Division is directed to modify the notices **of** deficiency accordingly; **as** modified, the notices **of** deficiency are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 30 1987


PRESIDENT


COMMISSIONER


COMMISSIONER