

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GERTRUDE KLINGER

:

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter **46**,
Title T of the Administrative Code of the City
of New York for the Years 1979 and 1980.

DECISION

In the Matter of the Petition

of

JOSEPH LOGAN

.

for Redetermination **of** a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law for the Years
1979 and 1980.

Petitioner, Gertrude Klinger, 196 Valencia Circle, Del Rey Beach, Florida,
filed a petition for redetermination of a deficiency or for refund of personal
income tax under Article 22 of the Tax Law and New York City personal income
tax under Chapter **46**, Title T of the Administrative Code **of** the City of New
York for the years 1979 and 1980 (File No. 52939).

Petitioner, Joseph Logan, 81 Oswego Avenue, Long Beach, New York 11561,
filed a petition for redetermination of a deficiency or for refund of New York
State personal income tax under Article 22 **of** the Tax Law for the years 1979
and 1980 (File No. 52940).

A consolidated hearing was held before Allen Caplowaith, Hearing Officer,
at the offices of the State Tax Commission, Two World Trade Center, New York

New York, on February 24, 1986 at 1:15 P.M. Petitioners appeared by Hy Allen, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether, as the result of a field audit, adjustments attributing additional income to petitioner Gertrude Klinger for each of the years 1979 and 1980 were proper.

11. Whether, as the result of a field audit, adjustments attributing additional income to petitioner Joseph Logan for each of the years 1979 and 1980 were proper.

FINDINGS OF FACT

1. Petitioner, Gertrude Klinger, timely filed a New York State Income Tax Resident Return for each of the years 1979 and 1980 whereon she reported salary income derived from Al Saffer & Co., Inc. ("Saffer") of \$15,480.00 in 1979 and \$17,055.00 in 1980.

2. Petitioner, Joseph Logan, filed a New York State Income Tax Resident Return for each of the years 1979 and 1980 whereon he reported salary income derived from Saffer of \$23,500.00 in 1979 and \$25,530.00 in 1980.

3. On March 30, 1984, the Audit Division issued a Statement of Personal Income Tax Audit Changes to Gertrude Klinger wherein, based on a field audit, the following adjustments were made:

	<u>1979</u>	<u>1980</u>
"Constructive dividends from Al Saffer & Co., Inc.	\$24,599.00	\$22,193.00
Medical adjustment due to change in AGI	\$ 788.00	\$ 854.00
Net Adjustment	<u>\$25,387.00</u>	<u>\$23,047.00"</u>

4. Based on the aforesaid statement, the Audit Division issued a Notice of Deficiency against Mrs. Klinger under the same date asserting additional New York State and City personal income tax for 1979 and 1980 of \$7,869.56, penalty of \$393.48, plus interest of \$3,161.59, for a total due of \$11,424.63.

5. On January 24, 1983, Mrs. Klinger executed a consent form extending the period of limitation upon assessment of 1979 personal income tax to any time on or before April 15, 1984.

6. On March 30, 1984, the Audit Division issued a Statement of Personal Income Tax Audit Changes to Joseph Logan wherein, based on a field audit, the following adjustment was made:

	<u>1979</u>	<u>1980</u>
"Constructive Dividends from Al Saffer & Co., Inc.	<u>\$21,858.00</u>	<u>\$52,680.00</u>
Net Adjustment	<u>\$21,858.00</u>	<u>\$52,680.00"</u>

7. Based on the aforesaid statement, the Audit Division issued a Notice of Deficiency against Mr. Logan under the same date asserting additional New York State personal income tax for 1979 and 1980 of \$10,399.46, penalty of \$519.97, plus interest of \$3,968.65, for a total due of \$14,888.08.

8. On January 24, 1983, Mr. Logan executed a consent form extending the period of limitation upon assessment of 1979 personal income tax to any time on or before April 15, 1984.

9. The penalty asserted against each petitioner herein was for negligence pursuant to section 685(b) of the Tax Law.

10. The adjustments to both Mrs. Klinger's and Mr. Logan's returns for "Constructive dividends from Al Saffer & Co., Inc.," were determined based on cash availability audits incorporating cash cost of living allowances, which were estimated by the Audit Division as follows:

Gertrude Klinger

	<u>1979</u>	<u>1980</u>
Estimated total cost of living	\$19,396.00	\$23,357.00
Less: checks written	(<u>\$12,413.00</u>)	(<u>\$17,106.00</u>)
Estimated cash cost of living	<u>\$ 6,983.00</u>	<u>\$ 6,251.00</u>

Joseph Logan

	<u>1979</u>	<u>1980</u>
Estimated total cost of living	\$15,000.00	\$18,500.00
Less: checks written	(<u>\$ 6,415.00</u>)	(<u>\$ 7,713.00</u>)
Estimated cash cost of living	<u>\$ 8,585.00</u>	<u>\$10,787.00</u>

11. Petitioners submitted documentation at a pre-hearing conference which resulted in the original adjustments being reduced to the following amounts:

	<u>1979</u>	<u>1980</u>
Total adjustment - Gertrude Klinger	\$1,449.00	\$6,907.00
Total adjustment - Joseph Logan	\$2,525.00	\$7,618.00

12. The aforesaid reduced adjustments resulted, in part, from reductions to petitioners' cash cost of living as follows:

a) Gertrude Klinger - 1979 estimated cash cost of living reduced from \$6,983.00 to \$5,511.00. 1980 estimated cash cost of living reduced from \$6,251.00 to \$4,779.00. Said reductions were the result of the elimination of automobile expenses, estimated each year at \$1,442.00.

b) Joseph Logan - 1979 estimated cash cost of living reduced from \$8,585.00 to \$5,992.00. 1980 estimated cash cost of living reduced from \$10,787.00 to \$5,935.00.

13. The revised tax liabilities determined to be due as the result of the adjustments made at the pre-hearing conference were as follows:

a - Gertrude Klinger	1979	\$ 146.07
	1980	934.21
Total Revised Tax		<u>\$1,080.28</u>

b - Joseph Logan	1979	\$ 328.30
	1980	<u>1,110.67</u>
Total Revised Tax		<u>\$1,438.97</u>

14. During the hearing, petitioners contended that the estimated cash cost of living allowances, as reduced at the pre-hearing conference, were still overstated. Thus, they did not agree to the revised deficiencies proposed at the conference.

15. During the hearing, the Audit Division conceded the proposed adjustments made as the result of the pre-hearing conference. Additionally, with respect to Mrs. Klinger, the Audit Division conceded a \$500.00 reduction for each year at issue to the amount estimated as entertainment expenses in the cost of living schedule.

16. During the hearing, no documentation was submitted which would warrant further reductions (other than those stated) to the tax liabilities of either petitioner.

CONCLUSIONS OF LAW

A. That petitioner, Gertrude Klinger, failed to sustain her burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that she is properly entitled to reductions in the adjustment at issue, other than those conceded by the Audit Division (see Finding of Fact "15", supra).

B. That petitioner, Joseph Logan, failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that he is properly entitled to reductions in the adjustment at issue, other than those conceded by the Audit Division (see Finding of Fact "15", supra).

C. That the petition of Gertrude Klinger is granted to the extent provided in Conclusion of Law "A", supra, and except as so granted, said petition is, in all other respects, denied.

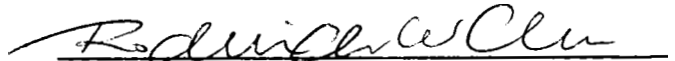
D. That the petition of Joseph Logan is granted to the extent provided in Conclusion of Law "B", supra, and except as so granted, said petition is, in all other respects, denied.

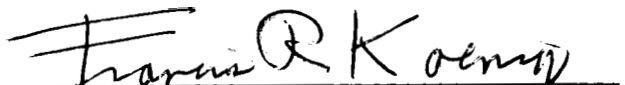
E. That the Audit Division is hereby directed to modify the notices of deficiency issued against petitioners on March 30, 1984 to be consistent with the decision rendered herein.

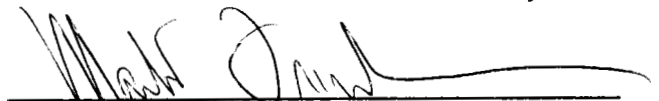
DATED: Albany, New York

STATE TAX COMMISSION

JUN 30 1986


PRESIDENT


COMMISSIONER


COMMISSIONER