

of

LEONIS FRAZIER

for Redetermination of a Deficiency or for
Refund of New York State and New York City
Personal Income Taxes under Article 22 of the
Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York
for the Years 1981 and 1982.

DECISION

In the Matter of the Petition

of

LLOYD FRAZIER ANDRUBY FRAZIER

forRedetermination of a Deficiency or for
Refund of New York State and New York City
Personal Income Taxes under Article 22 of the
Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York
for the Years 1981 and 1982.

Petitioner, Leonis Frazier, 112-36 180th Street, St. Albans, New York
11433, filed a petition for redetermination of a deficiency or for refund of
New York State and New York City personal income taxes under Article 22 of the
Tax Law and Chapter 46, Title T of the Administrative Code of the City of New
York for the years 1981 and 1982 (File No. 59544).

Petitioners, Lloyd Frazier and Ruby Frazier, 110-15 179th Street, St. Albans,
New York 11433, filed a petition for redetermination of a deficiency or for
refund of New York State and New York City personal income taxes under Article
22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the
City of New York for the years 1981 and 1982 (File No. 59545).

A consolidated hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 2, 1986 at 10:45 A.M. Petitioners appeared by Alex Greenspan, **Esq.** The Audit Division appeared by John P. Dugan, **Esq.** (Angelo A. Scopellito, **Esq.**, of counsel).

ISSUE

Whether, based upon a cash availability analysis, the Audit Division properly found additional funds subject to personal income tax.

FINDINGS OF FACT

1. For the years 1981 and 1982, petitioner Leonis Frazier timely' filed New York State and City of New York resident income tax returns with his wife, Lillian, under the filing status "married filing separately on one return".

2. For the years 1981 and 1982, petitioners, Lloyd Frazier and Ruby Frazier, timely filed New York State and City of New York resident income tax returns under the filing status "married filing joint return".

3. On August 17, 1984, the Audit Division issued to petitioner Leonis Frazier a Statement of Personal Income Tax Audit Changes which explained to him that, pursuant to an audit, additional income had been determined in the amount of \$15,474.00 for 1981 and \$7,478.00 for 1982. As a result of this determination of additional income, total New York State and City of New York income tax was asserted to be due in the amounts of \$2,827.00 for 1981 and \$1,413.00 for 1982, plus penalties pursuant to sections 685(b) and 685(c) of the Tax Law and interest, for total amounts due of \$3,865.00 for 1981 and \$1,780.00 for 1982. Accordingly, on January 9, 1985, the Audit Division issued to Leonis Frazier a Notice of Deficiency asserting additional tax due for the years 1981 and 1982 of \$4,240.00, plus penalties and interest, for a total amount due of \$5,856.03.

4. On August 17, 1984, the Audit Division issued to petitioners, Lloyd Frazier and Ruby Frazier, a Statement of Personal Income Tax Audit Changes which explained that, pursuant to an audit, additional income had been determined in the amount of \$19,678.00 for 1981 and \$8,061.00 for 1982. As a result of this determination of additional income, total New York State and City of New York income tax was asserted to be due in the amounts of \$2,864.00 for 1981 and \$856.00 for 1982, plus penalty pursuant to section 685(b) of the Tax Law and interest, for total amounts due of \$3,796.00 for 1981 and \$1,013.00 for 1982. Accordingly, on January 9, 1985, the Audit Division issued to Lloyd Frazier and Ruby Frazier a Notice of Deficiency asserting additional tax due for the years 1981 and 1982 of \$3,720.00, plus penalty and interest, for a total amount due of \$4,996.32.

5. For the years at issue, petitioner Leonis Frazier received income from Frazier Brothers, Inc., a service station business operated along with his brother, Lloyd Frazier, from Frazier Wine and Liquor, a sole proprietorship, and from two parcels of rental property. A detailed field audit was performed in which petitioner Leonis Frazier's books and records, including cash receipts, bank statements and cancelled checks, were analyzed to substantiate his personal and business expenditures and to determine the sources of funds being deposited into business checking accounts, as well as into personal checking and savings accounts. From an examination of Leonis Frazier's books and records, the auditor determined that said **books** and records were incomplete and were inadequate to properly account for all of the expenses and receipts. The auditor resorted, therefore, to an indirect audit method of income reconstruction, a cash availability analysis, whereby the sources and applications of funds were analyzed. The results of this analysis were as follows:

	<u>1981</u>	<u>1982</u>
Sources of Funds	\$17,052.00	\$19,153.00
Applications of Funds	<u>32,526.00</u>	<u>26,631.00</u>
Excess of Applications Over Sources	\$15,474.00	\$ 7,478.00

6. At a pre-hearing conference, petitioner's representative submitted information which resulted in additional income for 1981 being reduced from \$15,474.00 to \$8,892.00 and for 1982 being reduced from \$7,478.00 to \$7,178.00. Total New York State and City of New York personal income tax due was, therefore, reduced from \$4,240.00 to \$2,981.00, plus penalties and interest.

7. For the years at issue, petitioners, Lloyd Frazier and Ruby Frazier, received income from Frazier Brothers, Inc., the 'service station business which Lloyd Frazier operated along with his brother, petitioner Leonis Frazier, and from two parcels of rental property. A detailed field audit was performed in which petitioners' books and records, including cash receipts, bank statements and cancelled checks, were analyzed to substantiate their personal and business expenditures and to determine the sources of funds being deposited into the real estate checking account, as well as into personal checking and savings accounts. From an examination of petitioners' books and records, the auditor determined that said books and records were incomplete and were inadequate to properly account for all of the expenses and receipts. The auditor resorted, therefore, to an indirect audit method of income reconstruction, a cash availability analysis, whereby the sources and applications of funds were analyzed. The results of this analysis were as follows:

	<u>1981</u>	<u>1982</u>
Sources of Funds	\$13,553.00	\$15,822.00
Applications of Funds	<u>33,231.00</u>	<u>23,883.00</u>
Excess of Applications Over Sources	\$19,678.00	\$ 8,061.00

8. At a pre-hearing conference, it was determined that, for the year 1981, petitioners had additional sources of funds in the amount of \$2,212.00 from a Federal income tax refund which resulted in additional income for 1981 being reduced from \$19,678.00 to \$17,466.00. Total New York State and City of New York personal income tax asserted by the Audit Division to be due for 1981 was, therefore, reduced from \$2,864.00 to \$2,460.00 and total tax due for both of the years at issue was reduced from \$3,720.00 to \$3,316.00, plus penalty and interest.

9. At the hearing held herein, petitioners' representative agreed, on behalf of the petitioners, to the Audit Division's findings as originally determined upon the audits and as subsequently revised at pre-hearing conference, with three specific exceptions. With respect to petitioner Leonis Frazier, petitioner's representative presented a sworn affidavit from Randy Frazier, son of Leonis Frazier, which stated that, in 1981, he lived with his parents, that he earned approximately \$15,000.00 for the year and that he gave his parents about \$3,000.00 during the year. With respect to petitioners, Lloyd Frazier and Ruby Frazier, petitioners' representative presented a sworn affidavit from Robin Frazier, daughter of Lloyd Frazier and Ruby Frazier, which stated that, in 1981 and 1982, she lived with her parents, that she earned approximately \$5,000.00 for each of these years and that she gave her parents about \$2,000.00 in each of these years. Petitioners' representative contends that petitioners' sources of funds should be increased by the amounts given to them by their respective children, thereby decreasing the additional income subject to tax for Leonis Frazier and for Lloyd Frazier and Ruby Frazier. The affiants, Randy Frazier and Robin Frazier, were not present to testify at the hearing held herein nor were any of the petitioners present to offer testimony concerning the alleged gifts made to the petitioners. No documentary evidence was presented

relative to the amounts of income earned by Randy Frazier or Robin Frazier for the years at issue. Petitioners' representative also presented, on behalf of petitioners, Lloyd Frazier and Ruby Frazier, a withdrawal slip from The Dime Savings Bank of New York indicating a withdrawal from Lloyd Frazier's savings account on October 5, 1982 of \$1,700.00, which he contends was used for ordinary living expenses, thereby reducing cash living expenses added to petitioners' applications of funds. The auditor stated that with respect to withdrawals in excess of \$1,000.00, such withdrawals are not allowed for living expenses unless that amount is transferred directly to a checking account or can be shown to have been used for everyday living expenses. No evidence was offered herein to substantiate the purpose for which this amount was withdrawn from Lloyd Frazier's savings account.

CONCLUSIONS OF LAW

A. That, pursuant to the provisions of section 689(e) of the Tax Law, petitioners bear the burden of proving the inaccuracy of the personal income tax deficiencies asserted herein.

B. That without testimony or documentary evidence from petitioners or from petitioners' children regarding the gifts alleged to have been made to petitioners by their children and the amounts earned by these children during the years at issue, the affidavits of Randy Frazier and Robin Frazier, standing alone, do not satisfy petitioners' burden of proving that the Audit Division erred in its failure to take into account the alleged gifts in its computation of petitioners' sources of funds for the years at issue for purposes of the cash availability analysis performed herein.

C. That without testimony or documentary evidence from petitioners, Lloyd Frazier and Ruby Frazier, regarding the purpose for which the amount of \$1,700.00

was withdrawn from petitioner Lloyd Frazier's savings account on October 5, 1982, said petitioners have not met their burden of proving that the Audit Division erred in its failure to reduce petitioners' cash living expenses by the amount of the withdrawal.

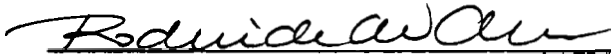
D. That the petition of Leonis Frazier is granted only to the extent indicated in Finding of Fact "6"; that the Audit Division is directed to modify the Notice of Deficiency issued January 9, 1985 accordingly; and that, except as so granted, the petition is in all other respects denied.

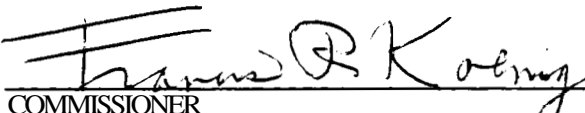
E. That the petition of Lloyd Frazier and Ruby Frazier is granted only to the extent indicated in Finding of Fact "8"; that the Audit Division is directed to modify the Notice of Deficiency issued January 9, 1985 accordingly; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 11 1987


PRESIDENT


COMMISSIONER


COMMISSIONER