

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Edward & Patricia Pangman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income  
& UBT under Article(s) 22 & 23 of the Tax Law :  
for the Years 1979-1981.

\_\_\_\_\_  
State of New York :

ss.:

County of Albany :

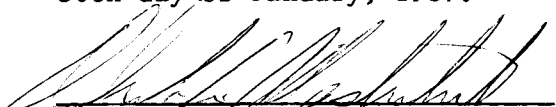
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 30th day of January, 1987, he/she served the within notice of decision by certified mail upon Edward & Patricia Pangman the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

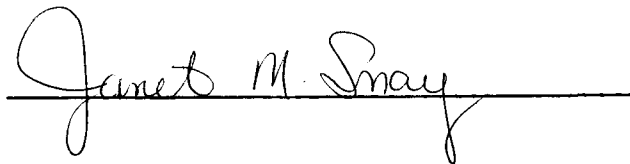
Edward & Patricia Pangman  
Route 7, Box 113A  
Howes Cave, NY 12092

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
30th day of January, 1987.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_  
Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Edward & Patricia Pangman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income  
& UBT under Article(s) 22 & 23 of the Tax Law :  
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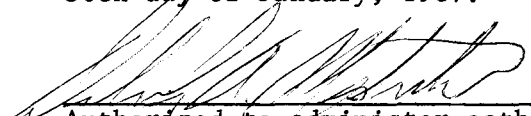
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 30th day of January, 1987, he served the within notice of decision by certified mail upon Victor R. Taylor, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

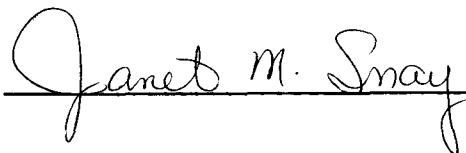
Victor R. Taylor  
RD #1  
Sloansville, NY 12160

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
30th day of January, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

January 30, 1987

Edward & Patricia Pangman  
Route 7, Box 113A  
Howes Cave, NY 12092

Dear Mr. & Mrs. Pangman:

Please take notice of the decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Victor R. Taylor  
RD #1  
Sloansville, NY 12160

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
EDWARD PANGMAN AND PATRICIA PANGMAN  
for Redetermination 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.

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DECISION

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, Hearing 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 a.m. 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 on audit.

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 determined 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 to 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 annum<sup>1</sup> for the years 1979 and 1980. No adjustment for personal living expenses is warranted for the year 1981 since, as explained in Finding 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 expenses 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.

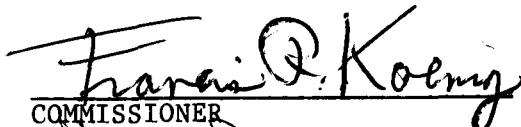
E. That the petition of Edward Pangman and Patricia Pangman is granted to the extent of Conclusions of Law "B" and "D" and the Audit Division is directed to modify the notices of deficiency accordingly; as modified, the notices of deficiency are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 30 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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<sup>1</sup> The Audit Division incorrectly transposed the \$1,308.00 attributed to home repairs and improvements to \$1,038.00 when determining the total amount of petitioners' living expenses.