

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of  
Richard G. Lefkon :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income  
Tax under Article(s) 22 of the Tax Law :  
for the Year 1971.

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

ss.:

County of Albany :

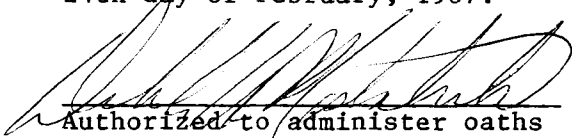
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 24th day of February, 1987, he/she served the within notice of decision by certified mail upon Richard G. Lefkon the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

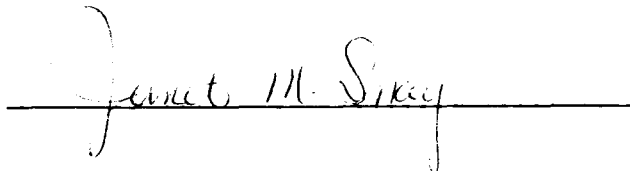
Richard G. Lefkon  
609 W. 114th Street  
New York, NY 10025

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  
24th day of February, 1987.

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

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

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

February 24, 1987

Richard G. Lefkon  
609 W. 114th Street  
New York, NY 10025

Dear Mr. Lefkon:

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 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

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

RICHARD G. LEFKON

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Year 1971.

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Petitioner, Richard G. Lefkon, 609 West 114th Street, New York, New York 10025, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 29924).

A hearing was held before Joseph W. Pinto, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 10, 1986 at 1:15 P.M., with all briefs to be submitted by October 1, 1986. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

#### ISSUES

I. Whether the Audit Division properly determined additional personal income tax due from petitioner for the year 1971.

II. Whether the Audit Division properly assessed penalties pursuant to Tax Law § 685(a)(1) and (a)(2).

#### FINDINGS OF FACT

1. On April 23, 1979, the Audit Division issued a Statement of Audit Changes to petitioner, Richard G. Lefkon, for the year 1971. Said statement contained the following explanation:

"Since a search of our files discloses that no 1971 New York State Income Tax Return was filed, we have computed your New York Tax Liability based on your Federal Return.

Also, Section 685(a)(1) and (a)(2) penalties are being imposed for late filing and failure to pay tax due."

2. Based on the aforementioned statement, the Audit Division issued a Notice of Deficiency ("notice") to petitioner on January 30, 1980. Said notice asserted additional tax due of \$1,022.50, and penalties and interest of \$963.69, for a total amount due of \$1,986.19.

3. Petitioner did not know whether or not he had filed a New York State income tax return for the year 1971, and, in fact, no return was ever received by the Department or produced at hearing.

4. Petitioner's Federal taxable income was established by a final Federal determination of the Internal Revenue Service.

5. Based upon this determination and a copy of petitioner's complete Federal return and wage statement, the Audit Division determined petitioner's New York taxable income to be \$16,750.00.

6. Petitioner contends that he should be given the benefit of a revenue agent's report which granted him \$6,023.84 in itemized deductions but which was reversed by the Internal Revenue Service in their appeals division. A complete copy of said report was never submitted herein.

7. Petitioner submitted the following documentation of employee business expenses which he contended the Audit Division should have taken into account when determining his New York State taxable income:

<u>DEDUCTION</u>	<u>AMOUNT</u>
Interjob transportation	\$ 214.60
Tuition and dues	484.01
Subscriptions	130.83
Rent and power	296.26
Phone	199.86

Gifts	122.47
Books	903.89
Xeroxing	311.80
Television and library equipment	2,125.17
Tuition and dues	470.00

Petitioner also submitted expenses incurred in the publishing of "Eduguides - Physics in the New York Area" in the sum of \$912.47, which had already been taken into account on petitioner's Schedule C, Federal form 1040 and in the Audit Division's calculations.

8. The Audit Division disallowed the employee business expenses consistent with the final Federal determination, and determined tax due of \$1,035.00 on New York taxable income of \$16,750.00. After subtracting the statutory credit of \$12.50 applicable in 1971 and the New York State withholding of \$564.05, the corrected tax due from petitioner was determined to be \$458.45, plus applicable penalties and interest to date.

#### CONCLUSIONS OF LAW

A. That Tax Law § 651(a) provides as follows:

"(a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, an income tax return under this article shall be made and filed by or for:

(1)(A) every resident individual required to file a federal income tax return for the taxable year...."

B. That the Internal Revenue Service reached a final determination as to petitioner's tax liability for the year 1971 as the term "final determination" is defined in Tax Law § 659 and the regulations promulgated thereunder at 20 NYCRR § 153.5.

C. That once the Internal Revenue Service had made a final determination adjusting the petitioner's Federal tax liability, said petitioner had an obligation to notify the Tax Commission within ninety days of said final

determination and concede the accuracy of such determination or state wherein it was erroneous (Tax Law §659; 20 NYCRR § 153.1).

D. That the petitioner filed neither a 1971 resident income tax return nor the notice required by the regulations at 20 NYCRR § 153.2, notifying the Commission of changes in his Federal taxable income and resulting tax liability.

E. That the Tax Commission is not required to accept as correct any change in a taxpayer's Federal taxable income, but may conduct its own independent audit or investigation in regard thereto (20 NYCRR § 153.4).

F. That petitioner's documentary proof of employee business expenses was not sufficient to warrant further modification of the Federal adjusted taxable income because said documentation was vague, failed to properly identify the itemized expenses as they related to the petitioner's business occupation and not sufficient to show that they were ordinary and necessary business expenses.

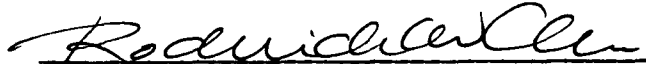
G. That, since petitioner did not file his 1971 personal income tax return, he is liable for penalties for failure to timely file his return and timely remit his payment therewith. Since no reasonable cause was offered for said failures, the penalties asserted pursuant to Tax Law §§ 685(a)(1) and 685(a)(2) are sustained.

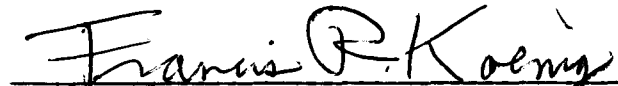
H. That the petition of Richard G. Lefkon is denied and the Notice of Deficiency dated January 30, 1980 is sustained, together with applicable penalties and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 24 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER