

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Charles & Dorothy Merchant :

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

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AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of November, 1980, he served the within notice of Decision by certified mail upon Charles & Dorothy Merchant, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles & Dorothy Merchant

Cranberry Lake, NY 12927  
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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  
28th day of November, 1980.

Deborah A Bank

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Charles & Dorothy Merchant :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
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AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of November, 1980, he served the within notice of Decision by certified mail upon Alvin O. Bieling the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

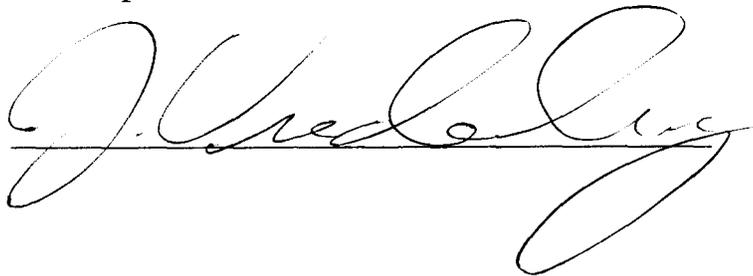
Mr. Alvin O. Bieling  
351 S. Warren St.  
Syracuse, NY 13202

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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  
28th day of November, 1980.

Deborah A Bank



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

November 28, 1980

Charles & Dorothy Merchant  
Cranberry Lake, NY 12927

Dear Mr. & Mrs. Merchant:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Alvin O. Bieling  
351 S. Warren St.  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
CHARLES MERCHANT and DOROTHY MERCHANT : 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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Petitioners, Charles Merchant and Dorothy Merchant, Cranberry Lake, New York 12927, 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. 15370).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 10, 1980 at 1:15 P.M. Petitioners appeared by Alvin O'Bieling, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

- I. Whether the petitioners had a source of nontaxable income from a repayment of "loans from stockholders" in the amount of \$10,008.00.
- II. Whether payments to a bank represent payments made out of corporate funds for equipment used by the corporation in the course of normal operation.
- III. Whether payments made to individuals from corporate checking accounts constituted an application of funds used by the Bureau to reconstruct petitioner's income.
- IV. Whether the amount used for personal living expenses in the source and application of funds method of audit was arbitrary.

FINDINGS OF FACT

1. Petitioners, Charles Merchant and Dorothy Merchant, timely filed a joint New York State Income Tax Resident Return (IT-200) for 1971 on which they reported wages of \$3,080.00 earned by Dorothy Merchant as vice president of Cralain, Inc.

2. Petitioners operated the Merchant's Cranberry Lake Inn, a restaurant and motel, in Cranberry Lake, New York, under the corporation name of Cralain, Inc. In the absence of complete books and records, the Income Tax Bureau utilized the source and application of funds method of reconstructing income, along with an analysis of petitioners' living expenses. The Bureau found that during 1971 the petitioners and Cralain, Inc. had nine checking accounts in four different banks. All checking accounts were used to pay personal, as well as corporate expenses. The business reported on the cash basis and the records consisted of the following: a file drawer for each year with separate folders for beer, liquor, food, etc. Petitioners also had a listing of amounts which petitioners contended to be business expenses, however, there was no way to determine, based on the records, if the items were paid for by cash or check. The petitioners had many cancelled checks, a few bank statements and some checkbook stubs. The Bureau determined there was an underreporting of income of \$28,078.00 for 1971. Based on this field audit, the Income Tax Bureau issued a Notice of Deficiency on April 11, 1975 for 1971 asserting personal income tax of \$2,414.12, plus penalty of \$120.71 [pursuant to section 685(b) of the Tax Law] and interest of \$433.17, for a total of \$2,968.00.

3. At the hearing, the petitioners and the Audit Division stipulated to a reduction in the application portion by \$8,462.00. The remainder is still in dispute.

4. Petitioners contended that the Income Tax Bureau failed to consider a source of nontaxable income in the form of a repayment of loans by Cralain, Inc. to petitioners in the amount of \$10,008.00. The petitioners stated this money was not directly paid to them, but was paid to various banks in payment of personal loans. However, the petitioners could not show, based on books and records, the source of income to Cralain, Inc. to pay these personal loans for petitioners, nor could they show a separation of personal and corporate funds.

5. Petitioners presented twelve checks drawn on four corporate checking accounts and a loan agreement, for a 1968 Islan (serial number 6381845466) on which Joseph Karl, Jr. was the cosigner of the note. Petitioners contended this was for equipment used by the corporation and paid for out of corporate funds and therefore, should not be used in the application of funds. However, the loan agreement stated the property was for personal use. The petitioners gave no explanation as to what type of equipment this was, its use in the business or how it was reported on the corporate returns.

6. Petitioners presented two statements written on the Cralain corporation letterhead which stated Joseph Karl and Howard Elam received \$2,000.00 and \$1,150.00, respectively, in 1971 for monies borrowed by Cralain, Inc. However, the petitioners failed to show that these funds were previously loaned to the corporation, or that such funds were paid back from only corporation funds thereby excluding these amounts from the application of funds.

7. The Income Tax Bureau estimated personal living expenses (such as food, clothing, medical, auto, and etc.) of \$3,000.00 because the petitioners did not avail themselves to be questioned as to their lifestyle. The estimate was based on an analysis of what information the Bureau had. The petitioners

contended the living expenses were arbitrary because meals and lodging were furnished by the employer, Cralain. Inc. However, the petitioners presented no evidence as to their cost of personal living expenses.

CONCLUSIONS OF LAW

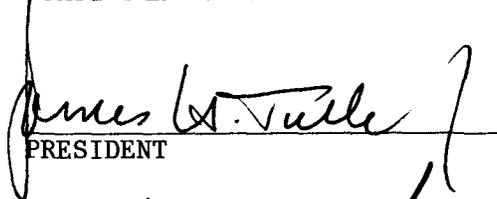
A. That the petitioners failure to have completed books and records, the comingling of funds in personal and business checking accounts and the indiscriminate use of these accounts for both personal and business, has contributed to the failure of the petitioners to sustain the burden of proof imposed by section 689(e) of the Tax Law which requires them to establish that the Notice of Deficiency issued April 11, 1975 was substantially erroneous, arbitrary or capricious.

B. That the petition of Charles Merchant and Dorothy Merchant is granted to the extent of reducing the discrepancy as stipulated by the Audit Division in Findings of Fact "3". The Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued April 11, 1975 to be consistent with the decision rendered herein and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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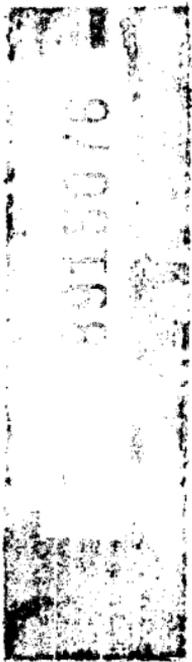
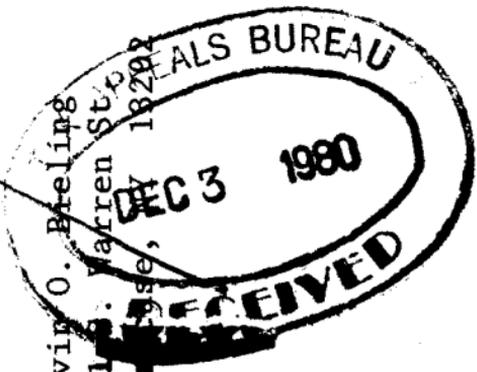
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STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



- Moved, left no address
- No such number
- Moved, but forwarding
- Addressee unknown

Alvin O. Breling  
351 Warren St  
SYRACUSE, NY 13202



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

November 28, 1980

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Very truly yours,

STATE TAX COMMISSION

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STATE OF NEW YORK

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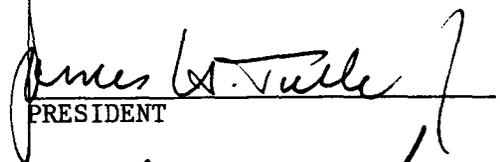
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DATED: Albany, New York

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