

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF ORVILLE E. PRARIE,

O. INGEBORG PRARIE, Executrix  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~22~~ 22 of the  
Tax Law for the Year(s) ~~1970 and 1971~~  
1970 and 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Catherine Steele, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26th day of August, 1976, she served the within  
Notice of Decision by (certified) mail upon Estate of Orville E. Prarie,  
O. Ingeborg Prarie, Executrix  
~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Estate of Orville E. Prarie  
O. Ingeborg Prarie, Executrix  
406 East Kimberly Drive  
Syracuse, New York 13219  
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)~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

26th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ESTATE OF ORVILLE E. PRARIE,  
O. INGEBORG PRARIE, Executrix  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article (X) 22 of the  
Tax Law for the Year(s) ~~XXXXXX~~  
1970 and 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Catherine Steele, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26th day of August, 1976, she served the within  
Notice of Decision by (certified) mail upon William P. Christy, Jr, Esq

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: William P. Christy, Jr., Esq.  
Romax Building  
731 James Street  
Syracuse, New York 13203  
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

26th day of August, 1976







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 26, 1976

TELEPHONE: (518) **457-3850**

✓  
**Estate of Orville E. Prarie  
O. Ingeborg Prarie, Executrix  
406 East Kimberly Drive  
Syracuse, New York 13219**

**Dear Mrs. Prarie:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section ~~706~~ **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Paul B. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ESTATE OF ORVILLE E. PRARIE,	:	DECISION
O. INGEBORG PRARIE, Executrix	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970 and 1971.	:	

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Petitioner, Estate of Orville E. Prarie, O. Ingeborg Prarie, Executrix, petitioned for redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the years 1970 and 1971.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on July 23, 1975 before L. Robert Leisner, Hearing Officer. The taxpayer was represented by William P. Christy, Jr. and the Income Tax Bureau was represented by Saul Heckelman, Esq. (Solomon Sies, Esq., of counsel).

#### ISSUE

Where the decedent's safe deposit box contained cash, was it unreported taxable income for 1970 and 1971?

FINDINGS OF FACT

1. Petitioner, Orville E. Prarie, and his wife, O. Ingeborg Prarie, timely filed New York State income tax returns for the years 1970 and 1971.

2. A Notice of Deficiency in personal income taxes for the years 1970 and 1971 was issued on December 28, 1973 against the petitioner under File No. 1-78505608.

3. The petitioner petitioned for redetermination of the deficiencies.

4. Petitioner, Orville E. Prarie (deceased), had been a practicing public accountant from the early 1940's until his death on February 17, 1973.

5. At the time of his death, petitioner had a safe deposit box at the Marine Midland Bank - Fairmount Office, Syracuse, New York, which he had rented since 1964.

6. On May 15, 1973, pursuant to notice, the Miscellaneous Tax Bureau, Estate and Gift Tax Section, inventoried this box which contained \$25,952.00 in cash (bills) and a few dollars in coins. Some \$4,811.00 of this cash was wrapped in various wrappers which contained yearly dates of 1945, 1947, 1950, 1955, 1959, 1960 and 1964. The Miscellaneous Tax Bureau turned this information over to the Income Tax Bureau. From this information, the Income Tax Bureau

determined that all of the cash which had not been wrapped and dated (\$21,147.00) was in fact accumulated in 1970 and 1971.

7. The Income Tax Bureau did a source and application of funds computation for two years, 1970 and 1971, and as a result of this determined that petitioner's total cash resources, i.e. reported income and nontaxable sources exceeded his cash expenditures plus other cash applications by some \$2,696.00 for the two years. This \$2,696.00 was eliminated from the total cash accumulation of \$21,147.00 and the balance of \$18,451.00 it determined to be cash which petitioner accumulated out of unreported income in equal amounts for 1970 and 1971.

8. The determination held that all the unwrapped and undated cash was accumulated in 1970 and 1971. All the cash that was not wrapped or dated as to year accumulated was presumed to have been accumulated in 1970 and 1971 because they were the open years and 1969 was ready to expire. The Bureau had no real evidence to base this action on because there was no evidence of any specific understatement of income for 1970 or 1971. The books and records were not examined in that respect. There was no evidence as to the entries into the safe deposit box except that the last entry was in 1971.

9. The determination of the Bureau that petitioner's total cash resources in 1970 and 1971 exceeded the application of these resources by only \$2,696.00 is based on the presumption that the dividends for said years were all non-cash dividends. This presumption is incorrect. The evidence is that many of the dividends were in cash and the dividend annual books were available. The evidence shows that petitioner had dividend income of \$2,639.00 and \$2,368.00 (before \$200.00 annual exclusion) for 1970 and 1971 respectively.

10. The evidence is that the Bureau eliminated all of these dividends as a source from which petitioner could have accumulated some of this cash in the box, in spite of the fact that there was no evidence upon which to base this action.

11. There was some attempt to show that some of this dividend income could be treated as a disbursement (application) for petitioner's self-employment plan which has not been taken into account and to explain away the balance as perhaps consisting of non-cash stock dividends, but there was no evidence upon which to base any of this. The evidence of the source and application of funds for the years 1965 through 1969 shows that cash in the amount of \$26,000.00 could have been accumulated from these sources in those years. A study was prepared by a certified public accountant based on the

same matters available to the Bureau, consisting of returns, the checking account (Marine Midland Bank) and the same estimated living expense figure that the Bureau had used in its computations. No savings account activity was shown in this exhibit, because there was none, other than the accumulation of interest, and the study correctly shows this accumulation as an application of funds. That exhibit shows that the same condition existed in each of these prior years that existed in 1970 and 1971, i.e. that there was an excess of resources over expenditures (applications) from which cash could have been accumulated. Although the taxpayer's representative was told that the prior years were a source of this cash, there was only a limited effort to investigate this "lead". For 1967, the Bureau found a total cash source of \$13,800.00, a decrease in the checking account of \$500.00, expenditures of \$7,100.00 and a deposit (or deposits) of \$5,605.00. By comparison, the evidence for 1967 shows total sources of \$17,570.00, an increase in the checking account of \$183.00 and expenditures of \$7,625.00. The deposit of \$5,605.00 in 1967 was merely a transfer from one account to the other which was erroneously treated as an application and the Bureau went no further with computations. For 1968, the examination showed a total source of \$14,800.00 as compared with \$17,776.00 from the evidence. The Bureau found \$9,000.00 of



expenditures compared to \$8,064.00 from the evidence. From this the Bureau concluded there was no excess source and went no further for 1968, and did not investigate the other prior years during which petitioner had the safe deposit box. At the hearing no evidence was produced by the Bureau to refute the source and application of funds set forth by the taxpayer's evidence.

12. The taxpayer's records, returns and affairs for the years 1970 and 1971 were found to be in order.

13. The money in the box was savings. This money could not have been earned alone in 1970 and 1971 by the decedent. There is no evidence that the decedent under-reported his income in 1970 or 1971.

14. The taxpayer and his wife had done accounting work since the 1940's. He was educated as an accountant, and always worked as an accountant. The cash in the decedent's safe deposit box is consistent with reported income on all his returns previously filed and with a lifetime's savings of the decedent and his wife.

#### CONCLUSIONS OF LAW

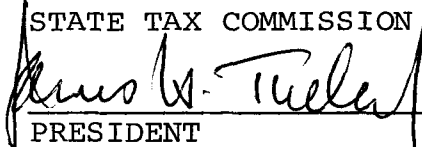
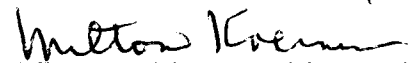
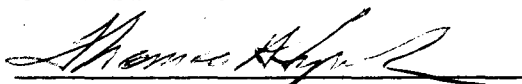
A. That the evidence of the prior years shows that if a reasonable investigation had been made into the prior years as a source of this cash, these prior years would have been found to be more than an adequate source, even if all dividends were eliminated

as being non-cash. Clearly, any part of the dividends (totaling \$5,007.00) which had been received in cash should not have been treated as an application of funds. If any of these dividends were received in cash, the adjustments made to petitioner's income would have to be decreased by it. The conclusion, therefore, is inescapable; that the Bureau failed completely to negate the prior years as income years for this cash accumulation. The Bureau has failed to meet the requirement enunciated by the U.S. Supreme Court, in Holland v. U.S., 348 U.S. 121 (1954), that where the taxpayer has furnished leads as to the source of the assets (cash), it is incumbent upon the government to thoroughly investigate those leads so as to negate the leads as a source of the assets.

B. That the cash in the safe deposit box was not unreported income in 1970 and 1971.

C. That the petition of the Estate of Orville E. Prarie is sustained and it is determined that there is no deficiency in income tax for 1970 and 1971.

DATED: Albany, New York  
August 26, 1976

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER