

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Herbert & Pearl Greenberg :
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 Years 1967 & 1968. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

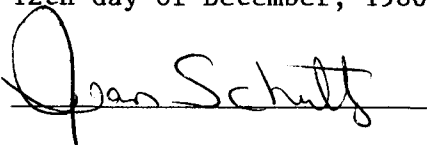
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Herbert & Pearl Greenberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

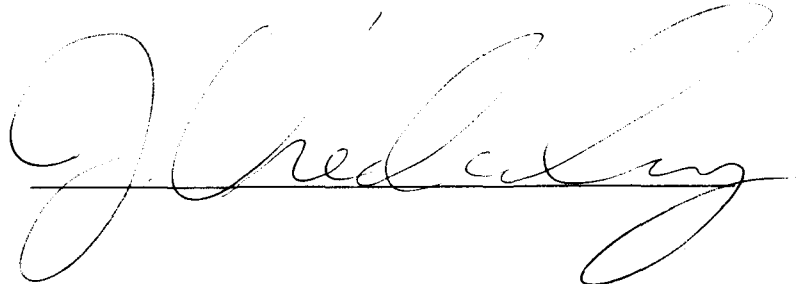
Herbert & Pearl Greenberg
33-65 14th St.
Long Island City, NY 11106

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
12th day of December, 1980.


Joan Schutt


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Herbert & Pearl Greenberg :

for Redetermination of a Deficiency or a Revision :
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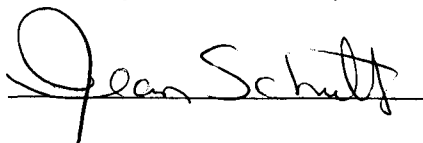
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Albert Podrid the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

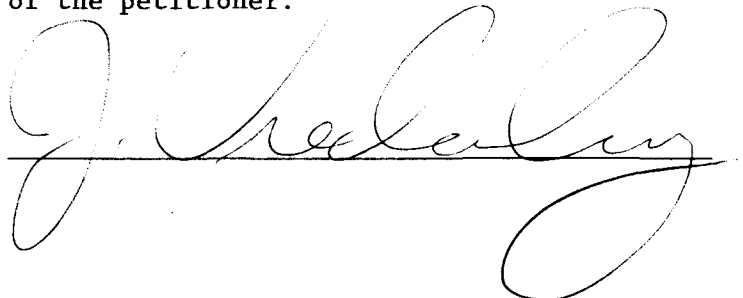
Mr. Albert Podrid
275 Madison Ave.
New York, NY 10016

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
12th day of December, 1980.


Jean Schutt



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

December 12, 1980

Herbert & Pearl Greenberg
33-65 14th St.
Long Island City, NY 11106

Dear Mr. & Mrs. Greenberg:

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
Albert Podrid
275 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions
of
HERBERT GREENBERG and PEARL GREENBERG
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1967 and 1968.

DECISION

Petitioners, Herbert Greenberg and Pearl Greenberg, 33-65 14th Street, Long Island City, New York 11106, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967 and 1968 (File No. 16876).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 27, 1978 at 1:15 P.M. Petitioners appeared by Albert Podrid, Esq. The Audit Division appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether, in relation to a personal income tax deficiency determined on a net worth basis, the record establishes:

(a) that petitioner Herbert Greenberg received the sum of approximately \$70,000 for the purpose of investing the same in the purchase of shares of stock as a nominee for the benefit of the investors of said sum; and

(b) that said petitioner thereafter sold the said shares of stock and disbursed the proceeds of sale thereof in the same capacity and for the benefit of the said investors.

FINDINGS OF FACT

1. On August 30, 1976, the Audit Division issued a Statement of Audit Changes against the petitioners, Herbert Greenberg and Pearl Greenberg, for the year 1967 in the sum of \$6,191.71 and for the year 1968 in the sum of \$3,322.74, or a total of \$9,514.43 for the years 1967 and 1968, together with interest thereon of \$4,581.27, for a total due of \$14,095.72, on the ground that "Adjustment is made to conform with the audit of your 1967 and 1968 Federal Income Tax Returns." In accordance with the aforesaid Statement of Audit Changes, the Audit Division issued a Notice of Deficiency against the said petitioners on August 30, 1976 in the said sum of \$14,095.72.

2. On August 30, 1976, the Audit Division issued a Statement of Audit Changes against petitioner Herbert Greenberg for a penalty under section 685(e) of the Tax Law for the year 1967 in the sum of \$3,095.85 and for the year 1968 in the sum of \$1,661.37, or a total of \$4,757.22 for the years 1967 and 1968, for the stated reason that said "Penalty is assessed under Section 685(e) of the Tax Law as the deficiency in personal income tax for the years 1967 and 1968...due to fraud." In accordance with the aforesaid Statement of Audit Changes, the Audit Division issued a Notice of Deficiency on August 30, 1976 against the said petitioner, Herbert Greenberg, in the said sum of \$4,757.22.

3. Petitioners timely filed a petition for redetermination or for refund of personal income taxes for the years 1967 and 1968. Pursuant to request dated March 13, 1978 a Perfected Petition, dated April 10, 1978, was filed on April 12, 1978.

4. Pursuant to letter (Form L-21), issued March 21, 1972, the Internal Revenue Service notified the said petitioners, Herbert Greenberg and Pearl Greenberg, that it had determined income tax deficiencies against them for the years 1967 and 1968 as follows:

"Tax Year Ended	Deficiency	Liability of Pearl Greenberg Limited to Deficiency of
Dec. 31, 1967		
Tax	36,348.80	Tax 36,348.80
Penalty - Sec. 6653(b)	18,174.40	
Dec. 31, 1968		
Tax	9,813.38	Tax 9,813.38
Penalty - Sec. 6653(b)	4,906.69"	

5. The aforesaid deficiencies were based on the determination of the Internal Revenue Service of unreported income in the returns of the petitioners for the taxable years ended December 31, 1967 and December 31, 1968 in the sum of \$80,391.88 for the year ended December 31, 1967 and of \$25,838.53 for the year ended December 31, 1968 and on the further determinations that (a)"all or part of the underpayment of tax for the taxable years ended December 31, 1967 and December 31, 1968 is due to fraud" and (b) that "no part of the underpayment is due to fraud on the part of Pearl Greenberg."

6. Pursuant to oral settlement between the Internal Revenue Service and the petitioner, Herbert Greenberg, the aforesaid findings of the Internal Revenue Service were adjusted as follows:

a. Unreported income of the petitioners for the year 1967 was decreased by \$16,361.14 on the net worth basis.

b. The determination that the petitioners' income tax deficiency for the year 1967 was the sum of \$36,348.80 was decreased by \$9,333.55 to the sum of \$27,015.25.

c. The determination that the penalty against the petitioner Herbert Greenberg for the year 1967 was the sum of \$18,174.40 was decreased by \$4,666.77 to the sum of \$13,507.63.

7. The notices of deficiency described in paragraphs "1" and "2" above were derived from the findings of the Internal Revenue Service described in

paragraphs "4" and "5" above, as adjusted pursuant to oral settlement described in paragraph "6" above.

8. It is the claim of petitioner Herbert Greenberg that he assented to the determination of the Internal Revenue Service as adjusted as aforesaid for the reason that he was then suffering from a disability and that he "would never at that point at least be in a position to pay the tax."

9. The petitioner Herbert Greenberg is an accountant and for a period of about six years from approximately 1963 to 1968 or 1969, he was an Internal Revenue Service agent. Since approximately 1969 or 1970 he has been a teacher in the special education division of the New York City Board of Education.

10. In this proceeding it is the claim of petitioner Herbert Greenberg that the petitioners are not liable for the deficiency asserted herein for the following reasons:

That he, said Herbert Greenberg, recommended to his cousin, Charles Alexander, an attorney, the purchase of shares of stock of a California savings and loan association and that said Charles Alexander organized a group of people who together contributed about \$70,000 for the purchase of said shares of stock.

It is further the claim of the said petitioner that said sum of about \$70,000 was turned over to him by Mr. Alexander in the form of checks, money orders and cash; that he then opened an account with the stock brokerage firm of Harris, Upham & Company and deposited the said sum of approximately \$70,000 with the said firm of Harris, Upham & Company in the assumed name of Harold Cohen (Harold Cohen being the name of one of the contributors of the said sum of \$70,000); and that then, during 1967, he purchased through said Harris, Upham & Company the shares of stock of said California savings and loan association.

It is further the claim of the said petitioner that said shares of stock were issued in the name of and were held by said Harris, Upham & Company for approximately seven months until sometime in 1968, when Harris, Upham & Company was instructed by the said petitioner to sell them; and that thereupon Harris, Upham & Company delivered to petitioner Herbert Greenberg its check for \$70,000 which, the said petitioner claims, he endorsed and turned over to Mr. Alexander.

It is claimed by the petitioner Herbert Greenberg that "if this item of purchase of securities in 1967 and the profit shown in the net worth statement for 1968 were eliminated from" his "net worth statements for those two years" they "would not show any increase in net worth" and "nothing that would warrant any kind of assessment."

11. Subsequent to the claimed delivery of the aforesaid check to the said Charles Alexander, Mr. Alexander died.

12. No written memorandum or agreement concerning the claimed transactions described in paragraph "10" above was ever entered into between the petitioner, Herbert Greenberg and said Charles Alexander.

13. It was claimed at the hearing held herein that the petitioner has a copy of the check that the petitioner received from Harris, Upham & Company representing the purchase price for the aforesaid shares of stock and which the petitioner claims was endorsed by him and turned over to the said Charles Alexander as set forth in paragraph "10" above. Said claimed copy of said claimed check was not offered or received in evidence.

14. No documentation concerning the claimed transactions between the petitioner, Herbert Greenberg, and Harris, Upham & Company referred to in paragraph "10" above were offered or received in evidence, it being the said petitioner's claim that papers reflecting said transactions were received by

him but that he turned them over to his said cousin, Charles Alexander, and that he did not ask Mr. Alexander for them.

15. The hearing held herein on November 27, 1978 as aforesaid was continued to a date to be agreed upon. Subsequently, the Audit Division withdrew its claim for the fraud penalty and Counsel for the petitioner, in a letter dated June 30, 1980, stated as follows:

"Inasmuch as the Law Bureau is dropping its claim for the fraud penalty in the instant matter, it is no longer deemed necessary to reopen the hearing. It is therefore suggested that the file in this case be referred to the hearing officer for his decision based on the record as it exists."

CONCLUSIONS OF LAW

A. That, considering not only the determination of the Internal Revenue Service that the petitioners failed to report income for 1967 and 1968 and the acquiescence of petitioner Herbert Greenberg in the aforesaid settlement of the said determination, but, in addition, the absence in this proceeding of documentation to support the claims of petitioner Herbert Greenberg concerning his alleged transactions with Charles Alexander and Harris, Upham & Company, including the failure of the said petitioner to offer in evidence the alleged copy of a check from Harris, Upham & Company to the said petitioner claimed to be in his possession, the original of which is alleged to have been endorsed and turned over by him to Charles Alexander, the record herein does not support a finding that said petitioner acted as a nominee for the benefit of others in said alleged transactions.

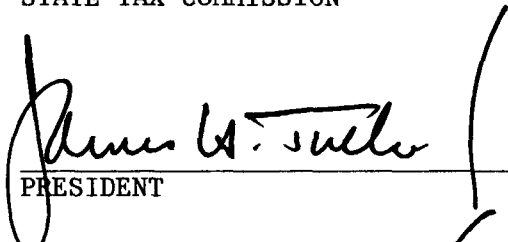
B. That in view of the withdrawal of the claim of fraud, the Notice of Deficiency, issued August 30, 1976, described in Finding of Fact "2", asserting a penalty totaling \$4,757.22 against petitioner Herbert Greenberg under section 685(e) of the Tax Law, is cancelled.

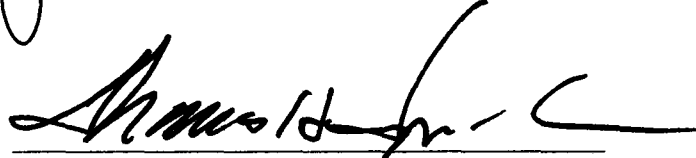
C. That except as expressly provided in Conclusion of Law "B", the petition and perfected petition of Herbert Greenberg and Pearl Greenberg are in all respects denied and the Notice of Deficiency issued August 30, 1976, described in Finding of Fact "1", asserting a deficiency of \$9,514.45, plus accrued interest, against the petitioners Herbert Greenberg and Pearl Greenberg, is in all respects sustained.


DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

December 12, 1980

Herbert & Pearl Greenberg
33-65 14th St.
Long Island City, NY 11106

Dear Mr. & Mrs. Greenberg:

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
Albert Podrid
275 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions
of
HERBERT GREENBERG and PEARL GREENBERG
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
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DECISION

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ISSUE

Whether, in relation to a personal income tax deficiency determined on a net worth basis, the record establishes:

(a) that petitioner Herbert Greenberg received the sum of approximately \$70,000 for the purpose of investing the same in the purchase of shares of stock as a nominee for the benefit of the investors of said sum; and

(b) that said petitioner thereafter sold the said shares of stock and disbursed the proceeds of sale thereof in the same capacity and for the benefit of the said investors.

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission

ALS BUREAU
CAMPUS

N. Y. 12227

CLAIM CHECK
NO.

356830



CLAIM CHECK NO

- Moved, tell no address HOLD
- No new number
- Moved, not forwarding
- Address unknown

Initials Route 1ST NOTICE

2ND NOTICE
RETURN

8915156

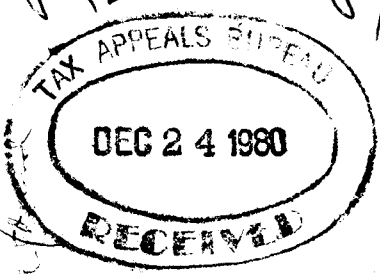
Detached from
PS Form 3849-A
Feb. 1978

Detached from
PS Form 3849-A
May 1979

*When Jerry had
not been out*

Albert Podrid
~~275 Madison Ave.~~
New York, NY 10016

11 Grace Ave
Ob. Neck, N.Y. 11023



REPCox

FINDINGS OF FACT

1. On August 30, 1976, the Audit Division issued a Statement of Audit Changes against the petitioners, Herbert Greenberg and Pearl Greenberg, for the year 1967 in the sum of \$6,191.71 and for the year 1968 in the sum of \$3,322.74, or a total of \$9,514.43 for the years 1967 and 1968, together with interest thereon of \$4,581.27, for a total due of \$14,095.72, on the ground that "Adjustment is made to conform with the audit of your 1967 and 1968 Federal Income Tax Returns." In accordance with the aforesaid Statement of Audit Changes, the Audit Division issued a Notice of Deficiency against the said petitioners on August 30, 1976 in the said sum of \$14,095.72.

2. On August 30, 1976, the Audit Division issued a Statement of Audit Changes against petitioner Herbert Greenberg for a penalty under section 685(e) of the Tax Law for the year 1967 in the sum of \$3,095.85 and for the year 1968 in the sum of \$1,661.37, or a total of \$4,757.22 for the years 1967 and 1968, for the stated reason that said "Penalty is assessed under Section 685(e) of the Tax Law as the deficiency in personal income tax for the years 1967 and 1968...due to fraud." In accordance with the aforesaid Statement of Audit Changes, the Audit Division issued a Notice of Deficiency on August 30, 1976 against the said petitioner, Herbert Greenberg, in the said sum of \$4,757.22.

3. Petitioners timely filed a petition for redetermination or for refund of personal income taxes for the years 1967 and 1968. Pursuant to request dated March 13, 1978 a Perfected Petition, dated April 10, 1978, was filed on April 12, 1978.

4. Pursuant to letter (Form L-21), issued March 21, 1972, the Internal Revenue Service notified the said petitioners, Herbert Greenberg and Pearl Greenberg, that it had determined income tax deficiencies against them for the years 1967 and 1968 as follows:

"Tax Year Ended	Deficiency	Liability of Pearl Greenberg Limited to Deficiency of
Dec. 31, 1967		
Tax	36,348.80	Tax 36,348.80
Penalty - Sec. 6653(b)	18,174.40	
Dec. 31, 1968		
Tax	9,813.38	Tax 9,813.38
Penalty - Sec. 6653(b)	4,906.69"	

5. The aforesaid deficiencies were based on the determination of the Internal Revenue Service of unreported income in the returns of the petitioners for the taxable years ended December 31, 1967 and December 31, 1968 in the sum of \$80,391.88 for the year ended December 31, 1967 and of \$25,838.53 for the year ended December 31, 1968 and on the further determinations that (a)"all or part of the underpayment of tax for the taxable years ended December 31, 1967 and December 31, 1968 is due to fraud" and (b) that "no part of the underpayment is due to fraud on the part of Pearl Greenberg."

6. Pursuant to oral settlement between the Internal Revenue Service and the petitioner, Herbert Greenberg, the aforesaid findings of the Internal Revenue Service were adjusted as follows:

a. Unreported income of the petitioners for the year 1967 was decreased by \$16,361.14 on the net worth basis.

b. The determination that the petitioners' income tax deficiency for the year 1967 was the sum of \$36,348.80 was decreased by \$9,333.55 to the sum of \$27,015.25.

c. The determination that the penalty against the petitioner Herbert Greenberg for the year 1967 was the sum of \$18,174.40 was decreased by \$4,666.77 to the sum of \$13,507.63.

7. The notices of deficiency described in paragraphs "1" and "2" above were derived from the findings of the Internal Revenue Service described in

paragraphs "4" and "5" above, as adjusted pursuant to oral settlement described in paragraph "6" above.

8. It is the claim of petitioner Herbert Greenberg that he assented to the determination of the Internal Revenue Service as adjusted as aforesaid for the reason that he was then suffering from a disability and that he "would never at that point at least be in a position to pay the tax."

9. The petitioner Herbert Greenberg is an accountant and for a period of about six years from approximately 1963 to 1968 or 1969, he was an Internal Revenue Service agent. Since approximately 1969 or 1970 he has been a teacher in the special education division of the New York City Board of Education.

10. In this proceeding it is the claim of petitioner Herbert Greenberg that the petitioners are not liable for the deficiency asserted herein for the following reasons:

That he, said Herbert Greenberg, recommended to his cousin, Charles Alexander, an attorney, the purchase of shares of stock of a California savings and loan association and that said Charles Alexander organized a group of people who together contributed about \$70,000 for the purchase of said shares of stock.

It is further the claim of the said petitioner that said sum of about \$70,000 was turned over to him by Mr. Alexander in the form of checks, money orders and cash; that he then opened an account with the stock brokerage firm of Harris, Upham & Company and deposited the said sum of approximately \$70,000 with the said firm of Harris, Upham & Company in the assumed name of Harold Cohen (Harold Cohen being the name of one of the contributors of the said sum of \$70,000); and that then, during 1967, he purchased through said Harris, Upham & Company the shares of stock of said California savings and loan association.

It is further the claim of the said petitioner that said shares of stock were issued in the name of and were held by said Harris, Upham & Company for approximately seven months until sometime in 1968, when Harris, Upham & Company was instructed by the said petitioner to sell them; and that thereupon Harris, Upham & Company delivered to petitioner Herbert Greenberg its check for \$70,000 which, the said petitioner claims, he endorsed and turned over to Mr. Alexander.

It is claimed by the petitioner Herbert Greenberg that "if this item of purchase of securities in 1967 and the profit shown in the net worth statement for 1968 were eliminated from" his "net worth statements for those two years" they "would not show any increase in net worth" and "nothing that would warrant any kind of assessment."

11. Subsequent to the claimed delivery of the aforesaid check to the said Charles Alexander, Mr. Alexander died.

12. No written memorandum or agreement concerning the claimed transactions described in paragraph "10" above was ever entered into between the petitioner, Herbert Greenberg and said Charles Alexander.

13. It was claimed at the hearing held herein that the petitioner has a copy of the check that the petitioner received from Harris, Upham & Company representing the purchase price for the aforesaid shares of stock and which the petitioner claims was endorsed by him and turned over to the said Charles Alexander as set forth in paragraph "10" above. Said claimed copy of said claimed check was not offered or received in evidence.

14. No documentation concerning the claimed transactions between the petitioner, Herbert Greenberg, and Harris, Upham & Company referred to in paragraph "10" above were offered or received in evidence, it being the said petitioner's claim that papers reflecting said transactions were received by

him but that he turned them over to his said cousin, Charles Alexander, and that he did not ask Mr. Alexander for them.

15. The hearing held herein on November 27, 1978 as aforesaid was continued to a date to be agreed upon. Subsequently, the Audit Division withdrew its claim for the fraud penalty and Counsel for the petitioner, in a letter dated June 30, 1980, stated as follows:

"Inasmuch as the Law Bureau is dropping its claim for the fraud penalty in the instant matter, it is no longer deemed necessary to reopen the hearing. It is therefore suggested that the file in this case be referred to the hearing officer for his decision based on the record as it exists."

CONCLUSIONS OF LAW

A. That, considering not only the determination of the Internal Revenue Service that the petitioners failed to report income for 1967 and 1968 and the acquiescence of petitioner Herbert Greenberg in the aforesaid settlement of the said determination, but, in addition, the absence in this proceeding of documentation to support the claims of petitioner Herbert Greenberg concerning his alleged transactions with Charles Alexander and Harris, Upham & Company, including the failure of the said petitioner to offer in evidence the alleged copy of a check from Harris, Upham & Company to the said petitioner claimed to be in his possession, the original of which is alleged to have been endorsed and turned over by him to Charles Alexander, the record herein does not support a finding that said petitioner acted as a nominee for the benefit of others in said alleged transactions.

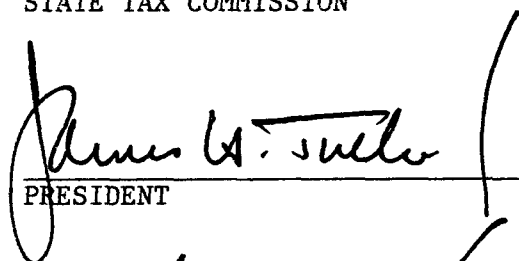
B. That in view of the withdrawal of the claim of fraud, the Notice of Deficiency, issued August 30, 1976, described in Finding of Fact "2", asserting a penalty totaling \$4,757.22 against petitioner Herbert Greenberg under section 685(e) of the Tax Law, is cancelled.

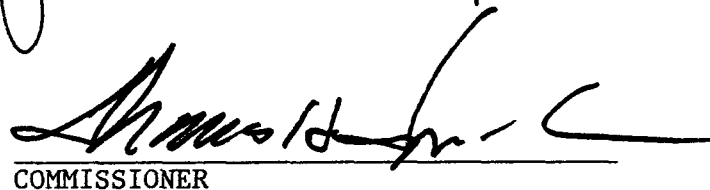
C. That except as expressly provided in Conclusion of Law "B", the petition and perfected petition of Herbert Greenberg and Pearl Greenberg are in all respects denied and the Notice of Deficiency issued August 30, 1976, described in Finding of Fact "1", asserting a deficiency of \$9,514.45, plus accrued interest, against the petitioners Herbert Greenberg and Pearl Greenberg, is in all respects sustained.

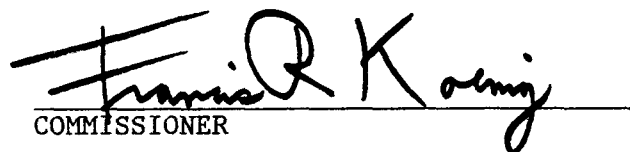
DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER