

STATE OF NEW YORK
STATE TAX COMMISSION

*Robert, John & Julia
Personal Income
(1971)*

In the Matter of the Petition

of

JOHN C. & JULIA ROBERTS

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s)) 1961 & 1963

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, 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 27th day of October, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon JOHN C. & JULIA ROBERTS (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John C. & Julia Roberts
c/o Bernard J. Klinger
17 Battery Place
Manhattan, New York
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

27th day of October, 1971

Rae Zimmerman

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
JOHN C. & JULIA ROBERTS
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1961 & 1963

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, 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 27th day of October, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon BERNARD J. KLINGER, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bernard J. Klinger, C.P.A.
17 Battery Place
Manhattan, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

27th day of October, 1971

Rae Zimmerman

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN C. & JULIA ROBERTS	:	DETERMINATION
	:	ON
for a Redetermination of a Deficiency	:	DEFAULT
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Years 1961, 1962 and 1963.	:	

John C. and Julia Roberts filed a petition for the redetermination of deficiencies for 1961 and 1963 and for a refund for 1962 of personal income taxes imposed under Article 22 of the Tax Law. A hearing was duly scheduled for 9:15 A.M. on May 11, 1971, at the offices of the State Tax Commission, Room 781, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau. Neither the petitioner nor his representative appeared. The file of the Income Tax Bureau with respect to said petition has been duly examined and considered.

FINDINGS OF FACT

1. The deficiencies dated June 7, 1965, and issued under a consent as provided in section 683(c)(2) of the Tax Law, are as follows: for 1961: \$212.26 plus interest, for 1963: \$212.26 plus a penalty of 25% under section 685(c) of the Tax Law of \$53.17 plus interest. A refund for 1962 was claimed of \$1,104.60 but has been granted only to the extent of \$229.26 plus interest.

2. For 1962, petitioners claimed a refund on their return of \$1,104.60, the amount of taxes withheld from wages, and showed a loss on the return. The Income Tax Bureau reduced the refund to \$229.26 by reason of findings that (a) the sum of \$28,153.92 included on the return as part of a loss of \$32,600.98 was a carryforward of a loss incurred by Julia Roberts in her business prior to her marriage to John C. Roberts and that Julia Roberts had no income of her own in 1962 and (b) that petitioners had additional taxable income of \$1,179.00 as a result of transactions involving capital gains and losses. This resulted in a tax due of \$875.34.

3. The deficiency for 1961 is based upon a finding that the sum of \$34,117.18 included as part of a loss of \$44,633.01 taken on the return was a carryforward of a loss incurred by Julia Roberts in her business prior to her marriage to John C. Roberts, and that Julia Roberts had no income of her own in 1961.

4. The deficiency for 1963 is based upon a finding that petitioners, at this time nonresidents of New York who had filed no returns, received a lump sum distribution of \$130,929.83 from a profit sharing plan operated by Mr. Roberts' former employer which was allocated to New York on the basis of the proportion of years Mr. Roberts had worked in New York to the total years he had worked (13.16%) and taxed as a capital gain.

5. Notice of the hearing was given to petitioner by mail sent to the petitioners' representative, as directed by petitioner, at the representative's current address. No reason appears for

petitioners' failure to appear.

CONCLUSIONS OF LAW

A. The petitioners are in default in this proceeding.

B. The disallowance of the loss carryforwards, the only issue raised in the petition, is justified by the holding in *Calvin v. U.S.* 354 Fed 2d 202.

DECISION

The petition is denied. The refund is allowed only to the extent shown on the deficiency notice and the deficiencies are affirmed all together with such interest, if any, as may be due under the Tax Law.

DATED: Albany, New York
October 27, 1971.

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruse Manley

COMMISSIONER

Milton Koerner

COMMISSIONER