

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HARVEY K. McCULLOCH & JULIE A.  
McCULLOCH

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) 1965

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

State of New York  
County of Albany

Martha Funaro , 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 2nd day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Harvey K. McCulloch  
& Julie A. McCulloch (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Harvey K. & Julie A. McCulloch  
6750 So. Lockwood Ridge Road  
Sarasota, Florida

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

2nd day of August , 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**August 2, 1972**

**Harvey K. & Julie A. McCulloch**  
**6750 So. Lockwood Ridge Road**  
**Sarasota, Florida**

**Dear Mr. & Mrs. McCulloch:**

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

Please take further notice that pursuant to  
Section(s) **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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

  
**Paul E. Coburn**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petitions :  
of :  
HARVEY K. McCULLOCH AND JULIE A. McCULLOCH : DECISION  
for Redetermination of Deficiency or for :  
Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year 1965. :

---

Petitioners, Harvey K. McCulloch and Julie A. McCulloch, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1965. (File No. 38191472). On October 4, 1971, they advised the State Tax Commission that they waived a formal hearing and consented to the issuing of a decision without the introduction of additional evidence on their part. The State Tax Commission renders the following decision after a review by it of the entire record contained in the file.

ISSUE

Did petitioners, Harvey K. McCulloch and Julie A. McCulloch, properly deduct from their New York gross income for the year 1965, depreciation deducted on prior federal income tax returns for depreciation incurred on business property located outside of New York State while they were nonresidents of New York State?

FINDINGS OF FACT

1. Petitioners, Harvey K. McCulloch and Julie A. McCulloch, filed a New York State combined income tax return for the year 1965. On line 4 of said return, they subtracted from their New York State gross income the installment profit, in the total sum of \$3,755.34, on the sale of a guest house business located outside of New York State.

2. On August 26, 1968, the Income Tax Bureau issued statements of audit changes against petitioners, Harvey K. McCulloch and Julie A. McCulloch, disallowing the aforesaid modification. It also allowed a deduction on the loss on a business in the sum of \$153.49. In accordance with the aforesaid statements of audit changes, it issued a Notice of Deficiency against petitioner, Harvey K. McCulloch, in the sum of \$193.42 and a Notice of Deficiency against petitioner, Julie A. McCulloch, in the sum of \$43.45.

3. Petitioners, Harvey McCulloch and Julie McCulloch, purchased a summer guest house in Westfield, New Jersey in 1953. The purchase price plus subsequent capital improvements and furniture and equipment purchases totaled \$21,698.63. They operated the guest house for profit until May, 1965, when they sold the property for a net sale price of \$27,485.34. Between 1953 and 1962, they took deductions for depreciation on their federal income tax returns totaling \$19,793.63, resulting in an adjusted basis for the property of \$1,905.00. Their net gain on the sale of the property was \$25,580.34. Fifty percent of the net gain, or \$12,790.17, was taxable since the transaction constituted the sale of a capital asset. Their capital gain was reported on an installment sale basis. The taxable installment was \$3,755.34 in the year 1965.

4. Petitioners, Harvey K. McCulloch and Julie A. McCulloch, were nonresidents of the State of New York from 1953 until November, 1962, when they purchased a one family home in New Rochelle and moved to New York. Petitioner, Harvey K. McCulloch, worked in New York State and filed nonresident income tax returns during said years. They did not deduct on the New York State returns the depreciation deducted on their federal returns in connection with the guest house business in Westfield, New Jersey.

CONCLUSIONS OF LAW

A. That since petitioners, Harvey K. McCulloch and Julie A. McCulloch, were nonresidents of New York State between 1953 and 1962, they were not required to report the income or permitted to deduct the depreciation incurred in connection with their guest house business located in New Jersey to New York State, although said income and depreciation were reported on their federal income tax returns for said years.

B. That there is no provision in the law that permits a resident individual to subtract from his New York gross income in the year of the receipt of income from the sale of a business located outside of New York State, depreciation deducted from business income on his prior federal income tax returns on said business property while he was a nonresident of New York State.

C. That the modification set forth in section 612(c)(4) of the Tax Law only applies where the taxpayer, prior to 1960, was required under Article 16 of the Tax Law to use a different method of depreciation or other adjustment on his New York State return than he used on his federal return, resulting in a higher adjusted basis for New York income tax purposes. The income from the property in question must have to have been subject to New York State income tax in the years prior to 1960 in order for this modification to be applicable.

D. That the New York adjusted gross income of petitioners, Harvey K. McCulloch and Julie A. McCulloch, during the year 1965 when they were residents of New York State was their federal adjusted gross income for said year, without any modifications, in accordance with meaning and intent of section 612 of the Tax Law.

E. That the petitions of Harvey K. McCulloch and Julie A. McCulloch are denied and the notices of deficiency issued August 26, 1968, are sustained.

DATED: Albany, New York

*August 2, 1972*

STATE TAX COMMISSION

*Norman Gallison*  
\_\_\_\_\_  
COMMISSIONER

*Russ Mawley*  
\_\_\_\_\_  
COMMISSIONER

*William Korman*  
\_\_\_\_\_  
COMMISSIONER