

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM P. ROBERTS and MURIEL S. 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) 1968.

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 28th day of August, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon WILLIAM P. and
MURIEL S. ROBERTS (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

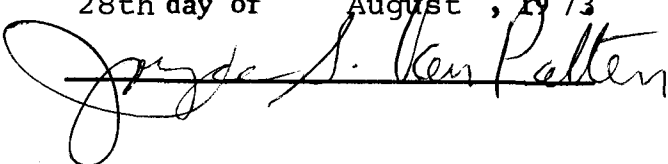
William P. and Muriel S. Roberts
2499 Warren Road, N.W.
Atlanta, Georgia 30318

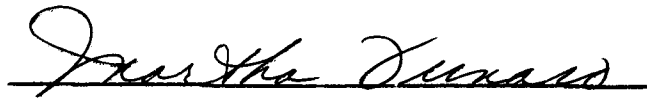
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

28th day of August, 1973


J. Ken Patten


Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
Mario A. Procaccino
~~FORWARD TO~~, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 28, 1973

William P. and Muriel S. Roberts
2499 Warren Road, N. W.
Atlanta, Georgia 30318

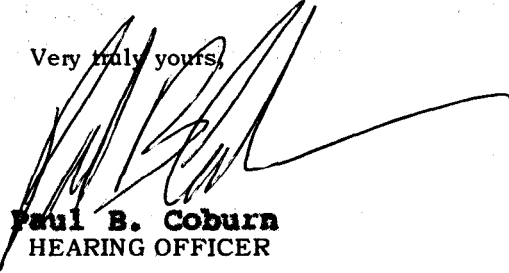
Dear Mr. and Mrs. Roberts:

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

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM ROBERTS and MURIEL ROBERTS	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

Petitioners, William Roberts and Muriel Roberts, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1968. (File No. 8-29002277). A formal hearing was scheduled before the State Tax Commission, Building #9, State Campus, Albany, New York, for September 11, 1972, at 3:30 P.M. On August 23, 1972, petitioners, in writing, waived a formal hearing and consented to the issuance of a decision without the introduction of additional evidence by them.

ISSUE

Did petitioner, William Roberts, a partner of Ribson and Roberts, properly file his individual tax return using the accrual basis while the partnership used the cash basis on its return?

FINDINGS OF FACT

1. Petitioners, William Roberts and Muriel Roberts, filed a joint New York State income tax return for the first three months of 1968. They filed a joint New York State nonresident income tax return for the remaining nine months of 1968.

2. On August 30, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, William Roberts and Muriel Roberts, increasing their taxable income for the first three months of 1968 by \$9,729.81, based upon an audit of Ribson and Roberts partnership return

for 1968. Accordingly a Notice of Deficiency was issued in the sum of \$550.01.

3. Petitioner, William Roberts, had a 50% interest in the architectural partnership of Ribson and Roberts.

4. Petitioner, William Roberts, withdrew from the partnership as of March 31, 1968, and left New York. The amount of monies he has actually received as of that date was \$3,362.50. This represented the petitioner's drawing for the first three months. Petitioner received a balance sheet and profit and loss statement of the partnership as of March 31, 1968. The profit and loss statement showed a net loss for that period of \$1.35. Petitioner reported this on his 1968 return. The statement petitioner received was an interim statement which included receivables and payables through March 31, 1968. The partnership was on a calendar year cash basis.

5. The partnership return for the entire taxable year 1968, showed a net profit from business of \$37,043.15. Of this, \$9,729.81 was claimed by Edward Ribson as petitioner, William Roberts' income. This amount represents 50% of the net profit, on the cash basis, as of March 31, 1968.

6. Petitioner, William Roberts, disagreed with the distribution of \$9,729.81 to him and the assessed income tax of \$550.01. He alleged he never received it and that his former partner, Edward Ribson, embezzled the money owed him. Petitioner failed to submit documentary or other sufficient evidence to substantiate his claim of embezzlement or failure to receive payment.

7. The Internal Revenue Service audited the partnership return for the year 1968 and accepted the return as filed. They also audited the individual returns and determined that the distribution shown to the individual partners was taxable to them.

CONCLUSIONS OF LAW

A. That petitioner, William Roberts, in determining his distributive share of the partnership for his individual tax return, must use the cash basis method since the partnership uses the cash basis method.

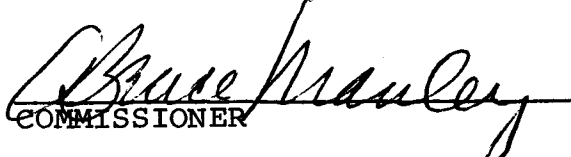
B. That petitioner, William Roberts, was entitled to 50% of the profits of the partnership for the first three months of 1968 since he had a 50% interest in it as a partner up till that time.


C. That the petition of William Roberts and Muriel Roberts is denied and the Notice of Deficiency issued August 30, 1971, is sustained.

DATED: Albany, New York
August 28, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER