

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

HERBERT J. ROY & MADELYN ROY

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) 1969

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

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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 16th day of January , 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon Herbert J. & Madelyn Roy (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Herbert J. & Madelyn Roy  
P. O. Box 633  
San Anselmo, California 94960

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

16th day of January , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

HERBERT J. ROY & MADELYN ROY

For a Redetermination of a Deficiency or  
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Tax Law for the (Year(s) 1969

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
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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 16th day of January , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon Michael M. Manning

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Michael M. Manning  
216 Reed Street  
Mill Valley, California 94941

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

16th day of January , 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**January 16, 1973**

**Herbert J. & Madelyn Roy**  
**P. O. Box 633**  
**San Anselmo, California 94960**

**Dear Mr. & Mrs. Roy:**

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

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In the Matter of the Petition :  
of :  
HERBERT J. ROY and MADELYN ROY : DECISION  
for Redetermination of Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1969. :

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Petitioners, Herbert J. Roy and Madelyn Roy, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969. (File No. 9-49107652). A calendar call was scheduled before Hon. A. Bruce Manley, State Tax Commissioner, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York for September 12, 1972, at 11:30 A.M. On August 29, 1972, petitioners, in writing, waived a formal hearing and consented to the issuance of a decision without the introduction of additional evidence. The State Tax Commission renders the following decision after due consideration of the record.

ISSUE

Were salary payments received by petitioner, Herbert J. Roy, a nonresident, from his employer while on terminal leave during the year 1969 subject to New York State personal income tax?

FINDINGS OF FACT

1. On February 15, 1970, petitioners, Herbert J. Roy and Madelyn Roy, filed a New York State income tax nonresident return

for the year 1969. They claimed total Federal income of \$11,920.00 and total New York State income of \$2,810.00. Attached to the return was Form IT-2102 issued by petitioner, Herbert J. Roy's employer for the year 1969 indicating wages paid of \$11,240.00 and New York State tax withheld of \$871.76. Petitioners claimed a refund of \$811.76.

2. On April 9, 1970, petitioners, Herbert J. Roy and Madelyn Roy, filed an amended New York State income tax nonresident return for the year 1969. The return stated additional New York State income of \$8,918.38 representing "taxable amount paid on termination of employment under employees savings plan--Mobil Oil Corp.". It set forth that the tax due was \$375.10 which sum was paid with the return.

3. On May 19, 1970, the Income Tax Bureau issued a Statement of Refund Adjustment for the year 1969 to petitioners, Herbert J. Roy and Madelyn Roy. It determined that their New York adjusted income for said year was \$8,981.44 and that their New York tax for said year was \$140.44. The refund adjustment was based upon a determination that salary received during a terminal leave represented income for past services rendered in New York. The amount taxable to New York was based on the ratio of his salary earned in New York State to his total salary for the prior three years. It allowed a personal income tax refund of \$731.32 which was paid to petitioners. In issuing the Statement of Refund Adjustment, the Income Tax Bureau did not take into consideration the additional income reported by petitioners on the amended tax return referred to in paragraph "2".

4. On April 26, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Herbert J. Roy and Madelyn Roy, imposing additional personal income tax due for the year 1969 in the sum of \$198.26. The additional tax due was based upon the inclusion in New York State income of the additional income reported on the amended tax return referred to in paragraph "2". In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$215.12.

5. Petitioner, Herbert J. Roy, was employed by Mobil Oil Corporation or one of its subsidiaries from January 1, 1949, until he retired on May 1, 1969.

6. Petitioner, Herbert J. Roy, worked out of the headquarters of Mobil Oil Corporation located at 150 East 42nd Street in New York City from 1959 until January 31, 1969. A portion of his time was spent working outside of the United States.

7. Petitioner, Herbert J. Roy, was placed on terminal leave by his employer for three months commencing February 1, 1969. He received his regular salary during this period. He did not render any services for his employer during this period. He spent the three months partly on vacation and partly in California canvassing job opportunities.

8. Petitioner, Herbert J. Roy and Madelyn Roy, were residents of the State of Connecticut from 1959 until April 30, 1969, and residents of the State of California from May 1, 1969, to the present time.

CONCLUSIONS OF LAW

A. That the terminal leave salary received by petitioner, Herbert J. Roy, a nonresident of the State of New York, during the year 1969 did not qualify as an annuity in accordance with the meaning and intent of 20 NYCRR 131.4(d).

B. That since the terminal leave salary received by petitioner, Herbert J. Roy, during the year 1969 did not qualify as an annuity under 20 NYCRR 131.4(d), the amount of said terminal leave salary taxable to New York State was based on the ratio of his salary earned in New York State to his total salary for the prior three years in accordance with the meaning and intent of 20 NYCRR 131.18. This allocation is reflected in the Statement of Refund Adjustment dated May 19, 1970.

C. That even if the terminal leave salary received by petitioner, Herbert J. Roy, during the year 1969 was considered to be regular salary income and not a retirement benefit, it would be taxable to New York State in proportion to the number of days actually worked within and without the State since vacation and leave-with-pay days are considered nonworking days in accordance with the meaning and intent of 20 NYCRR 131.16. Therefore all of his income for said year would be taxable since he did not work outside of New York State during the month of January.

D. That the petition of Herbert J. Roy and Madelyn Roy is denied and the Notice of Deficiency issued April 26, 1971, is sustained.

DATED: Albany, New York  
January 16, 1973

STATE TAX COMMISSION

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COMMISSIONER

*Bruce Manley*  
COMMISSIONER

*Milton Korman*  
COMMISSIONER