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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ROBERT C. MOCK, MARJORIE E. MOCK &
BELLE B. MOCK

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

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, 1962, 1963,
1964 & 1965

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 20th day of August , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Robert C. Mock, Marjorie E. Mock & Belle B. Mock (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Robert C. Mock, Mrs. Marjorie E. Mock & Mrs. Belle B. Mock
146 Central Park West
New York, New York 10023
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

20th day of August , 1974

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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ROBERT C. MOCK, MARJORIE E. MOCK &
BELLE B. MOCK

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Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1961, 1962, 1963,
1964 & 1965

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 20th day of August, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Walter J. Baumstein, 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: Walter J. Baumstein, P.A.
21 Bond Street
Great Neck, 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
20th day of August, 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York
August 20, 1974

**Mr. Robert C. Mock, Mrs. Marjorie E. Mock &
Mrs. Belle B. Mock
146 Central Park West
New York, New York 10023**

Dear Mr. Mock and Mesdames Mock:

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,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT C. MOCK, MARJORIE E. MOCK and BELLE B. : DECISION
MOCK :
for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Years :
1961, 1962, 1963, 1964 and 1965. :

Petitioners, Robert C. Mock, Marjorie E. Mock and Belle B. Mock, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1961, 1962, 1963, 1964 and 1965. (File Nos. 3-7789470, 28037266, and 48012920). A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 14, 1973, at 9:00 A.M. Petitioners appeared by Walter J. Baumstein, P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUES

I. Were additional income taxes properly assessed against petitioner, Robert C. Mock, for the years 1961, 1962, 1963 and 1964?

II. Was income in the sum of \$8,102.00 properly claimed to have been received by petitioner, Marjorie E. Mock, in the year 1965 for her duties as an office manager and interior designer in her husband's architectural firm?

FINDINGS OF FACT

1. The Income Tax Bureau imposed additional personal income tax based on Federal audit changes against petitioner, Robert C. Mock, for the years 1961, 1962, 1963, and 1964. He consented to the deficiencies for the years 1961, 1963 and 1964. The Bureau admitted an error in its calculation of petitioner's additional income for the year 1962.

2. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert C. Mock, holding all business income earned by him and his wife, Marjorie E. Mock, attributable to the husband, on the grounds that petitioners had failed to substantiate that the wife had earned \$8,102.00, which was part of the total business income of Robert C. Mock's architectural firm. In accordance with the aforesaid Statement of Audit Changes, the Bureau issued a Notice of Deficiency against petitioner, Robert C. Mock, in the sum of \$1,242.93.

3. Petitioner, Robert C. Mock, was an architect in New York City in 1965. His wife, petitioner, Marjorie E. Mock, worked as an office manager and interior designer in her husband's office. She also worked for Varig, Brazilian National Airline, in their New York office.

4. There was no withholding statement furnished Marjorie E. Mock for her services for her husband's architectural firm in 1964.

5. Petitioners did not submit evidence of checks or other payments made to Marjorie E. Mock pursuant to an employer-employee relationship. She was not a partner in her husband's firm.

6. Petitioners did not negligently or intentionally disregard the rules and regulations of Article 22 of the Tax Law.

CONCLUSIONS OF LAW

A. That petitioner, Robert C. Mock, failed to produce documentary or other evidence to sustain his burden of proof that the amounts in question were income attributable to his wife, Marjorie E. Mock, in the year 1965. In the absence of such proof, the amounts in issue were properly held taxable to the husband.

B. That the Notices of Deficiencies for the years 1961, 1963, and 1964 are sustained with consent of the petitioners.


C. That the amount of additional income for the year 1962 is \$24,117.72 and the resulting tax should be adjusted accordingly.

D. That all penalties for the years 1961 and 1962 are hereby cancelled.

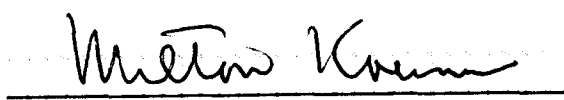
E. That the petition of Robert C. Mock and Marjorie E. Mock and Belle B. Mock is in all other respects denied and the Notices of Deficiency issued on May 22, 1967, on February 10, 1969 and on April 11, 1969, are sustained.

DATED: Albany, New York
August 20, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER