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United States Board of Tax Appeals

Docket No.

NICHOLAS ROERICH,
Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal
Revenue,
Respondent.

PETITION

HERBERT PLAUT,
HAROLD DAVIS,
Attorneys for Petitioner,
76 Beaver Street,
New York, N. Y.

United States Board of Tax Appeals

NICHOLAS ROERICH, Petitioner, <i>vs.</i> GUY T. HELVERING, Commissioner of Internal Revenue, Respondent.	}	Docket No.
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Petition

The above named petitioner hereby petitions for a redetermination of the deficiency (IT:E:Aj-HWS-27609-90D) set forth by the Commissioner of Internal Revenue in his notice of deficiency dated December 2, 1935, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual and a non-resident alien, presently residing at Naggar, Kulu, Punjab, British India.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on December 2, 1935.

3. The taxes in controversy are income taxes for the calendar years 1926, 1927 and 1934, and in the amounts respectively of \$10,680.41, \$10,824.82 and \$314.21 (totalling \$21,819.44), with 25% penalties respectively of \$2,670.10, \$2,706.20 and \$78.55 (totalling \$5,454.85), with 50% penalties respectively of \$5,340.20, \$5,412.41 and \$157.11

(totalling \$10,909.72), and with interest, which up to December 2, 1935, respectively of \$5,567.86, \$4,993.65, and \$12.98 (totalling \$10,574.49), or a grand total (interest being computed up to December 2, 1935) of \$48,758.50, with such interest as may have accrued since that date.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

A. The claimed tax due for 1926 is erroneous in that the petitioner's net income was assessed at \$76,613.18, whereas in truth and fact the petitioner's net income for said year was \$2,900, or \$73,713.18 less. The said error was founded upon the inclusion in petitioner's income of

(a) claimed income from the sale of paintings, which, in truth and fact, was not income to, of, or for the petitioner, amounting to \$73,300.00

(b) claimed income from interest on bank deposits, which in truth and fact was not income to, of, or for the petitioner, amounting to 413.18

Totalling \$73,713.18

B. The claimed tax due for 1927 is erroneous in that the petitioner's net income was assessed at \$77,379.62, whereas in truth and in fact the petitioner's net income for said year was \$100.00, or \$77,279.62 less. The

said error was founded upon the erroneous inclusion of

(a) claimed income received from sale of paintings, which in truth and fact was not income to the petitioner, in the sum of. \$74,271.78

(b) claimed income received from interest on Liberty bonds, which interest was on bonds not of the petitioner, in the sum of. 637.50

(c) claimed profit received on the sale of Liberty bonds, not the property of the petitioner, in the sum of 971.11

(d) claimed income received as interest on bank deposits and bonds, not the property of the petitioner, in the sum of 1,399.23

Totalling \$77,279.62

C. The claimed tax due for 1934 is erroneous in that the petitioner's net income was assessed at \$8,569.00, whereas in truth and in fact the petitioner's income for said year was \$6,069, or \$2,500 less. The said error was founded upon the erroneous inclusion of

(a) claimed income from the sale of paintings of \$2,500;

and is erroneous further in that no credit was given for deductions for lawful purposes in the sum of \$2,770.

D. Because petitioner's net income for 1926 was \$3,313.18, for 1927 was \$100.00, for 1934 was \$6,069 less deductions, the respective penalties and interest assessed against petitioner were and are erroneous because

(a) they were not founded upon the actual income;

(b) in so far as 1926 and 1927 are concerned they should not have been assessed because the petitioner was not required to file returns for said years; and

(c) there has been no fraud, or intent to defraud, and no wilful or intentional failure to file returns.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

A. In 1923, a Central Asiatic Expedition, with artistic and scientific aims, including the painting of a great panoramic series of works of Central Asia never theretofore painted by a western artist, the translation of original manuscripts, folk lore and artistic material of that locality, and archaeological research, was organized by the Roerich Museum, Master Institute of United Arts, Inc., and Corona Mundi, International Art Center, which were educational and artistic organizations, organized and operated exclusively for scientific, literary and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. It was planned that the Expedition should begin its work from Sikkim, India, thence pro-

ceeding to Kashmir, Ladak, Chinese Turkestan, Altai, Burjatia, Mongolia, Tibet, across the Himalayas and back to Sikkim, concluding a theretofore unattempted circle around Central Asia.

B. The petitioner was requested by the aforementioned institutions to undertake the leadership of this expedition. The petitioner previously had been engaged in artistic and scientific pursuits.

C. The said expedition was pursued entirely for American interests in that the fruits of said expedition were to be, and were, brought back to the United States of America and here to be exhibited in the museums and organizations sponsoring said expedition. In return for the aforementioned acquiring of said fruits of the expedition, including all the paintings painted while on said expedition to become the permanent exhibition of the Roerich Museum and its trustees (and later to be publicly declared the property of the American people at large), the said organizations and persons associated with said organizations agreed to finance the said expedition and pay its expenses.

D. One of said persons who agreed to contribute funds and make donations for the said expedition was Louis L. Horch.

E. The petitioner had great confidence in the said Louis L. Horch, and prior to leaving on said expedition he executed and delivered to said Louis L. Horch a full power of attorney to act for him and in his name, and per-

mitted said Louis L. Horch to open bank accounts in his, the petitioner's name, make deposits therein and to withdraw funds therefrom, all for the purposes of the said expedition. Petitioner had left the matter of filing income tax returns for the years 1926 and 1927, among many years, with the said Louis L. Horch, who had filed such returns for him prior thereto.

F. The said expedition left New York in May, 1923, and in December, 1923, reached Darjeeling in British Sikkim. Here a base was established and several trips were conducted in Sikkim. The whole of 1924 was spent in Sikkim in preparation for the more extensive journey into inner Asia. It was imperative to acquire a good speaking knowledge of the Tibetan language before starting on a journey which would require constant relations with natives. On March 6, 1925 the expedition left Darjeeling, and then proceeded to Kashmir, Little Tibet, over the passes of Karakorum, to Chinese Turkestan, and thence to the Altai Mountains, Mongolia, through the Gobi Desert, across the spaces of Tibet, and back to Sikkim, arriving at the last-mentioned on May 26, 1928. The route taken by the expedition appears on the photostatic copy of a map, attached hereto and marked Exhibit B. In October, 1927, the expedition was held captive in Tibet at an altitude of 15,000 feet in extreme weather, and was detained there for the entire winter, until March, 1928, during which time ninety animals of the caravan perished from the cold and hunger, five na-

tives attached to the expedition died from the hardships, and all provisions and money were exhausted. Accounts of the expedition and reports thereof are more fully contained in "Trails to Inmost Asia" by George N. Roerich, published by the Yale University Press in 1931, "Altai Himalaya" by petitioner, published by Frederick A. Stokes & Co., in 1929, "Shambhala," by petitioner, published by Frederick A. Stokes & Co., in 1930, "Heart of Asia," by petitioner, published by the Roerich Museum Press in 1929, "Himalaya," by petitioner, published by Brentano in 1925.

G. During the five years of the expedition, petitioner painted nearly five hundred paintings, all of which were sent to the Roerich Museum in New York, and where they since have been, and are now, hanging on permanent exhibition. In addition, a vast record of scientific achievement of the expedition has been described in articles and writings, besides the works mentioned, and many cultural objects were secured for the sponsoring organizations.

H. On July 24, 1929, the trustees of the Roerich Museum, including petitioner, proclaimed the Roerich Museum and its objects of art as the property of the people of the United States of America, by a declaration dated that day, a photostatic copy of which is attached hereto and marked Exhibit C; and official notification of said declaration was conveyed to the President of the United States. Such declaration embraced, among other

things, the paintings and art objects made and found on the expedition hereinabove set forth.

I. In 1926, Louis L. Horch, above referred to, and his wife, Nettie S. Horch, contributed the sum of \$73,300 to the expedition for its purposes and for acquiring on behalf of the sponsoring organizations for permanent loan exhibition the paintings painted by petitioner on said expedition. This sum was a donation for the Roerich Museum so that the expedition might continue and so that the Roerich Museum might acquire the fruits thereof. This sum was deposited by the said Louis L. Horch in the bank account of petitioner's name under the control of the said Louis L. Horch and by the said Louis L. Horch withdrawn from time to time and sent to the expedition in Asia.

J. The said sum of \$73,300 was not income to the petitioner, but was a donation so that the expedition could continue and so that the expedition could produce the art and scientific objects for its sponsors; and the said sum was entirely spent for the expenses of the expedition.

K. The paintings were not sold by petitioner to Louis L. Horch for the sum of \$73,300 or any other sum but were given by petitioner to the Roerich Museum for permanent loan exhibition.

L. Interest on bank deposits amounting to \$413.18 was not interest on money or deposits of petitioner, but donations for the expedition, and was not income to, of, or for the

petitioner, and was entirely spent for the expenses of the expedition.

M. By reason of the foregoing, the inclusion of the said sum of \$73,713.18 in petitioner's income for 1926 was erroneous; and petitioner's income for said year was only \$2,900.

N. In 1926, for a long time prior thereto, and ever since, and at the present time, petitioner was and is married and living with his wife and contributing to her support.

O. In 1927, in similar fashion, Louis L. Horch and his wife Nettie S. Horch contributed and donated the sum of \$65,137.66 in cash and deposited bonds of the value of \$9,134.12, totalling \$74,271.78, for the purposes of the expedition and so that the sponsoring organizations might reap the fruits of the expedition.

P. The said sum of \$74,271.78 was not income to the petitioner, but was a donation so that the expedition could continue and so that the expedition could produce the art and scientific objects for its sponsors; and the said sum was entirely spent for the expenses of the expedition.

Q. The paintings were not sold by petitioner to Louis L. Horch for the sum of \$74,271.78 or any other sum, but were given by petitioner to the Roerich Museum for permanent loan exhibition.

R. By reason of the foregoing, the inclusion of the sum of \$74,271.78 in petitioner's income for 1927 was erroneous.

S. Interest on Liberty bonds in the sum of \$637.50 was deposited in petitioner's bank account by the said Louis L. Horch. The said bonds were purchased by the said Louis L. Horch with money deposited in said account by the said Louis L. Horch for donations for the purposes of the expedition, as hereinabove stated. Neither the bonds nor the interest was petitioner's property.

T. The interest on the said bonds was tax-exempt.

U. The Liberty bonds aforesaid were sold by said Louis L. Horch on September 10, 1927, and the proceeds from the sale of said bonds were deposited by him in petitioner's bank account, but neither the bonds nor the proceeds from the sale thereof were the property of petitioner, but were donations and conversions thereof for the purposes of the aforesaid expedition; and the profit on the sale thereof, \$971.11, was not income to, of, or for the petitioner, and was entirely spent for the expenses of the expedition.

V. Interest on bank deposits and bonds, amounting to \$1,399.25, was interest on money and bonds not of petitioner, but donations for the expedition, and was not income to, of, or for the petitioner, and was entirely spent for the expenses of the expedition.

W. By reason of the foregoing, petitioner's income for 1927 was \$100, and not \$77,379.62.

X. In any event, even if the amounts set forth in the notice of the deficiency were tax-

able income for 1926-1927, which the petitioner denies, said sums were spent by petitioner in carrying on the expedition, including reasonable allowances for salaries or other compensation for personal services and traveling expenses while away from home and in the pursuit of the said expedition, all in behalf of the sponsoring organizations, each organized and operated exclusively for scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, all of which constituted lawful deductions.

Y. In any event, even if the amounts set forth in the notice of deficiency for 1926-1927 or any part thereof were compensation for labor or personal services, which the petitioner denies, such labor or personal services were performed without the United States by petitioner, a non-resident alien individual, and therefore was not taxable income.

Z. Petitioner did not make a false or fraudulent return or fail to make any return with intent to evade tax for any of the years here involved and, therefore, by reason of the statute in such case made and provided this ^{Assessment} proceeding in so far as 1926 and 1927 are concerned is barred by the statute of limitations.

AA. On or about April 22, 1934, petitioner departed from the United States on an expedition to Central Asia, which said expedition was organized by the Department of

Agriculture of the Government of the United States, and was continuously absent from the United States from that date for the balance of 1934 and is still absent. Prior to petitioner's departure he filed a return of his income up to that time.

BB. Petitioner, who had great confidence in the aforesaid Louis L. Horch, left the matter of filing his return for the balance of the year and any other returns for the year with the said Louis L. Horch, who had for many years prior to 1934 attended to the filing of petitioner's tax returns; but, without the knowledge of the petitioner, the said Louis L. Horch failed to file any return for him for 1934.

CC. Upon information and belief, petitioner's income from the sale of paintings was not, as is stated in the notice of deficiency, \$8,569.00, but \$6,219 less \$150 commission paid for the sale of paintings, or a net of \$6,069.

DD. Petitioner, in 1934, contributed the sum of \$1,300 to the Roerich Museum or Master Institute of United Arts, Inc., both of which were corporations organized and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and \$1,470 to Urusvati Himalayan Research Institute, organized and operated

exclusively for similar purposes; and to the extent permitted by law these were and are proper deductions.

EE. There has been no fraud and no fraud with intent to evade tax, no part of any deficiency is due to fraud with intent to evade tax, and no wilful or intentional failure to file return, for any of the periods here involved.

FF. The petitioner is ready, able and willing to pay the proper tax on his income for 1934.

WHEREFORE, the petitioner prays that this Board may hear the proceeding, determine that there was no deficiency for 1926 and 1927, determine that there was no fraud for 1926, 1927 and 1934, redetermine the deficiency for 1934, if any, adjudge that the petitioner in the years in question had no income subject to taxation other than as herein stated, that the petitioner is not subject to the taxes, penalties or interest assessed against him, and relieve the petitioner and his property from any liens or proceedings taken against him by reason of claimed deficiencies.

NICHOLAS ROERICH,
Petitioner.

By HERBERT PLAUT,
HAROLD DAVIS,
Attorneys for Petitioner,
76 Beaver Street,
New York, N. Y.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK, } ss.:

HERBERT PLAUT and HAROLD DAVIS, both being duly sworn, say that they are the attorneys in fact and in law for Nicholas Roerich, the petitioner, that a copy of the power of attorney under which they act is attached hereto; that they act pursuant to such power; that such power has not been revoked; that petitioner is a non-resident alien and is sojourning outside the United States and is absent from the United States; that they have read the foregoing petition and are familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts they believe to be true. The grounds for their knowledge are the books, records and papers of petitioner, communications received from him, and conferences with his associates.

HERBERT PLAUT.
 HAROLD DAVIS.

Subscribed and sworn to before me
 this 27th day of February, 1936.

HAROLD M. COHEN,
 Notary Public.

Bronx County No. 149; Reg. No. 138C36
 Cert. filed N. Y. Co. No. 736, Reg. No. 6C413
 Cert. filed Kings Co. No. 150; Reg. No. 6285
 Commission expires March 30, 1936.

Exhibit A

TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
 COMMISSIONER OF INTERNAL REVENUE

Address Reply to
 Commissioner of Internal Revenue
 and Refer to

Dec. 2, 1935.

MR. NICHOLAS ROERICH,
 c/o L. L. Horch,
 310 Riverside Drive,
 New York, New York.

Sir:

In accordance with the provisions of section 279(a) of the Revenue Act of 1926, and section 273(a) of the Revenue Act of 1934, there has been assessed against you a deficiency amounting to \$48,758.50, income tax, penalties and interest, for the taxable years 1926, 1927 and 1934, the details of which are set forth in the statement attached.

In accordance with section 274(a) of the Revenue Act of 1926, as amended by section 501 of the Revenue Act of 1934, and section 272(a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a peti-

tion with the United States Board of Tax Appeals
for a redetermination of the deficiency.

Respectfully,

GUY T. HELVERING,
Commissioner.

By CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosure:

Statement.

STATEMENT

IT:E:Aj
HWS-27609-90D

In re: MR. NICHOLAS ROERICH,
c/o L. L. Horch,
310 Riverside Drive,
New York, New York.

Year	Tax Due	Tax Assessed	Deficiency in Tax	25% Penalty	50% Penalty	Interest
1926	\$10,680.41	None	\$10,680.41	\$2,670.10	\$5,340.20	\$5,567.86
1927	10,824.82	None	10,824.82	2,706.20	5,412.41	4,993.65
1934	314.21	None	314.21	78.55	157.11	12.98
Totals	\$21,819.44	None	\$21,819.44	\$5,454.85	\$10,909.72	\$10,574.49
Total deficiencies in taxes, penalties and interest						\$48,758.50

1926

Net income reported (No return filed). None
Income from sale of paintings..... \$76,200.00
Interest received on bank deposits.... 413.18

Net income \$76,613.18

COMPUTATION OF TAX

Net income \$76,613.18

Less:

Exemption	3,500.00
Subject to normal tax.....	\$73,113.18
Tax on \$4,000.00 at 1½%.....	\$60.00
Tax on \$4,000.00 at 3%.....	120.00
Tax on \$65,113.18 at 5%.....	3,255.66
Surtax on \$76,613.18	7,250.37
Total	\$10,686.03

Less:

Earned income credit	5.62
Tax due	\$10,680.41
Tax assessed	None

Deficiency in tax, assessed November 23, 1935	\$10,680.41
25% penalty for failure to file return, assessed November 23, 1935.....	2,670.10
50% penalty as provided by section 275(b), Revenue Act of 1926, assessed November 23, 1935.....	5,340.20
Interest, assessed November 23, 1935..	5,567.86

1927

Net income reported (No return filed). None	
Interest received on bank deposits and bonds	\$1,399.23

Royalty received	100.00
Taxable Liberty bond interest received	637.50
Profit received on the sale of Liberty bonds	971.11
Income received from the sale of paintings	74,271.78
	<hr/>
Net income	\$77,379.62

COMPUTATION OF TAX

Net income	\$77,379.62
Less:	
Taxable Liberty bond interest	\$637.50
Exemption	3,500.00
	<hr/>
\$4,137.50	
Subject to normal tax.....	\$73,242.12
Tax on \$4,000.00 at 1½%	60.00
Tax on \$4,000.00 at 3%	120.00
Tax on \$65,242.12 at 5%	3,262.11
Surtax on \$77,379.62	7,388.33
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Total	\$10,830.44
Less:	
Earned income credit.....	5.62
	<hr/>
Tax due	\$10,824.82
Tax assessed	None
	<hr/>

Deficiency in tax, assessed November 23, 1935	\$10,824.82
25% for failure to file return, assessed November 23, 1935	2,706.20
50% penalty as provided by section 275(b), Revenue Act of 1926, assessed November 23, 1935	5,412.41
Interest, assessed November 23, 1935.	4,993.65

1934

Net income reported (No return filed).	None
Income received from sale of paintings	\$8,569.00
	<hr/>
Net income	\$8,569.00

COMPUTATION OF TAX

Net income	\$8,569.00
Less:	
Exemption	2,500.00
	<hr/>
Net income subject to surtax.....	\$6,069.00
Less:	
Earned income credit	300.00
	<hr/>
Net income subject to normal tax.....	\$5,769.00
Normal tax on \$5,769.00 at 4%	230.76
Surtax on \$6,069.00	83.45
	<hr/>
Tax due	\$314.21
Tax assessed	None
	<hr/>

Deficiency in tax, assessed November 23, 1935	\$314.21
25% penalty for failure to file return, assessed November 23, 1935.....	78.55
50% penalty as provided by section 293(b), Revenue Act of 1934, assessed November 23, 1935.....	157.11
Interest, assessed November 23, 1935..	12.98

UNITED STATES BOARD OF TAX APPEALS

-----X
:
NICHOLAS ROERICH,
Petitioner :
vs. : Docket No.
GUY T. HELVERING,
Commissioner of Internal Revenues :
Respondent :
:
-----X

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency (IT:E:Aj--HWS-27609-90D) set forth by the Commissioner of Internal Revenue in his notice of deficiency dated December 2, 1935, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual and a non-resident alien, presently residing at Naggar, Kulu, Punjab, British India.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on December 2, 1935.

3. The taxes in controversy are income taxes for the caldendar years 1926, 1927, and 1934, and in the amounts respectively of \$10,680.41, \$10,824.82 and \$314.21 (totalling \$21,819.44), with 25% penalties respectively of \$2,670.10, \$2,706.20, and \$78.55 (totalling \$5,454.85), with 50% penalties respectively of \$5,340.20, \$5,412.41 and \$157.11 (totalling \$10,909.72, and with interest, which up to December 2, 1935, respectively of \$5,567.86, \$4,993.65, and \$12.98 (totalling \$10,574.49), or a grand total (interest being computed up to December 2, 1935) of \$48,758.50, with such interest as may have accrued since that date.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

A. The claimed tax due for 1926 is erroneous in that the petitioner's net income was assessed at \$76,613.18 , whereas in truth and fact the petitioner's net income for said year was \$2,900, or \$73,713.18 less.

The said error was founded upon the inclusion in petitioner's income of

- (a) claimed income from the sale of paintings, which, in truth and fact, was not income to, of, or for the petitioner, amounting to \$73,300.00
- (b) claimed income from interest on bank deposits, which in truth and fact was not income to, of, or for the petitioner, amounting to 413.18

Totalling \$73,713.18

(B) The claimed tax due for 1927 is erroneous in that the petitioner's net income was assessed at \$77,379.62, whereas in truth and in fact the petitioner's net income for said year was \$100.00, or \$77,279.62 less.

The said error was founded upon the erroneous inclusion of

- (a) claimed income received from sale of paintings, which in truth and fact was not income to the petitioner, in the

sum of		\$74,371.78
(b)	claimed income received from interest on Liberty bonds, which interest was on bonds not of the petitioner, in the sum of	637.50
(c)	claimed profit received on the sale of Liberty bonds, not the property of the petitioner, in the sum of	971.11
(d)	claimed income received as interest on bank deposits and bonds, not the property of the petitioner, in the sum of	1,399.23
	Totalling	\$77,279.62

D. Because petitioner's net income for 1926 was \$3,313.18, for 1927 was \$100.00, for 1934 was \$, the respective penalties and interest assessed against petitioner were and are erroneous because

- (a) they were not founded upon the actual income;
- (b) they should not have been assessed because the petitioner was not required to file returns for said years.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

A. In 1923, a Central Asiatic Expedition, with artistic and scientific aims, including the painting of a great panoramic series of works of Central Asia never theretofore painted by a western artist, the translation of original manuscripts, folk lore and artistic material of that locality, and archaeological research, was organized by the Roerich Museum, Master Institute of United Arts, Inc., and Corona Mundi, International Art Center, which were educational and artistic organizations, organized and operated exclusively for scientific, literary and educational purposes, no part of the net earnings of which insures to the benefit of any private shareholder or individual. It was planned that the Expedition should begin its work from Sikkim, India, thence proceeding to Kashmir, Ladak, Chinese Turkestan, Altai, Burjatia, Mongolia, Tibet, across the Himalayas and back to Sikkim, concluding a theretofore unattempted circle around Central Asia.

B. The petitioner was requested by the aforementioned institutions to undertake the leadership of this expedition. The petitioner previously had been engaged in artistic and scientific pursuits.

C. The said expedition was pursued entirely for American interests in that the fruits of said expedition were to be, and were, brought back to the United States of America and here to be exhibited in the museums and organizations sponsoring said expedition. In return for the aforementioned acquiring of said fruits of the expedition, including all the paintings painted while on said expedition, to become the property of the Roerich Museum and its trustees (and later to be publicly declared the property of the American people at large), the said organizations and persons associated with said organizations agreed to finance the said expedition and pay its expenses.

D. One of said persons who agreed to contribute funds and make

donations for the said expedition was Louis L. Horch.

E. The petitioner had great confidence in the said Louis L. Horch, and prior to leaving on said expedition he executed and delivered to said Louis L. Horch a full power of attorney to act for him and in his name, and permitted said Louis L. Horch to open bank accounts in his, the petitioner's name, make deposits therein and to withdraw funds therefrom, all for the purposes of the said expedition.

F. The said expedition left New York in May, 1923, and in December, 1923, reached Darjeeling in British Sikkim. Here a base was established and several trips were conducted in Sikkim. The whole of 1924 was spent in Sikkim in preparation for the more extensive journey into inner Asia. It was imperative to acquire a good speaking knowledge of the Tibetan language before starting on a journey which would require constant relations with natives. On March 6, 1925 the expedition left Darjeeling, and then proceeded to Kashmir, Little Tibet, over the passes of Karakorum, to Chinese Turkestan, and thence to the Altai Mountains, Mongolia, through the Gobi Desert, across the spaces of Tibet, and back to Sikkim, arriving at the last-mentioned on May 26, 1928. The route taken by the expedition appears on the photostatic copy of a map, attached hereto and marked Exhibit B. In October, 1927, the expedition was held captive in Tibet at an altitude of 15,000 feet in very cold weather, and was detained there for the entire winter, until March, 1928, during which time ninety animals of the caravan perished from the cold and hunger, five natives attached to the expedition died from the hardships, and all provisions and money were exhausted. Accounts of the expedition and reports thereof are more fully contained in "Trails to Inmost Asia", by George N. Roerich, published by the Yale University Press in 1931, "Altai Himalaya" by petitioner, published by F. A. Stokes & Co., in 1929, "Shambhala", by petitioner, published by F. A. Stokes & Co., in 1930, "Heart of Asia" by petitioner, published by the Roerich Museum Press in 1929, "Himalaya" by petitioner, published by Brentano in 1925.

G. During the five years of the expedition, petitioner painted nearly five hundred paintings, all of which were sent to the Roerich Museum in New York, and where they since have been, and are now, hanging on permanent exhibition. In addition, a vast record of scientific achievement of the expedition has been described in articles and writings, besides the works mentioned, and many cultural objects were secured for the sponsoring organizations.

H. On July 24, 1929, the trustees of the Roerich Museum, including petitioner, proclaimed the Roerich Museum and its objects of art as the property of the people of the United States of America, by a declaration dated that day, a photostatic copy of which is attached hereto and marked Exhibit C; and official notification of said declaration was conveyed to the President of the United States. Such declaration embraced, among other things, the paintings and art objects made and found on the expedition hereinabove set forth.

I. In 1926, Louis L. Horch, above referred to, and his wife, Nettie S. Horch, contributed the sum of \$73,300 to the expedition, for its purposes and for acquiring on behalf of the sponsoring organizations paintings painted by petitioner on said expedition. This sum was a donation for the Roerich Museum so that the expedition might continue and so that the Roerich Museum might acquire the fruits thereof. This sum was deposited by the said Louis L. Horch in petitioner's bank account under the control of the said Louis L. Horch, and by the

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said Louis L. Horch withdrawn from time to time and sent to the expedition in Asia.

J. The said sum of \$73,300 was not income to the petitioner, but was a donation for the sponsoring organizations so that the expedition could continue and so that the expedition could produce the art and scientific objects for its sponsors; and the said sum was entirely spent for the expenses of the expedition.

K. The paintings were not sold by petitioner to Louis L. Horch for the sum of \$73,300 or any other sum but were given by petitioner to the Roerich Museum.

L. Interest on bank deposits amounting to \$413.18 was not interest on money or deposits of petitioner, but donations for the expedition, and was not income to, of, or for the petitioner, and was entirely spent for the expenses of the expedition.

M. By reason of the foregoing, the inclusion of the said sum of \$73,713.18 in petitioner's income for 1926 was erroneous; and petitioner's income for said year was only \$2,900.

N. In 1926, for a long time prior thereto, and ever since, and at the present time, petitioner was and is married and living with his wife and contributing to her support.

O. In 1927, in similar fashion, Louis L. Horch and his wife Nettie S. Horch contributed and donated the sum of \$65,137.66 in cash and deposited bonds of the value of \$9,134.12, totalling \$74,271.78 for the purposes of the expedition and so that the sponsoring organizations might reap the fruits of the expedition.

P. The said sum of \$74,271.78 was not income to the petitioner, but was a donation for the sponsoring organizations so that the expedition could continue and so that the expedition could produce the art and scientific objects for its sponsors; and the said sum was entirely spent for the expenses of the expedition.

Q. The paintings were not sold by petitioner to Louis L. Horch for the sum of \$74,271.78 or any other sum, but were given by petitioner to the Roerich Museum.

R. By reason of the foregoing, the inclusion of the sum of \$74,271.78 in petitioner's income for 1927 was erroneous.

S. Interest on Liberty bonds in the sum of \$637.50 was deposited in petitioner's bank account by the said Louis L. Horch. The said bonds were purchased by the said Louis L. Horch with money deposited in said account by the said Louis L. Horch for donations for the purposes of the expedition, as hereinabove stated. Neither the bonds nor the interest was petitioner's property.

T. The interest on the said bonds was tax-exempt.

U. The Liberty bonds aforesaid were sold by said Louis L. Horch on September 10, 1927, and the proceeds from the sale of said bonds were deposited by him in petitioner's bank account, but neither the bonds nor the proceeds from the sale thereof were the property of petitioner, but were donations and conversions thereof for the purposes of the aforesaid

expedition; and the profit on the sale thereof, \$971.11, was not income to, of, or for the petitioner, and was entirely spent for the expense of the expedition.

V. Interest on bank deposits and bonds, amounting to \$1,399.25 was interest on money and bonds not of petitioner, but donations for the expedition, and was not income to, of, or for the petitioner, and was entirely spent for the expenses of the expedition.

W. By reason of the foregoing, petitioner's income for 1927 was \$100, and not \$77,379.62.

X. In any event, even if the amounts set forth in the notice of the deficiency were taxable income for 1926-1927, which the petitioner denies, said sums were spent by petitioner in carrying on the expedition, including reasonable allowances for salaries or other compensation for personal services and traveling expenses while away from home and in the pursuit of the said expedition, all in behalf of the sponsoring organizations, each organized and operated exclusively for scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, all of which constituted lawful deductions.

Y. In any event, even if the amounts set forth in the notice of deficiency for 1926-1927 or any part thereof were compensation for labor or personal services, which the petitioner denies, such labor or personal services were performed without the United States by petitioner, a non-resident alien individual, and therefore was not taxable income.

WHEREFORE, the petitioner prays that this Board may hear the proceeding, redetermine the deficiency, if any, adjudge that the petitioner in the years in question had no income subject to taxation other than as herein stated, that the petitioner is not subject to the taxes, penalties or interest assessed against him, and relieve the petitioner and his property from any liens or proceedings taken against him by reason of claimed deficiencies.

NICHOLAS ROERICH

By _____

Attorneys for Petitioner
76 Beaver Street,
New York, N.Y.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

HERBERT PLAUT and HAROLD DAVIS, both being duly sworn, say that they are the attorneys in fact and in law for Nicholas Roerich, the petitioner, that a copy of the power of attorney under which they act is attached hereto; that they act pursuant to such power; that such power has not been revoked; that petitioner is a nonresident alien and is sojourning outside the United States and is absent from the United States; that they have read the foregoing petition and are familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts they believe to be true. The grounds for their knowledge are the books, records and papers of petitioner, communications received from him, and conferences with his associates. Subscribed and sworn to before me
this _____ day of February _____

A
re. para E. - It is of importance that said Louis L. Horch filled out income tax returns for Prof. Nicholas Roerich since the year 1923 until 1926, having his power of attorney and absolute authorization to do so, as the petitioner was away on an expedition in Central Asia since 1923 and therefore could not attend naturally himself to the filling out of his income tax returns. There are photostatic copies of receipts attached hereto proving that said Louis L. Horch filled out income tax returns for Prof. Roerich acting as his attorney in this matter.

re. para I. - As per official entry in the minutes of Trustees' Meeting of (date) Mr. Louis L. Horch and Nettie Horch donated to the above mentioned Institutions, which sponsored the expedition to Central Asia, the sum of \$400,000 (?) outright and the sum of \$600,000 on interest of 4%, but agreeing not to receive back ever the capital. The sums for the expedition for 1926 and 1927 entered into the above mentioned sums also as donations, but in no way as payments for paintings of the petitioner. This latter fact was so understood by all trustees of the Roerich Museum, of whom several also donated in their turn certain sums for the expenses of the expedition, one of the purposes of which was to receive paintings of Nicholas Roerich for the permanent exhibition in the Roerich Museum in New York.