

**United States Vs. Malcolm**

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**Court :** US Supreme Court

**Decided On :** Jan-19-1931

**Appeal No. :** 282 U.S. 792

**Appellant :** United States

**Respondent :** Malcolm

**Judgement :**

United States v. Malcolm - 282 U.S. 792 (1931)

U.S. Supreme Court United States v. Malcolm, 282 U.S. 792 (1931)

**United States v. Malcolm**

**No. 512**

**Submitted January 12, 1931**

**Decided January 19, 1931**

**282 U.S. 792**

*CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS*

*FOR THE NINTH CIRCUIT*

## SYLLABUS

1. Under the Revenue Act of 1928, the entire community income of a husband and wife, domiciled in California, need not be returned and the income tax thereon be paid by the husband.

2. Under 161(a), California Civil Code, the wife has such an interest in the community income that she should separately report and pay the tax on one-half of it.

The certificate from the court below stated the facts as follows:

"Robert K. Malcolm and Esther Jarrett Malcolm are husband and wife and citizens of the United States.

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Since October 1, 1920, they have continuously maintained their domicile in the state of California. During the year 1928, Robert Malcolm received a salary of \$3,600 for personal services rendered as an officer of the Liberty Farms Company, a California corporation. Under the laws of the State of California, this income was community property. On March 1, 1929, the husband and wife filed separate returns of their income for federal income tax purposes. Each reported one-half of the salary of \$3,600 received in 1928 by the husband, and each fully paid the amount shown to be due on the returns. It is admitted that all income taxes due from either husband or wife for the year 1928 have been fully paid if, as a matter of law, they had a lawful right to make such separate returns under the provisions of 11, 12, and 51 of the Revenue Act of 1928."

After the husband had filed his income tax return for the calendar year 1928, as set out above, the Commissioners, upon an audit and examination, determined that his return was incorrect in that the salary of \$3,600 should have been reported by the husband alone, and an income tax paid thereon by him, instead of both husband and wife reporting it at \$1,800 on each return. Accordingly, the Commissioner determined against the husband a deficiency in income tax

amounting to \$18.39. An assessment in this amount was then made and collected from the husband, the plaintiff herein, together with interest amounting to \$1.12. A claim for refund was thereafter filed and rejected by the Commissioner. From a judgment for this amount in plaintiff's favor, the defendant has appealed.

The questions certified were as follows:

"1. Under the applicable provisions of the Revenue Act of 1928, must the entire community income of a husband and wife domiciled in California be returned and the income tax thereon be paid by the husband? "

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"2. Has the wife, under 161(a) of the Civil Code of California, such an interest in the community income that she should separately report and pay tax on one-half of such income?"

PER CURIAM.

The first question certified is answered: No. The second question is answered: Yes. *Poe v. Seaborn, ante*, p. [282 U. S. 101](#) ; *Goodell v. Koch, ante*, p. [282 U. S. 118](#) ; *Hopkins v. Bacon, ante*, p. [282 U. S. 122](#) .

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