

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD FELD & ISABEL FELD

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1962

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 29th day of October , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Harold Feld & Isabel Feld (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Harold Feld & Isabel Feld
20 East 86th Street
New York, 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

29th day of October , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of October , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Allan Bakst

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Allan Bakst
21 East 40th Street
New York, New York 10016

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

29th day of October , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HAROLD FELD AND ISABEL FELD	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the year 1962.	:	

Petitioners, Harold Feld and Isabel Feld, have filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1962. (File No. 2-8117311) A formal hearing was held before Alfred Rubenstein, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 1, 1966, at 11:00 A.M. Petitioners appeared by Allan Bakst, Esq.

FINDINGS OF FACT

1. Petitioner, Harold Feld, filed an unincorporated business tax return for the year 1962. He reported as taxable income on this return the net income received by him from his unincorporated business, Union Square Painting Company, but omitted from taxable income the salary paid to him by Topps Construction Corp.

2. On January 4, 1965, the Income Tax Bureau issued a statement of audit changes against petitioners, Harold Feld and Isabel Feld, imposing unincorporated business tax upon the salary received by him during the year 1962 from Topps Construction Corp upon the grounds that the salary constituted business income subject to unincorporated business tax pursuant to Article 23 of the Tax Law. It also imposed additional personal income tax which was paid by petitioners and is not contested by them. In accordance with the

statement of audit changes, it issued a notice of deficiency.

3. During the year 1962, petitioner, Harold Feld, conducted a sole proprietorship under the name of Union Square Painting Company.

4. During the year 1962, petitioner, Harold Feld, was also the president and owner of 50% of the stock of Topps Construction Corp. The other 50% was owned by his brother. He was paid a salary of \$13,500.00 for his services to the corporation. Federal income tax, New York State income tax and social security tax was withheld from his salary and unemployment, disability and workmen's compensation insurance was paid for his benefit by the corporation. He reflected this income as salary on his 1962 Federal and New York State income tax returns.

5. Topps Construction Corp. during the year 1962 was a general contractor engaged in the renovation and alteration of offices and homes, essentially on behalf of banks, insurance companies and industrial organizations. The average billing per job was between \$10,000.00 and \$15,000.00 Each job was a one time transaction. There was little continuity in the work obtained from any particular customer. It competed with other construction contractors for jobs through submission of competitive bids. It used subcontractors to perform all manual work on contracts awarded to it.

6. Union Square Painting Company, on the other hand, during the year 1962 was solely engaged in the painting of office building suites. It was hired to work for landlords who rented to multiple tenants or by building or renting agents who operated buildings for landlords. The average billing per job was \$200.00 to \$300.00. Generally, many different jobs were obtained from the same customers. It had its own employees who did the work. It competed with other painting contractors for the jobs.

7. During the year 1962, the two organizations shared space in the same suite of offices. They had a common reception room and the same telephone number. The telephone bill was apportioned. Clerical work was performed for the corporation by employees of Union Square Painting Company. Each organization had its own separate lease for the office space, its own books and records, its own bank accounts, insurance coverage, accounts receivable and creditors. The painting services performed by Union Square Painting Company for the corporation represented about 1% of its total billings and about 5% to 10% of the gross amounts billed to the corporation. Each organization had separate estimators who prepared bids for jobs. With the exception of petitioner, the personnel of one business was not qualified to work for the other business. He devoted approximately 25% of his time to the corporation and the balance to the proprietorship. The services rendered by him for each organization were different.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Harold Feld, during the year 1962 as an officer of Topps Construction Corp. were not so integrated and interrelated with his activities in connection with his unincorporated business, Union Square Painting Company, as to constitute part of a business regularly carried on by him and therefore the salary received by him for services as an officer of the corporation was exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Harold Feld, on behalf of Topps Construction Corp. during the year 1962 did not constitute the carrying on of an unincorporated business and his

income derived therefrom was not subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

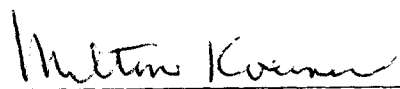
C. That the petition is granted with respect to the notice of deficiency issued January 4, 1965, insofar as it includes the salary income of petitioner, Harold Feld from Topps Construction Corporation in computing the additional unincorporated business tax.

DATED: Albany, New York
October 29, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N.Y. 12226

CERTIFIED

No. 592238

MAIL

Harold Feld & Isabel Feld

20 West 86th Street

New York, New York

presented by mail
11/3/71
NOV 3 1971



PLANETARIUM
STATION

MEMORANDUM

DATE:

11/8/71

TO: Mr. Louis Etlinger
c/o Floyd Worden
Income Tax Bureau
Room 104, Building #8

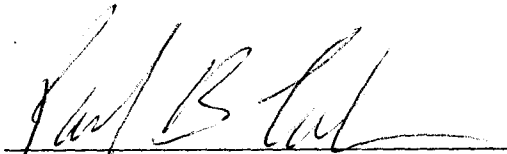
FROM: Paul B. Coburn, Hearing Officer
Hearing Unit
Room 214a, Building #9

RE: HAROLD FELD

SOCIAL SECURITY NO.:

125-03-6159

Please advise as to the last known address for the
above named taxpayer.


Paul B. Coburn

Taxpayer's last known address is:

*Correspondence mailed ~~received~~ Oct 12, 1971 shows T.P.'s
return address to be:-
1016 71st St
New York City*