

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT ISEAR & NANCY ISEAR:

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) 1965, 1966 and 1967

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

State of New York
County of Albany

Rae Zimmerman, 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 28th day of December, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert Isear &
Nancy Isear

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Robert Isear & Nancy Isear
22 Ferncliff Road
Scarsdale, New York 10583

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

28th day of December, 1971.

Harold Furus

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT ISEAR & NANCY ISEAR :

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

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) 1965, 1966 and 1967.

State of New York
County of Albany

Rae Zimmerman, 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 28th day of December , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Harry C.

Shuster

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

wrapper addressed as follows: Harry C. Shuster
51 Chambers Street
New York, New York 10007

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

28th day of December , 1971.

Martha F. Fuchs

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT ISEAR & NANCY ISEAR : DECISION
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Years 1965, 1966 and 1967. :

Petitioners, Robert Isear and Nancy Isear, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 84311711). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on July 16, 1971, at 10:30 A.M. Petitioners appeared by Harry C. Shuster, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did petitioner, Robert Isear's, activities as a photographer and a photographic consultant during the years 1965, 1966 and 1967 constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioners, Robert Isear and Nancy Isear, filed New York State income tax resident returns for the years 1965, 1966 and 1967. They did not file New York State unincorporated business tax returns for said years.

2. On February 24, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert Isear and Nancy Isear, imposing unincorporated business tax upon the income received by petitioner, Robert Isear, from his activities as a commercial

photographer during the years 1965, 1966 and 1967 and accordingly issued a Notice of Deficiency in the sum of \$1,825.84.

3. Petitioner, Nancy Isear, was neither employed nor engaged in an unincorporated business during the years 1965, 1966 and 1967.

4. During the years 1965, 1966 and 1967, a substantial portion of petitioner, Robert Isear's, income was derived from taking photographs for large corporations. These photographs were used by them in connection with their public relations activities. He also advised them on how best to cover subjects, what medium to use, and how the photographs might be best used in the layouts of publications. He was paid on a fee basis. The negatives became the property of the clients. The balance of his income was derived from taking photographs for advertising purposes.

5. Petitioner, Robert Isear, commenced his career in photography in 1942 as a Sergeant in the Army Air Force. He became a photographic officer with the rank of major. He directed the activities of the Eighth Air Force photo section in England and Europe. He worked as a free-lance photographer for a number of different magazines after the war. He was picture editor of Business Week Magazine from 1952 to 1960. He has worked as a photographer and photographic consultant for magazines and corporations since 1960.

6. During the years 1965, 1966 and 1967, over 90% of petitioner, Robert Isear's, income as a photographer and photographic consultant was derived from personal services rendered. Capital was not a material income producing factor.

7. Petitioner, Robert Isear, made charitable contributions of \$340.00 in 1965 and \$367.00 in 1966. The computation of unincorporated business tax set forth in the Statement of Audit Changes dated February 24, 1970, did not give him credit for these charitable contributions.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Robert Isear, as a commercial photographer and photographic consultant during the years 1965, 1966 and 1967, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Robert Isear, during the years 1965, 1966 and 1967, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That since petitioner, Nancy Isear, was not engaged in an unincorporated business during the years 1965, 1966 and 1967, she was not liable for unincorporated business tax for said years.

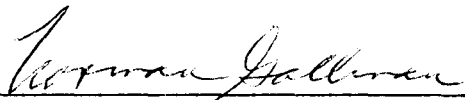
D. That petitioner, Robert Isear, is entitled to a deduction for charitable contributions in the sum of \$340.00 for the year 1965 and \$367.00 for the year 1966, since said contributions were not in excess of 5% of the amount by which his unincorporated gross income exceeded the sum of his unincorporated business deductions computed without the benefit of any deduction for charitable contributions in accordance with the meaning and intent of section 706(1) of the Tax Law.

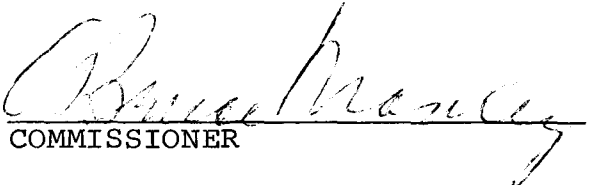
E. That the petition of Robert Isear and Nancy Isear is granted to the extent of cancelling the Notice of Deficiency issued February 24, 1970, as against petitioner, Nancy Isear, and of reducing petitioner, Robert Isear's, taxable business income for the year 1965 from \$9,581.26 to \$9,241.26 and for the year 1966 from \$13,793.68 to \$13,426.68 and of reducing the unincorporated

business tax due for the year 1965 from \$383.25 to \$369.65 and for the year 1966 from \$551.75 to \$537.07, and the Notice of Deficiency issued February 24, 1970, as against petitioner, Robert Isear, is reduced from \$1,825.84 to \$1,789.95 together with such interest as may be due from February 24, 1970, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
December 28, 1971

STATE TAX COMMISSION


COMMISSIONER


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COMMISSIONER