

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES J. KRIEGSMANN

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) 1964 and 1965

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

State of New York
County of Albany

Lynn Wilson, 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 31st day of May, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon JAMES J.
KRIEGSMANN (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: James J. Kriegsmann

165 West 46th Street
New York, New York 10036

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

31st day of May, 1972.

Jantha Funnaro

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 31st day of May , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon ROBERT GOLDMAN,
C.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: Robert Goldman, C.P.A.

570 Seventh Avenue
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

31st day of May , 1972.

Martha Furus

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 31, 1972

James J. Kriegsmann
165 West 46th Street
New York, New York 10036

Dear Mr. Kriegsmann:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **722** 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,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JAMES J. KRIEGSMANN	:	DECISION
For Redetermination of Deficiency	:	
or for Refund of Unincorporated	:	
Business Tax under Article 23 of	:	
the Tax Law for the Years 1964 and	:	
1965.	:	

Petitioner, James J. Kriegsmann has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964 and 1965. (File #32275869). 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 December 16, 1970 at 9:15 a.m. Petitioner appeared by Robert Goldman, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

FINDINGS OF FACT

1. Petitioner, James J. Kriegsmann, filed New York State unincorporated business tax returns for the years 1964 and 1965. He reported as taxable income on these returns the net income received from his unincorporated business, but omitted from taxable income the salary paid to him by Master Photographers, Inc. and Harbent, Inc.
2. On February 19, 1968 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, James J. Kriegsmann imposing unincorporated business tax upon the salary received by him during the years 1964 and 1965 from Master Photographers, Inc. and Harbent, Inc. upon the grounds that said salary represented additional business

income subject to unincorporated business tax and accordingly issued a Notice of Deficiency in the sum of \$1,108.32.

3. During the years 1964 and 1965, petitioner, James J. Kriegsmann, was the sole proprietor of a commercial photography business.

4. During the years 1964 and 1965 petitioner, James J. Kriegsmann, was also an officer of Master Photographers, Inc. and Harbent, Inc. He received a salary from Master Photographers, Inc. of \$9,275.00 in 1964 and \$8,050.00 in 1965. He received a salary from Harbent, Inc. of \$2,250.00 in 1964 and \$4,750.00 in 1965. Federal income tax, social security tax and New York State income tax was withheld from the salary paid to him by Master Photographers, Inc. Only social security tax was withheld from the salary paid to him by Harbent, Inc. His wife owned 50% of the stock of each of the corporations. He owned one share of stock in Master Photographers, Inc.

5. During the years 1964 and 1965, petitioner, James J. Kriegsmann's unincorporated business was engaged in the business of photographing, processing and selling photographs of theatrical celebrities. He maintained studios and laboratories at 165 West 46th Street in New York City. He occupied two floors consisting of 18,000 square feet of space divided into photographic studios, laboratories and offices.

6. During the years 1964 and 1965, Harbent, Inc. was also engaged in the business of selling photographs of theatrical celebrities. It did not have any photographic or lab facilities of its own. It contracted out its business to petitioner, James J. Kriegsmann's unincorporated photography business. It was billed for the services rendered. It occupied one desk in the space leased by the unincorporated business. It had its own stationery, billheads, price lists, and telephone. It serviced the same type of customers and often the same customers as the unincorporated business.

7. During the years 1964 and 1965, Master Photographers, Inc. was engaged in the business of photographing, processing and selling photographs of commercial items such as furniture, television sets and the like. It maintained an office on the third floor of 165 West 46th Street in New York City. It leased the premises directly from the

landlord of the building. It had its own equipment, employees, stationery, billheads and telephone. It did its own advertising. It used a portion of the laboratory leased by the unincorporated business in connection with the processing of photographs. Petitioner, James J. Kriegsmann, was the only employee of the corporation who was also employed by the unincorporated business.

8. The services rendered by petitioner, James J. Kriegsmann, as an officer of Master Photographers, Inc. and Harbent, Inc. were similar to his activities on behalf of his unincorporated business. It consisted of supervising the work of the various organizations and rendering technical advice to their respective customers. There was no fixed division of his time between the various organizations.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, James J. Kriegsmann, during the year 1964 and 1965 as an officer of Master Photographers, Inc. were not so integrated and interrelated with his activities in connection with his unincorporated photography business 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 said 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, James J. Kriegsmann, during the year 1964 and 1965 as an officer of Master Photographers, Inc. 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 services rendered by petitioner, James J. Kriegsmann, during the years 1964 and 1965, as an officer of Harbent, Inc., were so integrated and interrelated with his activities in connection with his unincorporated photography business 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 said corporation was not

exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

D. That the aforesaid activities of petitioner, James J. Kriegsmann, during the years 1964 and 1965 as an officer of Harbent, Inc. constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

E. That the petition of James J. Kriegsmann is granted to the extent of reducing corrected taxable business income for the year 1964 from \$36,149.32 to \$26,874.32 and for the year 1965 from \$53,272.36 to \$45,222.36 and of reducing additional unincorporated business tax due for the year 1964 from \$461.00 to \$89.99 and for the year 1965 from \$512.00 to \$322.01, and the Notice of Deficiency issued February 19, 1968 is reduced from \$1,108.32 to \$462.97 together with such interest as may be lawfully due from February 19, 1968, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 31, 1972.

STATE TAX COMMISSION

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koen

COMMISSIONER