

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRWIN FELDMAN

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) 1967 & 1968 ;

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 8th day of November , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irwin Feldman

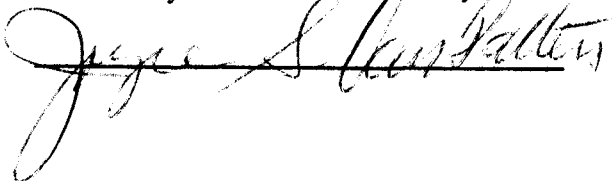
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Irwin Feldman
57 Salem Ridge Drive
Huntington, New York

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

8th day of November , 1973.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRWIN FELDMAN

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) 1967 & 1968 :

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 8th day of November , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Harold Ross

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

wrapper addressed as follows: Mr. Harold Ross
P.O. Box 307

355 Gotham Parkway

Carlstadt, New Jersey 07027

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

8th day of November , 1973

Jesse S. Van Pelt

Jesse S. Van Pelt

Martha Funaro

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino

~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

November 8, 1973

Mr. Irwin Feldman
57 Salem Ridge Drive
Huntington, New York

Dear Mr. Feldman:

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	:	
IRWIN FELDMAN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967 and 1968.	:	

Petitioner, Irwin Feldman, 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 1967 and 1968. (File No. 8-16373245). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York for November 15, 1972 at 1:15 P.M. Petitioner's representative, Harold Ross, in writing, waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Irwin Feldman's activities as a photographer during the years 1967 and 1968 constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioner, Irwin Feldman, and his wife filed New York State income tax resident returns for the years 1967 and 1968. He did not file New York State unincorporated business tax returns for said years.

2. On November 30, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Irwin Feldman, imposing

unincorporated business tax upon the income received by him from his activities as a photographer during the years 1967 and 1968. It also imposed a penalty pursuant to section 685(a) of the Tax Law for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,110.11.

3. During the years 1967 and 1968, petitioner, Irwin Feldman's business income was derived from his activities as a photographer. He conducted his business under the names "Robert Scott" and "Robert Scott Studio". He maintained a studio at 112 East 31st Street in New York City. He specialized in fashion, story and magazine cover photography. Approximately 75% of his said income was earned for work as a magazine cover photographer for national magazine publishers.

4. Petitioner, Irwin Feldman, listed his principal business product or activity as "commercial photography" on Schedule "C" and Schedule "SE" of his 1967 and 1968 Federal income tax returns.

5. During the years 1967 and 1968 all of petitioner, Irwin Feldman's business income as a photographer was derived from personal services rendered. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Irwin Feldman, as a fashion, story and magazine cover photographer during the years 1967 and 1968, 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.

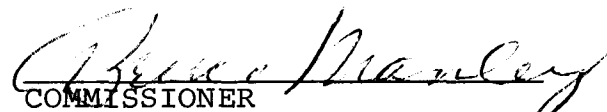
B. That the aforesaid activities of petitioner, Irwin Feldman, during the years 1967 and 1968 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Irwin Feldman is denied and the Notice of Deficiency issued November 30, 1967 is sustained.

DATED: Albany, New York
November 8, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER