

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN KONER

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) 1966 & 1967 :

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 7th day of November , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Marvin Koner

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

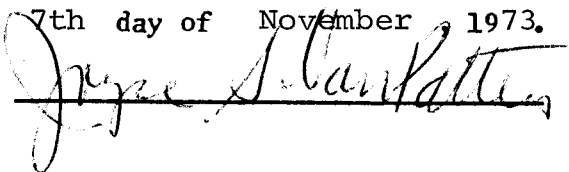
wrapper addressed as follows: Mr. Marvin Koner
127 West 56th Street
New York, New York

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

7th day of November 1973.





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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7th day of November , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Bernard Goodman, 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: Bernard Goodman, C.P.A.
109 Croton Avenue
Ossining, 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

7th day of November , 1973.

[Signature]

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 7, 1973

Mr. Marvin Koner
127 West 56th Street
New York, New York

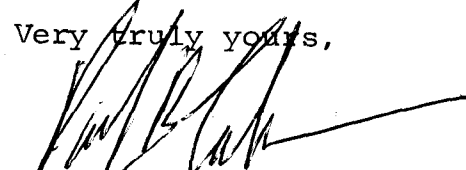
Dear Mr. Koner:

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	:	
MARVIN KONER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	

Petitioner, Marvin Koner, 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 1966 and 1967. (File No. 78872769). 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 14, 1972, at 9:15 A.M. Petitioner appeared by Bernard Goodman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUES

I. Did petitioner, Marvin Koner's activities as a free-lance photographer during the years 1966 and 1967, constitute the practice of a profession?

II. Did petitioner, Marvin Koner, have reasonable cause for failure to file New York State unincorporated business tax returns for the years 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, Marvin Koner, and his wife filed New York State combined income tax returns for the years 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Marvin Koner, imposing unincorporated business tax in the sum of \$1,513.98, upon the income received by him from his activities as a free-lance photographer during the years 1966 and 1967. It also imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of \$378.49 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 \$2,084.98.

3. During the years 1966 and 1967, petitioner, Marvin Koner's business income was derived from his activities as a free-lance photographer. He specialized in taking photographs to illustrate stories and articles appearing in national magazines. He was retained to take photographs by magazines such as Playboy, Fortune, Redbook, Esquire, Pageant, and Infinity.

4. Petitioner, Marvin Koner, received a B.A. degree in Biology from Alfred University in 1941. He attended Air Force schools in photography, photo intelligence and aerial photography while serving in the Air Force between 1943 and 1946. He attended the Germain School of Photography in 1947. He also attended seminars for talented photographers in New York City, conducted by Alex Brodevitch. He lectured on photography at numerous universities and photography clubs. He wrote several articles for publications in the field of photography.

5. During the years 1966 and 1967, all of petitioner, Marvin Koner's business income as a free-lance photographer was derived from personal services rendered. Capital was not a material income producing factor.

6. Petitioner, Marvin Koner, was advised by his counsel that he was not required to file New York State unincorporated business tax returns for the years 1966 and 1967.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Marvin Koner, as a free-lance photographer during the years 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.

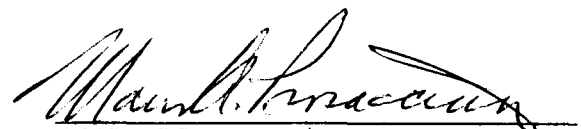
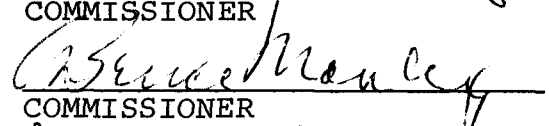
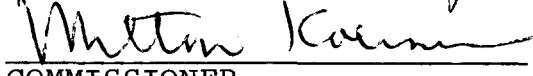
B. That the aforesaid activities of petitioner, Marvin Koner, during the years 1966 and 1967, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Marvin Koner, had reasonable cause for failure to file New York State unincorporated business tax returns for the years 1966 and 1967, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Marvin Koner is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1966 and 1967, in the sum of \$378.49; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued November 24, 1969; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
November 7, 1973

STATE TAX COMMISSION


COMMISSIONER

COMMISSIONER

COMMISSIONER