

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GOSTA PETERSON and  
PATRICIA PETERSON

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

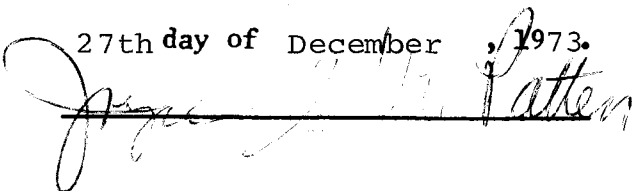
MARTHA FUNARO, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27th day of December, 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon GOSTA PETERSON and  
PATRICIA PETERSON (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. and Mrs. Gosta Peterson  
16 East 96th 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

27th day of December, 1973.

 Joseph P. Patten

 Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GOSTA PETERSON and

PATRICIA PETERSON

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

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 27th day of December , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon STEPHEN PERLMAN

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Mr. Stephen Perlman  
41 East 42nd 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

27th day of December , 1973.

James A. Van Latta

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
Mario A. Procaccino  
~~NORMAN F. CALLEY~~ PRESIDENT

A. BRUCE MANLEY  
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
December 27, 1973

Mr. and Mrs. Gosta Peterson  
16 East 96th Street  
New York, New York

Dear Mr. and Mrs. Peterson:

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

Please take further notice that pursuant to **section 722** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 months** after  
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 relat-  
ing 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

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
GOSTA PETERSON and	:	
PATRICIA PETERSON	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1965, 1966 and 1967.	:	

---

Petitioners, Gosta Peterson and Patricia Peterson, have filed a petition for a redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 78652095). 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 September 18, 1973, at 2:45 P.M. Petitioners appeared by Stephen Perlman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

#### ISSUES

I. Did petitioner, Gosta Peterson's activities as a free-lance editorial fashion photographer during the years 1965, 1966 and 1967 constitute the practice of a profession?

II. Did petitioner, Gosta Peterson, have reasonable cause for failure to file New York State unincorporated business tax returns for the years 1965, 1966 and 1967?

FINDINGS OF FACT

1. Petitioners, Gosta Peterson and Patricia Peterson, filed New York State combined income tax returns for the years 1965, 1966 and 1967. They did not file New York State unincorporated business tax returns for said years.

2. On December 29, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Gosta Peterson and Patricia Peterson, imposing unincorporated business tax in the sums of \$956.25 for the year 1965, \$1,450.30 for the year 1966 and \$1,538.41 for the year 1967 upon the income received by petitioner, Gosta Peterson, from his activities as a free-lance photographer during said years. It also imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of \$986.24 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 \$5,536.53.

3. It was stipulated at the formal hearing that the Statement of Audit Changes and Notice of Deficiency dated December 29, 1969, should not have been issued against petitioner, Patricia Peterson, since they were solely concerned with income earned by petitioner, Gosta Peterson.

4. During the years 1965, 1966 and 1967, petitioner, Gosta Peterson's business income was derived from his activities as a free-lance photographer. Approximately 20% of his income during said years was received in connection with photographs

taken for commercial advertising and promotional purposes. He concedes that this portion of his income was subject to the unincorporated business tax. The balance of his income for said years was derived from editorial fashion photography. He was retained principally by Conde Nast Publications and the New York Times to take photographs in connection with fashion articles in magazines published by them. The articles and the photographs illustrating said articles were not used to sell or promote the particular items, but rather to express the opinions of the fashion editors. He had the sole discretion to determine how and where to pose and photograph the models used in connection with said articles. All he was given by a magazine was a copy of the text and in most cases the particular garment the magazine wished to use in the article.

5. All of petitioner, Gosta Peterson's business income as a photographer during the years 1965, 1966 and 1967 was derived from personal services rendered. Capital was not a material income producing factor.

6. Petitioner, Gosta Peterson, was advised by the preparer of his tax returns that he was not required to file New York State unincorporated business tax returns for the years 1965, 1966 and 1967.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner, Gosta Peterson, as a free-lance editorial fashion photographer and as a commercial photographer 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. Petition of Marvin Koner, Decision of the State Tax Commission, November 7, 1973; Petition of Irwin Feldman, Decision of the State Tax Commission, November 8, 1973; Petition of Robert Isear and Nancy Isear, Decision of the State Tax Commission, December 28, 1971.

B. That the aforesaid activities of petitioner, Gosta Peterson, 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 it is held that petitioner, Gosta Peterson's income from his activities both as a free-lance editorial fashion photographer and as a commercial photographer for the years 1965, 1966 and 1967 is subject to the unincorporated business tax, it is not necessary for the State Tax Commission at this time to decide what percentage of said income was derived from each activity.

D. That petitioner, Gosta Peterson, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1965, 1966 and 1967, and, therefore the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

E. That the Statement of Audit Changes and Notice of

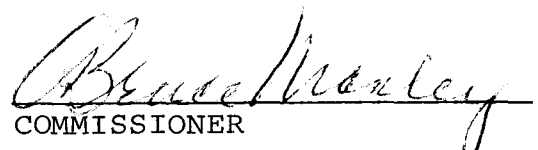
Deficiency dated December 29, 1969, should not have been issued against petitioner, Patricia Peterson.

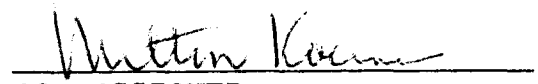
F. That the petition of Gosta Peterson and Patricia Peterson is granted to the extent of cancelling the Notice of Deficiency dated December 29, 1969, as against petitioner, Patricia Peterson, and cancelling the penalty imposed pursuant to section 685(a) of the Tax Law in the sum of \$986.24 as against petitioner, Gosta Peterson, that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued December 29, 1969; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
December 27, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER