

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CORNELL CAPA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Unincorporated Business** :
Taxes under Article ~~(s)~~ 23 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ :
1965, 1966, 1967

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December, 1977, he served the within
Notice of Decision by (certified) mail upon Cornell Capa
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Cornell Capa
275 Fifth Avenue
New York, New York 10016

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative~~
~~xxx the~~ 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

13th day of December, 1977

Just Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CORNELL CAPA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) :
1965, 1966, 1967 ~~xxxxxxxxxx~~

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~xxx~~he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December, 1977, ~~he~~he served the within
Notice of Decision by (certified) mail upon Boris J. Gottlieb

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Boris J. Gottlieb, CPA
19 West 44th 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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

13th day of December, 1977

Janet Mack

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

December 13, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Gernall Capa
275 Fifth Avenue
New York, New York 10016**

Dear Mr. Capa:

Please take notice of the **722** ~~DECISION~~
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrvasty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

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

Petitioner, Cornell Capa, 275 Fifth Avenue, New York, New York 10016, filed a petition for 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. 00188).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 12, 1976 at 9:15 A.M. Petitioner appeared by B.J. Gottlieb, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether the petitioner's activities as a photo-journalist during the years 1965, 1966 and 1967 constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

II. Whether the petitioner's royalty income derived from his activities as a photo-journalist was subject to the unincorporated business tax.

III. Whether the petitioner's income from the Estate of Robert

Capa was subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner filed New York State unincorporated business tax returns for the years 1965, 1966 and 1967. On these returns he included income received from the Estate of Robert Capa, as well as book-copyright royalty income. He also filed New York State business allocation schedules for the years 1965, 1966 and 1967.

2. On February 26, 1969, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner showing the disallowance of the allocation of business income claimed for the years 1965, 1966 and 1967, on the grounds that desk space and services furnished by the petitioner's agent in foreign countries did not constitute bona fide places of business of the petitioner outside New York State. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued against the petitioner on October 27, 1969 in the sum of \$1,231.44.

3. On January 22, 1970, petitioner filed a petition for redetermination of a deficiency or for refund of unincorporated business tax for the years 1965, 1966 and 1967, on the grounds that a major portion of his income was not subject to tax as it was from literary work and was, therefore, the practice of a profession; that part of his income was royalty income from the Estate of Robert Capa and was not business income; and that he maintained offices outside the State of New York and properly allocated income outside the State of New York.

4. In a letter to the Income Tax Bureau dated December 3, 1971, Murray Frank, Esq., petitioner's attorney, stated that his client was withdrawing his contention that he was entitled to allocate income to sources outside New York State.

5. During the years 1965, 1966 and 1967, the petitioner was a free-lance magazine photographer and photo-journalist who derived a major portion of his income from photo essays which he created for various magazines. He also received royalties as the photographer or photographic editor of various books written on a variety of subjects. He received numerous awards for the excellence he displayed in the field of photography. He lectured on photography at colleges and museums.

6. Petitioner received income from the Estate of Robert Capa and included said income in the amount of \$3,935.12 for the year 1965, \$4,546.42 for the year 1966 and \$3,434.46 for the year 1967, as business income on his unincorporated business tax returns.

CONCLUSIONS OF LAW

A. That the activities of petitioner as a photo-journalist 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 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 during the years 1965, 1966 and 1967 constituted the carrying on of an unincorporated business and his income derived therefrom, including royalty

income received as the photographer and photographic editor of books, is subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the income received by the petitioner from the Estate of Robert Capa does not constitute unincorporated business gross income within the meaning and intent of section 705 of the Tax Law.

D. That the petition of Cornell Capa is granted to the extent that the income from the estate of Robert Capa in the sums of \$3,935.12, \$4,546.42 and \$3,434.46 for the years 1965, 1966 and 1967, respectively, is to be excluded from unincorporated business gross income. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued October 27, 1969, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
December 13, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER