

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WERNER WOLFF

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

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, :
1969 and 1970.

State of New York
County of Albany

JANET MACK

, 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 9th day of October , 1975, she served the within
Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon Werner Wolff

~~XXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Werner Wolff
397 Bleecker Street
New York, New York 10014

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 (~~XXXXXXXXXXXX~~
~~XX~~) petitioner herein and that the address set forth on said wrapper is the last
known address of the (~~XXXXXXXXXXXX~~) petitioner.

Sworn to before me this

9th day of October , 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WERNER WOLFF

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article ~~(8)~~ 23 of the
Tax Law for the Year(s) 1967, 1968, :
1969 and 1970.

State of New York
County of Albany

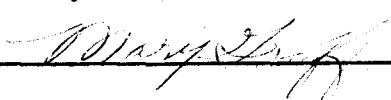
JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 9th day of October, 1975, she served the within
Notice of Decision (~~XXXXXX~~) by (certified) mail upon Bernard Goodman, P.A.

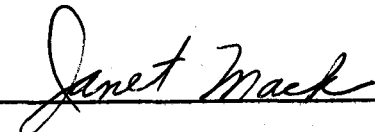
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Bernard Goodman, P.A.
Goodman and Steiner
109 Croton Avenue
Ossining, New York 10562
and by depositing same enclosed in a postpaid properly addressed 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

9th day of October, 1975.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER
~~GEORGE O. CONNELL~~

BUILDING 9, ROOM 214A ~~107~~
STATE CAMPUS
ALBANY, N.Y. 12227
AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright
Mr. Coburn
Mr. Leisner
(518) 457-3336

DATED: Albany, New York
October 9, 1975

Mr. Warner Wolff
397 Bleecker Street
New York, New York 10014

Dear Mr. Wolff:

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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WERNER WOLFF	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1967, 1968, 1969 and 1970.	:	

Petitioner, Werner Wolff, 397 Bleecker Street, New York, New York 10014, has filed petitions for redetermination of deficiency or for refund of personal income tax under Article 23 of the Tax Law for the years 1967, 1968 and 1969. (File No. 948009264) and for the year 1970 (File No. 058738847).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 9, 1975, at 2:00 P.M. Goodman and Steiner by Bernard Goodman, P.A. appeared for petitioner. Saul Heckelman, Esq. (James A. Scott, Esq., of counsel) appeared for the Income Tax Bureau.

ISSUES

I. Did the activities of petitioner, Werner Wolff, as a photo journalist during the years 1967, 1968, 1969 and 1970 constitute the practice of a profession?

II. Is petitioner, Werner Wolff, liable for unpaid New York State unincorporated business taxes for the years 1967, 1968, 1969 and 1970?

FINDINGS OF FACT

1. Petitioner, Werner Wolff, failed to file with the Income Tax Bureau New York State unincorporated business tax returns for the years 1967, 1968, 1969 and 1970.

2. On September 27, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Werner Wolff, imposing additional personal income taxes and unincorporated business taxes for the years 1967, 1968 and 1969 upon the grounds that petitioner was carrying on an unincorporated business. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$2,228.55. A previous remittance of \$294.31 was applied against this deficiency so that the balance due is in the sum of \$1,934.24.

3. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Werner Wolff, imposing an additional personal income tax and unincorporated business tax for the year 1970 upon the grounds that petitioner was carrying on an unincorporated

business. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$821.10 for the year 1970.

4. Petitioner, Werner Wolff, is a photo journalist. He maintains no office, nor does he have any employees. During the years 1967, 1968 1969 and 1970, petitioner, Werner Wolff's business income was derived from his activities as a photo journalist. He took photographs for magazines such as Patient Care, Johns Hopkins Magazine, the Mount Sinai Annual Report and the New York Times Magazine.

5. Petitioner, Werner Wolff, began photography as a hobby in Germany. In 1936, he emigrated to the United States where he took a course at the New York Institute of Photography. In December, 1936, petitioner, Werner Wolff, was hired by Pix, Inc. where he worked as a darkroom assistant. He was employed by Pix, Inc. until 1939.

6. In 1939, with two other employees of Pix, Inc., petitioner, Werner Wolff, formed a picture agency called Camera Features. This agency was dissolved in 1942 when petitioner, Werner Wolff, was drafted into the army. From 1942 until he was discharged in 1945, he was assigned to Yank magazine as an army photographer.

7. Petitioner, Werner Wolff, joined Black Star Publishing Co., Inc. as a contract photographer in 1945. A contract made on January 1, 1952, between petitioner, Werner Wolff and Black Star Publishing Co., Inc. provided that Black Star would become the exclusive agent for the sale and rental of his photographs. The contract specified a percentage from the sale of his photographs that petitioner, Werner Wolff, would pay Black Star Publishing Co., Inc.

8. In the 1950's petitioner, Werner Wolff, became a partner in the G. & W. Photo Service. The unincorporated business tax for G. & W. Photo Service is paid by the partnership. Petitioner, Werner Wolff, reported his proportion of the G. & W. Photo Service unincorporated business tax on his 1970 New York State personal income tax return.

9. Petitioner, Werner Wolff, had his photographs exhibited on two separate occasions in museums throughout the United States. The exhibition was sponsored by Photography in the Fine Arts and the petitioner, Werner Wolff, was not reimbursed for the use of his photographs.

10. During the years 1967, 1968, 1969 and 1970, all of petitioner, Werner Wolff's business income as a photo journalist was derived from personal services rendered. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

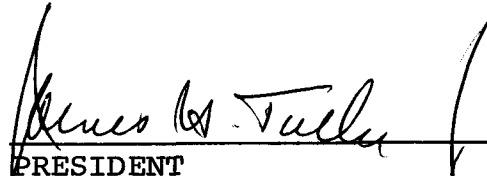
A. That the activities of petitioner, Werner Wolff, as a photo journalist, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law. (See petition of Koner v. S.T.C., November 7, 1973).

B. That the activities of petitioner, Werner Wolff, as a photo journalist during the years 1967, 1968, 1969 and 1970 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 Werner Wolff is denied and the Notices of Deficiency dated September 25, 1972 and November 26, 1973 are sustained.

DATED: Albany, New York
October 9, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER