

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CHARLES HARBUTT

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 (23) of the  
Tax Law for the Year(s) 1965 & 1967.

State of New York  
County of Albany

Donna Scranton, 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 17th day of May, 1976, she served the within  
Notice of Decision (~~or Determination~~) by (certified) mail upon Charles  
Harbutt (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Charles Harbutt  
190 Warren Street  
Brooklyn, 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~~  
~~xxx~~) 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

17th day of May, 1976.

Just Mack

Donna Scranton

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CHARLES HARBUTT

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 (X) 23 of the  
Tax Law for the Year(s) 1965 and  
1967.

State of New York  
County of Albany

Donna Scranton, 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 17th day of May, 1976, she served the within  
Notice of Decision (~~xx Determination~~) by (certified) mail upon Harvey  
Horowitz, Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Harvey Horowitz, Esq.  
Squadron, Gartenberg, Ellenoff & Plesent  
551 Fifth Avenue  
New York, New York 10017  
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

17th day of May, 1976.

Janet Mack

Donna Scranton



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

DATED: Albany, N.Y.  
May 17, 1976

TELEPHONE: (518) 457-3850

Mr. Charles Harbutt  
190 Warren Street  
Brooklyn, New York

Dear Mr. Harbutt:

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

Please take further notice that pursuant to  
Section(8) **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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

**PAUL E. COBURN**  
**SUPERVISING TAX**  
**HEARING OFFICER**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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

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Petitioner, Charles Harbutt, residing at 190 Warren Street, Brooklyn, New York, has filed a petition for a redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1965 and 1967.

(File No. 74948289.) A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on December 12, 1973, and December 16, 1974. Petitioner appeared by Squadron, Gartenberg, Ellenoff & Plesent (Harvey Horowitz, Esq. of counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq. and James Scott, Esq. of counsel).

#### ISSUES

I. Was the income of the petitioner, Charles Harbutt, received as a photographer-journalist subject to the unincorporated business tax for the years 1965 and 1967.

II. Did petitioner, Charles Harbutt, have reasonable cause for failing to file timely unincorporated business tax returns for the years 1965 and 1967.

FINDINGS OF FACT

1. Petitioner, Charles Harbutt, timely filed New York State income tax returns for the years 1965 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On April 11, 1969, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Charles Harbutt, imposing unincorporated business taxes for the years 1965 and 1967 on the grounds that his activities constituted the carrying on of an unincorporated business. Accordingly, the Income Tax Bureau issued a Notice of Deficiency for 1965 and 1967 in the sum of \$1,228.47.

3. Petitioner, Charles Harbutt, was awarded a Bachelor's Degree in journalism in 1956 from Marquette University. He was editor of the Jubilee Magazine from 1956 to 1959 and also editor and chief photographer for the City of New York Planning Commission from 1968 through 1970. From 1968 through 1971 he was also an instructor of photography in such institutions as Cooper Union and Pratt and at workshops in Aspen, Colorado; Millerton, New York; Boston, Massachusetts and Camden, Maine. His awards included a By-Line Award conferred in 1966 by the alumni of Marquette University in recognition of distinguished service as a journalist, a Heart

Association Award for outstanding medical coverage and a CAPS Award for photography. He was the only photographer to be commissioned by the American Revolutionary Bicentennial Commission to describe the United States in photographs for the Bicentennial.

4. Petitioner, Charles Harbutt, during the years in question 1965 and 1967, described his activities as a photographer-journalist. He covered over fifty-one different assignments. His photographs appeared in many magazines such as Accent on Leisure, Hospital News, Post Time and Parade. An article on adult education appeared in Life Books. In addition he worked on independent projects with the hope that they would be published and distributed. This was done by an organization known as Magnum to which he belonged with twenty other internationally known photographers. This international cooperative of photographers with offices in New York and Paris provided its members with a business service of billing customers, an office to work in and photography dark rooms. It attempted to sell materials which the photographers developed as their own independent projects. At times assignments come through said organization. On some assignments he prepared texts with the photographs. On other assignments he initiated and researched the subject in order to prepare and edit the photographs.

5. The income tax returns for the years 1965 and 1967 were prepared by Gerard S. Abraham, a certified public accountant, who advised petitioner, Charles Harbutt, on tax matters.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Charles Harbutt, as a photographer-journalist during the years 1965 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 the petitioner, Charles Harbutt, during the years 1965 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.

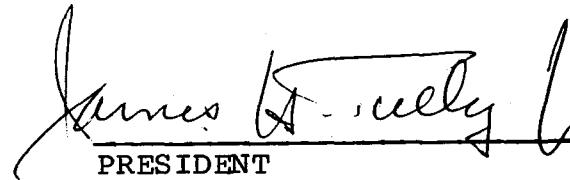
C. That petitioner, Charles Harbutt, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1965 and 1967 and therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Charles Harbutt is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1965 and 1967; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of

Deficiency issued April 11, 1969; and, that except as so granted,  
the petition is in all other respects denied.

DATED: Albany, New York  
May 17, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER