

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BURTON S. GLINN

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 through 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 17th day of February , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Burton S. Glinn

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Burton S. Glinn
1 West 64th Street
New York, New York 10023

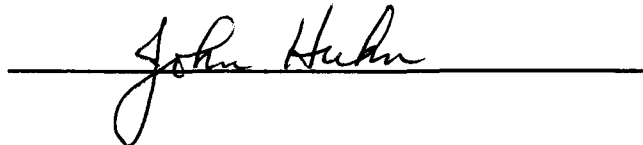
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

17th day of February , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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BURTON S. GLINN

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

John Huhn , 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 February , 19 78, ~~she~~ served the within
Notice of Decision by (certified) mail upon Boris J. Gottlieb

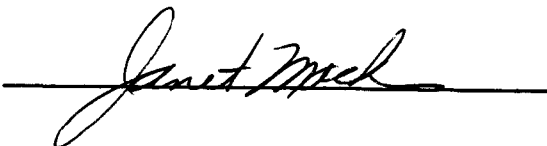
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Boris J. Gottlieb, CPA
19 West 44th Street
New York, New York 10036

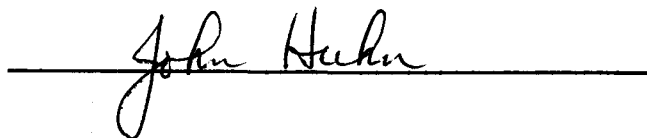
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

17th day of February , 1978







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

February 17, 1978

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

**Mr. Burton S. Glinn
1 West 64th Street
New York, New York 10023**

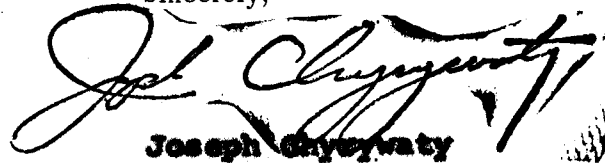
Dear Mr. Glinn:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(b) 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 Chyzywaty
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
BURTON S. GLINN : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Years 1965 through 1967. :

Petitioner, Burton S. Glinn, 1 W. 64th Street, New York, New York 10023, 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 through 1967 (File No. 00301).

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 March 30, 1977 at 10:45 A.M. Petitioner appeared by Boris J. Gottlieb, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioner's activities as a photographer during the years 1965, 1966 and 1967, constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner filed unincorporated business tax returns for the years 1965, 1966 and 1967. On said returns, he included all income which he received from his activities as a photographer.

He also filed a New York Business Allocation Schedule for the years 1965, 1966 and 1967, allocating a portion of his income to sources outside New York State.

2. On October 27, 1969, the Income Tax Bureau issued a Notice of Deficiency against the petitioner for the years 1965 through 1967. Said Notice resulted from the Income Tax Bureau's disallowance of an allocation of business income on the grounds that desk space and services furnished by his agent in Paris, France, and in London, England, did not constitute bona fide places of business outside New York State.

3. On January 20, 1970, Burton S. Glinn filed a petition for Redetermination of a Deficiency or for Refund of Personal Income Tax or Unincorporated Business Tax for the years 1965, 1966 and 1967, on the grounds that (a) a major portion of his income was derived from literary works and was exempt in that it constituted practice of a profession within the purview of section 703(c) of the Tax Law, and (b) that he maintained offices outside the State of New York and properly allocated income to sources outside the State of New York.

4. Petitioner withdrew his contention that he was entitled to allocate income to sources outside New York State. He did not claim exemption from unincorporated business tax for work he performed for commercial firms, but claimed exemption on that portion

of his income attributable to commission fees received by him from Magnum Photos, Inc. for its lease of his photo negatives and for royalties from book copyrights.

5. During the years 1965, 1966 and 1967, petitioner, Burton S. Glinn, was a photographer. He derived a major portion of his income from commission fees received by him from his agent Magnum Photos, Inc. Magnum Photos, Inc. maintained petitioner's archives of photographic negatives and leased these negatives to customers for a fee. Petitioner received a commission from Magnum Photos, Inc. each time his negatives were leased. Petitioner also received copyright royalties as the photographer for various books and publications.

6. Petitioner contended that photographs which appeared in a literary magazine article or book and which belonged to him, constituted an "art form" similar to that of literary writing and to that extent, represented a profession exempt from unincorporated business tax.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Burton S. Glinn, as a 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 unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of petitioner during the years 1965, 1966 and 1967 constituted the carrying on of an unincorporated business, and his income derived therefrom (including copyright royalties and commission fees for the use of his photo negatives) was subject to unincorporated business tax, in accordance with the meaning and intent of section 703 and 705 of the Tax Law.

C. That the petition of Burton S. Glinn is denied and the Notice of Deficiency issued October 27, 1969 is sustained together with such interest as may be lawfully owing.

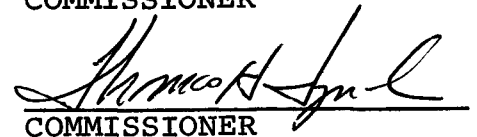
DATED: Albany, New York

February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER