

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRWIN FELDMAN

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) ~~xxxPeriod(s)xx~~ :
1969 through 1970.

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 6th day of April, 1979, she served the within
Notice of Decision by (certified) mail upon Irwin Feldman
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Irwin Feldman
c/o Harold Ross, CPA
355 Gotham Parkway
Carlstadt, NJ 07072

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

6th day of April, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
IRWIN FELDMAN

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) ~~xxxxxxx~~ :
1969 and 1970.

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 6th day of April, 1979, he served the within
Notice of Decision by (certified) mail upon Harold Ross
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Harold Ross, CPA
Ross, Friedman & Co.
355 Gotham Parkway
Carlstadt, NJ 07072
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

6th day of April, 1979.

Marilyn J. Papineau

John Huhn



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

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

April 6, 1979

Mr. Irwin Feldman
c/o Harold Ross, CPA
355 Gotham Parkway
Carlstadt, ~~NY~~ 07072
NY

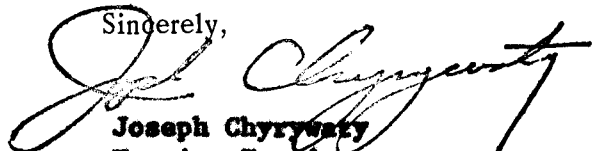
Dear Mr. Feldman:

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(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 Chyrwaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
IRWIN FELDMAN : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years :
1969 and 1970. :

Petitioner, Irwin Feldman, c/o Harold Ross, CPA, 355 Gotham Parkway, Carlstadt, New Jersey 07072, 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 1969 and 1970 (File No. 13926).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1978 at 2:45 P.M. Petitioner appeared by Harold Ross, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's activities as a photographer during 1969 and 1970 constituted the carrying on of an unincorporated business, or whether his activities constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner, Irwin Feldman, timely filed New York State personal income tax returns for 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities as a photographer constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency against petitioner on April 13, 1973 for 1969 and 1970 in the amount of \$1,932.88 in unincorporated business tax, plus \$737.42 in penalty (pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law) and \$302.06 in interest, for a sum of \$2,972.36.

3. Petitioner conceded that he was an independent contractor during the years at issue and specialized in fashion and story photography. His photographs appeared on the covers of nationally-known magazines and his name appeared in said magazines in recognition of his work. He performed services for approximately five principals.

4. Petitioner had no formal education in photography. His knowledge and skill was attained through many years of experience.

5. Petitioner's income was derived from personal services rendered and capital was not a material income producing factor.

6. Petitioner's wife was not involved in his activities as a photographer.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Irwin Feldman, as a photographer during 1969 and 1970, although requiring special knowledge and experience, did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Irwin Feldman, during 1969 and 1970, constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law; thus, the income derived therefrom was subject to the imposition of unincorporated business tax, in accordance with the meaning and intent of sections 701(a) of the Tax Law.

C. That the Income Tax Bureau erroneously included the name of Florence Feldman in the Notice of Deficiency and is hereby directed to amend said Notice by removing her name.

D. That the petition of Irwin Feldman is denied and the Notice of Deficiency issued April 13, 1973, amended only to the extent of removing his wife's name, is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER