

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Reuben & Shulamit Klein : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Year :  
1975.

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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Reuben & Shulamit Klein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

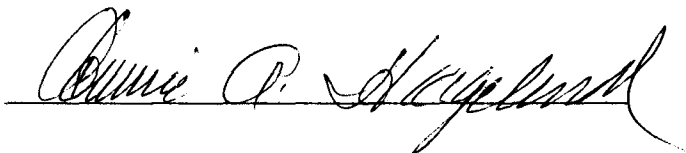
Reuben & Shulamit Klein  
525 Winchester Ave.  
Union, NJ 07083

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
28th day of September, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Reuben & Shulamit Klein : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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Tax under Article 22 of the Tax Law for the Year :  
1975.

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State of New York  
County of Albany


Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Melvin Meyer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

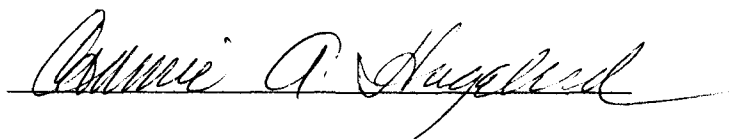
Melvin Meyer  
41 E. 42nd St.  
New York, NY 10017

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 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  
28th day of September, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

September 28, 1983

Reuben & Shulamit Klein  
525 Winchester Ave.  
Union, NJ 07083

Dear Mr. & Mrs. Klein:

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) 690 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 Law 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:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Melvin Meyer  
41 E. 42nd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
REUBEN KLEIN and SHULAMIT KLEIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

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Petitioners, Reuben Klein and Shulamit Klein, 525 Winchester Avenue, Union, New Jersey 07083, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1975 (File No. 25144).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1981 at 9:00 A.M. Petitioner appeared by Melvin Meyer, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

- I. Whether petitioner Reuben Klein, a nonresident, is entitled to allocate part of his earnings to sources without New York State.
- II. Whether petitioner, Reuben Klein's claimed deductions for employee business expenses were ordinary and necessary and properly substantiated.

FINDINGS OF FACT

1. Petitioners, Reuben Klein (now deceased) and Shulamit Klein, his wife, filed a joint New York State nonresident income tax return for 1975. On said return petitioner Reuben Klein indicated that he worked a total of 236 days and of those days 141 were worked outside New York State. He accordingly allocated

his earnings to sources within and without New York State. In addition, petitioner Reuben Klein claimed deductions for employees business expenses of \$11,013.40.

2. On December 15, 1978, the Audit Division issued a Notice of Deficiency against petitioners, Reuben Klein and Shulamit Klein, asserting personal income tax of \$2,601.98 plus interest of \$590.19 for a total of \$3,192.17. The Notice of Deficiency was based on a Statement of Audit Changes, issued under date of September 12, 1978 disallowing claimed allocation of wages and employee business expenses because petitioners failed to submit information requested in letters sent to them by the Audit Division under dates of January 4, 1978 and May 10, 1978.

3. During the year at issue, petitioner Reuben Klein, a nonresident, worked out of a New York State office of Iran Overland Sales, Inc. (hereinafter "corporation") as a salesman of freight space which he sold to companies shipping freight to Iran.

4. Petitioner Shulamit Klein testified that her husband, petitioner Reuben Klein traveled extensively throughout the Middle East, England and the United States selling freight space.

In support of her testimony, petitioner Shulamit Klein submitted a worksheet which she prepared indicating the number of days petitioner Reuben Klein traveled without New York State. The number of days petitioner Reuben Klein traveled without New York was in some instances estimated by petitioner Shulamit Klein and, in other instances she calculated the days based on hotel bills. The worksheets indicated a total of 154 days were worked outside New York State.

In addition, petitioner Shulamit Klein submitted copies of hotel bills, airline tickets, auto rental agreements and other receipts which reflected total expenditures of \$10,916.39. These documents indicated petitioner Reuben Klein was outside New York State on business on at least 56 days in 1975.

The Audit Division conceded that petitioner Reuben Klein traveled within and without the United States and did in fact expend monies for hotels and travel.

5. Petitioner Shulamit Klein was unable to obtain any information from the corporation, relative to the nature of her husband's employment as it terminated its business sometime in 1975 or 1976. Further, petitioner Reuben Klein, the party who incurred expenses at issue died December 10, 1980.

#### CONCLUSIONS OF LAW

A. That any allowance claimed for days worked outside of New York State must be based upon the performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer (20 NYCRR 131.16).

B. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that Reuben Klein worked outside New York State for 141 days as claimed on their return or 154 days as calculated in worksheets submitted by Shulamit Klein. Petitioners have submitted sufficient evidence to show that Reuben Klein worked outside New York State 56 days in 1975.

C. That petitioners have sustained the burden of proof to show that Reuben Klein incurred business expenses of \$10,916.39.

D. That the Audit Division is directed to modify the Notice of Deficiency by recomputing petitioner Reuben Klein's New York source income on the basis of

180<sup>1</sup> days worked within New York of the total 236 days worked and by allowing the business expense deduction in Conclusion of Law "C" allocated to New York in the same manner as Reuben Klein's income.

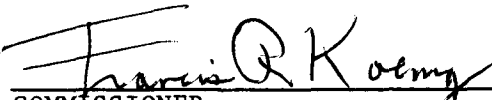
E. That the petition of Reuben Klein and Shulamit Klein is granted to the extent provided in Conclusion of Law "D" and is in all other respects denied.


DATED: Albany, New York

**SEP 28 1983**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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<sup>1</sup> 236 total days worked, less 56 days worked outside New York State.

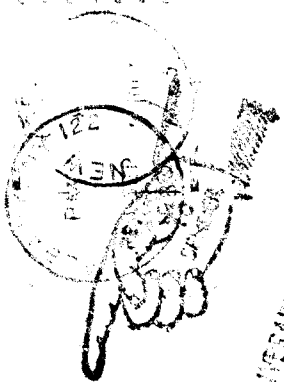
TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

**CERTIFIED**

**P 481 208 234**

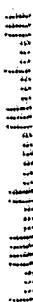
**MAIL**



NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD  
NEW YORK, N.Y. 10017

Melvin Meyer  
41 E. 42nd St.  
New York, NY 10017

10-5-83



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

September 28, 1983

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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
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STATE OF NEW YORK

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E. That the petition of Reuben Klein and Shulamit Klein is granted to the extent provided in Conclusion of Law "D" and is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983

  
PRESIDENT

  
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