

STATE OF NEW YORK
STATE TAX COMMISSION

Klein
U.B.T.
1970

In the Matter of the Petition

of

Robert Klein

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) 1960, 1961, :
1962 and 1963

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

James K. H.
cc it
99-341

State of New York
County of Albany

Claire A. Draves, 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 29th day of December, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert Klein

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Robert Klein
291 Channon Road
Hewlett Harbor, 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
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

29th day of December, 1970.

James S. Van Patten

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Robert Klein

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) 1960, 1961, :
1962 and 1963

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State of New York
County of Albany

Claire A. Draves, 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 29th day of December, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Henry F. Matheis

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Henry F. Matheis
271 Madison Avenue
New York, New York 10016

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

29th day of December, 1970.

James S. Van Patten

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
ROBERT KLEIN	:	DECISION
For Redetermination of Deficiency or	:	
For Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the years 1960, 1961, 1962 and 1963	:	

Petitioner, Robert Klein, has filed petitions for Redetermination of Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the years 1960, 1961, 1962 and 1963. (File #7066607 and 3-3393766). A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, 80 Centze Street, New York, New York, on May 27, 1966, at 10:30 A.M. Petitioner appeared by Henry F. Matheis, C.P.A.

FINDINGS OF FACT

1. Petitioner, Robert Klein, and his wife filed joint New York State Income Tax Resident Returns for the years 1960 through 1963. He did not file any Unincorporated Business Tax Returns for those years.

2. On April 13, 1964, the Income Tax Bureau issued a statement of audit changes against petitioner, Robert Klein, imposing Unincorporated Business Tax upon the income received by him from his activities as a manufacturer's representative during the year 1960 upon the ground that these activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a Notice of Deficiency therefor in the sum

of \$128.64.

3. On June 15, 1965, the Income Tax Bureau issued a B statement of audit changes against petitioner, Robert Klein, imposing incorporated business tax upon the income received by him from his activities as a manufacturer's representative during the years 1961, 1962 and 1963 upon the ground that these activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a Notice of Deficiency therefor in the sum of \$1,616.34.

4. Petitioner, Robert Klein was a lamp and lighting fixture salesman during the years 1960 through 1963. He represented several principals in the sale of lamps and lighting fixtures. The items sold by him for each principal were non-competitive. He used a room in his home as an office, but he did not have a business listing for his home telephone.

5. During the years 1960 through 1963 petitioner, Robert Klein, owned 50% of the stock and was an officer of Artone Creations, Inc. The corporation manufactured wall decorations used in connection with lighting-equipment. He received a fixed salary from the corporation, although the amount of salary varied from year to year. The corporation withheld Federal and New York State Income Taxes and Social Security Taxes from his salary. His basic function on behalf of the corporation was to sell its products at the same time he was selling the products of his other principals.

6. During the years 1960 through 1963 the principals for whom petitioner, Robert Klein, sold merchandise, other than Artone Creations, Inc., did not withhold New York State and Federal Income

Taxes and Social Security Taxes from the commissions paid to him. On Schedule "C" of his Federal Income Tax Returns he deducted business expenses in connection with his sales activities. He received no compensation for his expenses. He reported to the sales managers of some of his principals. They did not exercise any degree of direction or control over him with respect to the time spent or the manner and means of effecting sales. He solicited his own accounts. He received no leads from his principals. He had no written agreements with them. He used a business letterhead with his own name. They limited his territory to the Metropolitan New York area and in the case of one principal he was not permitted to sell to department stores.

CONCLUSIONS OF LAW

A. That the commissions received by petitioner, Robert Klein, during the years 1960 through 1963 from the principals he represented and the salary received from Artone Creations. Inc., constituted receipts from his regular business of selling lamps and lighting fixtures and not compensation as an employee exempt from the imposition of Unincorporated Business Tax in accordance with the meaning and intent of Section 703 (b) of the Tax Law.

B. That the aforesaid activities of petitioner, Robert Klein, during the years 1960 through 1963 constituted the carrying on of an unincorporated business and his business income derived therefrom was subject to Unincorporated Business Tax in accordance with the meaning and intent of Section 703 of the Tax Law.

C. That the petitions of Robert Klein are denied and the Notices of Deficiency issued April 13, 1964 and June 15, 1965, are sustained.

DATED: Albany, New York

December 23, 1966

STATE TAX COMMISSION

Norman Hallman

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Korman

COMMISSIONER