

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

J. LESTER & ANNETTE 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) 1965

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

State of New York
County of Albany

Martha Funaro , 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 26th day of May , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon J. Lester &
Annette Klein (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: J. Lester & Annette Klein
67-41 185th Street
Flushing, 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

26th day of May , 1972

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

J. LESTER & ANNETTE KLEIN :

For a Redetermination of a Deficiency or
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Tax Law for the (Year(s) 1965 :

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State of New York
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Martha Funaro , 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 26th day of May , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Leonard B. Zwalk
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Leonard B. Zwalk
1745 Merrick Avenue
Merrick, New York 11566

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.

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Sworn to before me this

26th day of May , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

May 26, 1972

J. Lester & Annette Klein
67-41 185th Street
Flushing, New York

Dear Sir and Madam:

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

Please take further notice that pursuant to section(s)
722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 Months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
J. LESTER AND ANNETTE KLEIN : DECISION
for a Redetermination of a Deficiency or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Year 1965.

J. Lester and Annette Klein filed a petition under section 722 and 689 of the Tax Law for a redetermination of a deficiency dated February, 1969, in unincorporated business tax under Article 23 of the Tax Law for the year 1965.

A hearing was held on July 29, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Leonard Zwalk, P.A., and the Income Tax Bureau was represented by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel).

The record of such hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a sales representative is subject to unincorporated business tax.

FINDINGS OF FACT

1. Prior to 1963 Mr. Klein had his own manufacturing business making plastic packaging materials and small objects for use as premiums in promoting sales of other items. In 1963, He had a heart attack and retired. Because his former customers had difficulty in finding new suppliers he agreed to help them.

2. During 1965 petitioner obtained suppliers in New York City for customers needing a type of curler and a plastic bag that petitioner had previously made himself. Mr. Klein had gross receipts of over \$70,000 from this type of business, resulting in a gross income of \$6,669.35.

3. Mr. Klein began working for Hassenfeld Bros. Inc. of Pawtucket, Rhode Island (now named Hasbro Industries, Inc.) in 1963. Hassenfeld is primarily a manufacturer of plastic toys and uses processes such as injection molding and electronic heat sealing. These processes were also useful in the manufacture of "premiums" and packaging materials. Mr. Klein's position was to set up a new packaging and "premium" line for Hassenfeld.

4. Hassenfeld maintained a showroom in New York City but that was for only the wholesale toy business with which Mr. Klein had no connection. Mr. Klein used a room in his home for business purposes.

5. When Mr. Klein began with Hassenfeld he was compensated on the basis of a guaranteed draw against commissions. Hassenfeld withheld taxes and social security. During the early part of 1965 petitioner and other salesmen were put on a straight commission and the company ceased any withholding. Reportedly the occasion for this was the installation of a new pension system in the company. Petitioner is not a member of the pension system. Mr. Klein paid a small amount on Schedule "C-3" of his 1965 federal return for self-employment tax.

6. Mr. Klein's accounts were generally large manufacturers such as Gillette and Proctor and Gamble. Each sale usually involved extended conferences both with the customer and Hassenfeld's engineers. Mr. Klein would visit two or three customers a week each in different

SMALL CLAIMS

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STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

mt

Mr. James S. McAtee
2201 Palmer Avenue
New Rochelle, New York

CERTIFIED

No. 402238

MAIL

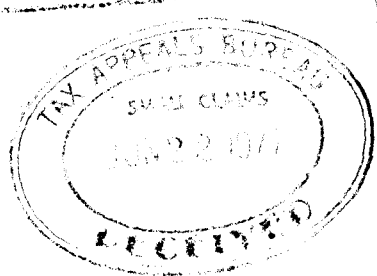


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parts of his territory. He submitted a "call report" to Hassenfeld weekly and contacted them by telephone frequently. Mr. Klein's expenses were about 20% of his commissions and were not reimbursed.

7. The deficiency is dated February 24, 1969, and amounts to \$1,027.22 plus a penalty under section 685(a) of the Tax Law of \$256.81, a penalty under section 685(c) of the Tax Law of \$59.52 and interest of \$176.14 for a total of \$1,519.69.

CONCLUSIONS OF LAW

Petitioners have not carried the burden of proof that Mr. Klein is subject to direction and control and is an employee (see Restatement of Agency, 2d, section 220). They are therefore subject to unincorporated business tax in the years in question.

DECISION

The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
May 26, 1972

STATE TAX COMMISSION

COMMISSIONER

Bruce Hawley

COMMISSIONER

Milton Koenn

COMMISSIONER