

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK J. STEIN & JOYCE STEIN

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

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) 1966 & 1967 :

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 30th day of October, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Jack J. & Joyce Stein (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Jack J. Stein  
35 Treeview Drive  
Melville, New York 11746

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

30th day of October, 1974.

*Joyce J. Stein*

*Martha Funaro*



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**Dated:** Albany, New York

**October 30, 1974**

**Mr. & Mrs. Jack J. Stein**  
**35 Treeview Drive**  
**Melville, New York 11746**

**Dear Mr. & Mrs. Stein:**

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 deci-  
sion must be commenced within **4 Months**  
from 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 relative  
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

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JACK J. STEIN and JOYCE STEIN	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	
	:	

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Petitioners, Jack J. Stein and Joyce Stein, have filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1966 and 1967. (File No. 74517044).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 15, 1973, at 1:30 P.M. Petitioners represented themselves. The Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Was the income received by petitioners, Jack J. Stein and Joyce Stein from Jack J. Stein's activities as an insurance salesman, during the years 1966 and 1967, subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, Jack J. Stein and Joyce Stein, filed New York State income tax resident returns for the years 1966 and 1967. They did not file unincorporated business tax returns for said years.

2. On November 24, 1969, the Income Tax Bureau issued a State-

ment of Audit Changes against petitioners, Jack J. Stein and Joyce Stein, imposing unincorporated business tax upon the income received by them from Jack J. Stein's activities as a salesman during the years 1966 and 1967. In accordance with the aforesaid Statement it issued a Notice of Deficiency in the sum of \$816.89.

3. During the years 1966 and 1967, petitioner, Jack J. Stein, was a full-time career agent for Aetna Life Insurance Company. He sold life insurance for the company on a commission basis under an "agent's career contract". Petitioner had been trained by Aetna, with whom he had been affiliated since 1955. He received office space, secretarial help and telephone service at Aetna's expense. He was regulated by product requirements and was bound to offer whatever insurance business he acquired to Aetna before he brokered his business with other companies. He received fringe benefits under Aetna's health and pension plans and had social security withheld from his commissions.

4. During the years 1966 and 1967, petitioner, Jack J. Stein, also sold on a commission basis, various kinds of insurance, as well as mutual funds, through companies other than Aetna, for whom he principally worked.

5. During 1966, petitioner, Jack J. Stein's gross income was \$25,958.00. Of that income, \$14,229.10 represented income from Aetna. The balance, \$11,728.90, represented the income which petitioner received from the other companies. During 1967, petitioner's gross income was \$28,968.00. Of that income, \$17,823.26 represented income from Aetna. The balance, \$11,144.74, represented the income which petitioner received from other companies.

CONCLUSIONS OF LAW


A. That the income received by petitioner, Jack J. Stein, from Aetna Life Insurance Company, during the years 1966 and 1967, constituted compensation as an employee and, therefore, was not subject to the unincorporated business tax (Greene v. Gallman, 39 A.D. 2d 270).

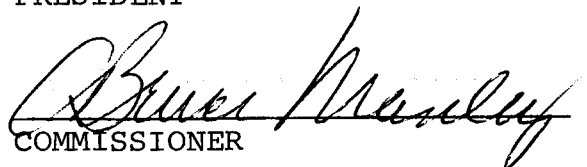
B. That the income received by petitioner, Jack J. Stein, from the various companies other than Aetna during the years 1966 and 1967, was earned by him as an independent agent and is not exempt from the imposition of the unincorporated business tax.

C. That the net business income of petitioner, Jack J. Stein, is reduced from \$16,446.00 to \$7,443.46 for 1966 and from \$18,778.00 to \$6,636.15 for 1967. Based on the reduced figures, no unincorporated business tax is due for the years in question.

DATED: Albany, New York  
October 30, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER