

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT KLEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Tax :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~xxx Period(s) x~~ :
1964, 1965, 1966, 1967 and 1968.

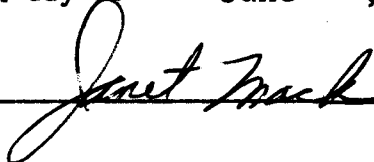
State of New York
County of Albany, New York

Marsina Donnini, 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 17th day of June, 1977, she served the within
Notice of Decision 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: Mr. 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~xxx 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

17th day of June, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

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ROBERT KLEIN

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For a Redetermination of a Deficiency or :
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of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ of the :
1964, 1965, 1966, 1967, 1968

State of New York
County of Albany

Marsina Donnini, 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 17th day of June 19 77, she served the within
Notice of Decision by ^{certified} ~~(registered)~~ mail upon Alvin I. Goidel, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alvin I. Goidel, Esq.
127 John Street
New York, New York 10038

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

17th day of June, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 17, 1977

TELEPHONE: (518) **457-1723**

Mr. Robert Klein
291 Channon Road
Hawlett Harbor, New York

Dear Mr. Klein:

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

Please take further notice that pursuant to
Section(9) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 30, 1976 at 1:20 P.M. The petitioner appeared by Alvin I. Goidel, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the activities of the petitioner as a multi-line outside commission salesman constituted the conduct of an unincorporated business, within the meaning and intent of section 703 of the Tax Law for the years 1964, 1965, 1966, 1967 and 1968.

FINDINGS OF FACT

1. Petitioner, Robert Klein, failed to file unincorporated business tax returns for the years 1964, 1965, 1966, 1967 and 1968.

2. On March 20, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert Klein, imposing unincorporated business tax for the years 1964, 1965 and 1966, upon the grounds that the business income reported, including salary for 1966, was deemed to be subject to the unincorporated business tax. The unincorporated business tax imposed for 1964, 1965 and 1966 was \$488.01, \$494.76 and \$224.41, plus \$202.92, \$176.05 and \$66.38 in interest, respectively. Accordingly, A Notice of Deficiency was issued totalling \$1,652.53.

3. On March 20, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert Klein, imposing unincorporated business tax for the years 1967 and 1968, upon the grounds that business income reported was deemed to be subject to the unincorporated business tax. The unincorporated business tax imposed for 1967 and 1968 was \$437.26 and \$134.16, plus \$103.11 and \$23.59 in interest, respectively. Accordingly, a Notice of Deficiency was issued totalling \$698.12.

4. The petitioner sold lighting fixtures for several principals, all of whom were manufacturers, during the years in issue. The items sold for each principal were noncompetitive.

He had no contracts, with any of his principals stating the terms of his association with them. None of the petitioner's principals withheld tax or paid social security for him.

He paid his own social security during the years in issue.

He paid his own business expenses including his automobile's cost and maintenance and its gasoline. The petitioner was not reimbursed by any of his principals for said business expenses during the years in issue. He listed business deductions on his Federal returns. None of the petitioner's principals exercised any substantial control or supervision over his sales activities or techniques, except to limit the territory in which he could sell.

5. The petitioner had no employees and did not maintain an office.

CONCLUSIONS OF LAW

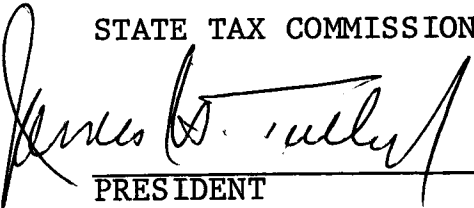
A. That the income received by petitioner, Robert Klein, from the firms he represented during the years 1964, 1965, 1966, 1967 and 1968 constituted income from his regular business of selling lighting fixtures and not compensation as an employee exempt from the imposition of the unincorporated business 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 1964, 1965, 1966, 1967 and 1968, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Robert Klein is denied and the notices of deficiency issued March 20, 1972, are sustained.

DATED: Albany, New York
June 17, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER