

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RUTH B. KLEINROCK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (s) 23 of the :  
Tax Law for the Year(s) ~~XXXX Period(s)~~ :  
1970, 1971, 1972 & 1973

State of New York  
County of Albany

John Huhn

, 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 1st day of September, 1977, she served the within

Notice of Decision by (certified) mail upon Ruth B. Kleinrock

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

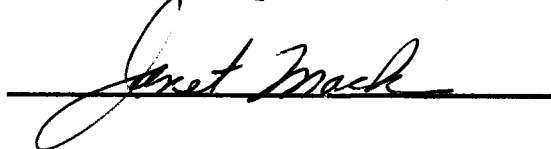
as follows: Ruth B. Kleinrock  
2129 East 17th Street  
Brooklyn, New York 11229

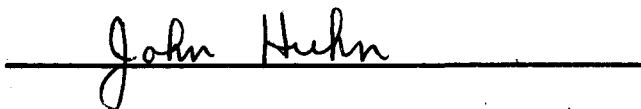
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

1st day of September, 1977.





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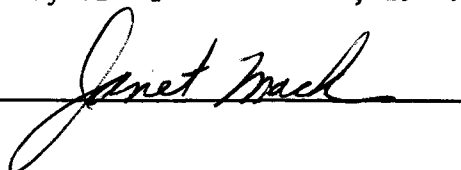
John Huhn , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 1st day of September , 1977 , he served the within  
Notice of Decision by (certified) mail upon Gustave Danziger, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Gustave Danziger, CPA  
as follows: 147 West 42nd Street  
New York, New York

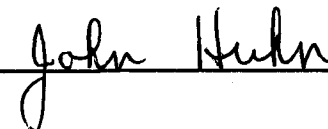
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1st day of September , 1977.







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

September 1, 1977

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

Ruth B. Kleinrock  
2129 East 17th Street  
Brooklyn, New York 11229

Dear Ms. Kleinrock:

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 **(b) 722** 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 Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**JOSEPH CHIRIVATI**  
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on November 15, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Gustave Danziger, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

## ISSUES

I. Whether the income received by the petitioner, Ruth B. Kleinrock, from her activities as a sales representative during the years 1970, 1971, 1972 and 1973, is subject to the unincorporated business tax or is she an employee exempt from the unincorporated business tax.

II. Whether petitioner, Ruth B. Kleinrock, had reasonable cause for failing to file a New York State unincorporated business tax return for the year 1970.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Income Tax Bureau issued notices of deficiency dated December 18, 1972 and June 30, 1975, against the petitioner, Ruth B. Kleinrock, imposing unincorporated business tax on the grounds that her activities as an independent agent constitute the carrying on of an unincorporated business. The Income Tax Bureau also imposed a delinquency penalty under section 722 of the Tax Law for the year 1970.

2. Petitioner, Ruth B. Kleinrock, and her husband, filed New York State resident returns for the years 1970, 1971, 1972 and 1973. She did not file unincorporated business tax returns for said years.

3. Petitioner, Ruth B. Kleinrock, was a corrugated box salesperson during the years 1970 through 1973. She represented three unaffiliated firms during said years. The products sold by petitioner, Ruth B. Kleinrock, for each firm were noncompetitive.

4. During the years 1970 through 1973 the firms for whom the petitioner, Ruth B. Kleinrock, sold above said items, withheld Federal and state income taxes and social security tax from the commissions paid to her. She was given an expense allowance by one of the principals she represented. She was free to work for other principals as long as they were noncompetitive. She did not have

any written employment contracts. The firms for whom she sold merchandise did not exercise any substantial control over her sales activities or techniques or over the time she devoted to sales, as she often sold the products of the three firms she represented to the same customers.

5. Petitioner, Ruth B. Kleinrock, was covered by one principal under their pension plan and by another principal under their health insurance plan. She was covered by the firms she represented during the years 1970 through 1973 for unemployment insurance and compensation and disability benefits.

6. Petitioner, Ruth B. Kleinrock, was advised by her accountant that she was not required to file a New York State unincorporated business tax return for the year 1970.

7. That the income received by the petitioner, Ruth B. Kleinrock, from the firms she represented during the years 1970 through 1973 constituted income from her regular business of selling 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.

8. That the aforesaid activities of the petitioner, Ruth B. Kleinrock, during the years 1970 through 1973 constituted the carrying on of an unincorporated business and her income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

9. That petitioner, Ruth B. Kleinrock, had reasonable cause for failing to file a New York State unincorporated business tax return for the year 1970 and; therefore, the penalty assessed pursuant to section 722 of the Tax Law for the year 1970 is cancelled.

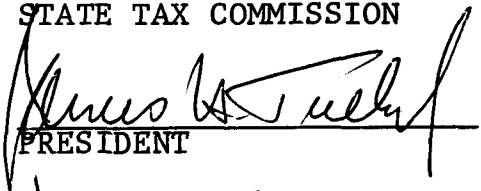
10. That the petition of Ruth B. Kleinrock for the year 1970 is granted to the extent of cancelling the penalty imposed in the sum of \$64.47 for said year; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued on December 18, 1972; and, that except as so granted, the petition is in all other respects denied.

11. That the petitions of Ruth B. Kleinrock for the years 1971, 1972 and 1973 are denied and the Notice of Deficiency issued June 30, 1975 is sustained together with such additional interest as may be legally owing.

DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance  
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



ADDRESSEE UNKNOWN  
NEW YORK

Gustave Panziger, CPA  
147 West 42nd Street  
New York, New York

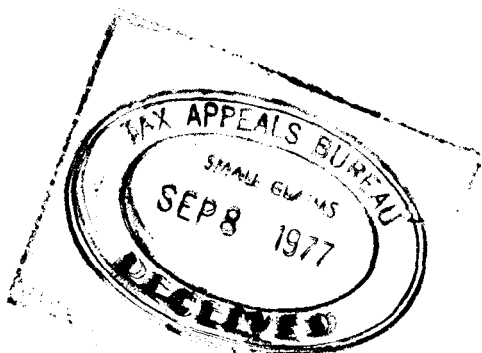
CERTIFIED

No. 402670

MAIL



310 Madison  
Ave.  
New York, NY 10017



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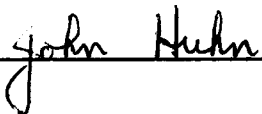
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14th day of September , 19 77

  
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