

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOEL KLINGER

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) ~~XXXXXX~~ :
1968, 1969 and 1970

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 22 day of July, 1977, she served the within
Notice of Decision by (certified) mail upon Joel Klinger
~~XXXXXX~~ (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Joel Klinger
1275 - 15th Street
Fort Lee, New Jersey
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~~
~~XXXXXX~~ 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

22 day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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Tax Law for the Year(s) ~~1968, 1969 and 1970~~ :
1968, 1969 and 1970

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 22 day of July, 1977, she served the within Notice of Decision by (certified) mail upon Edwin Shor, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edwin Shor, CPA
26 Court Street
Brooklyn, New York 11242
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

22 day of July, 1977.

Marsina Donnini

Janet Mach



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

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

July 22, 1977

Mr. Joel Klinger
1275 - 15th Street
Port Lee, New Jersey

Dear Mr. Klinger:

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(s) **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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Joseph Marcus, Hearing Officer, on August 19, 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 with his representative, Edwin Shor, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Did the activities of petitioner, Joel Klinger, as a sales representative for D. & R. Sales Associates and Century Case Goods, Inc., constitute the carrying on of an unincorporated business under section 703 of the Tax Law?

1. Petitioner, Joel Klinger, filed New York State personal income tax returns for the years 1968, 1969 and 1970. (IT208). He did not file New York State unincorporated business tax returns for the aforementioned years.

2. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes, against the petitioner, imposing unincorporated business taxes in the sum of \$1,996.66 upon the income received by petitioner from his activities as a salesman during the years under review. In accordance with the Statement of Audit Changes, it issued a Notice of Deficiency under the same date.

3. During the years in question, the petitioner received income in the form of commissions from two firms, D. & R. Sales Associates and Century Case Goods, Inc., as a salesman.

4. No payroll taxes, or any other items relative to employee payroll deductions, were deducted from petitioner's remuneration.

5. Petitioner stated that his sales territories were proscribed for him by the companies he represented and that he could not solicit, of his own accord, new business without the express consent of his principals.

6. Petitioner was periodically required to be present in the principals' showrooms; he was also required to attend furniture shows at 200 Lexington Avenue, in New York City and High Point, North Carolina.

7. Petitioner had no contract of employment with his principals, had no employees of his own and was required to clear his vacations with his principals.

8. Petitioner, Joel Klinger, was not covered by any company pension plan. He could not sell for any other firms. He did not have business cards.

9. Petitioner was not reimbursed for business expenses in connection with his activities and consistently filed schedule C's (Form 1040) known as "Profit (or Loss) from Business or Profession (Sole Proprietorship)" with his Federal Returns.

10. Evidence submitted by petitioner in the form of a letter from one, Stanley N. Rosenberg, his immediate supervisor during the years under review, dated August 16, 1976, indicated that petitioner was "required to devote at least 90% of his working time to this employment"...

11. Petitioner maintained a business office in his home.

CONCLUSIONS OF LAW

A. That petitioner, Joel Klinger, was a salesperson under control and supervision of his principals. That his activities as a salesperson for the firms did not constitute the carrying on of an unincorporated business.

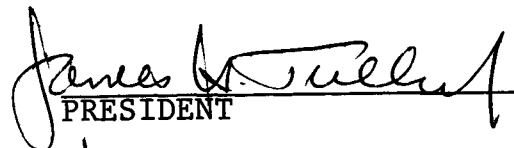
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B. That petition of Joel Klinger is sustained and the
Notice of Deficiency is hereby cancelled.

DATED: Albany, New York

July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER