

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD KRONSTADT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(x)~~ 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

Bruce Batchelor , 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 8th day of April , 1977, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Bernard Kronstadt

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mr. Bernard Kronstadt  
14 Thompson Drive  
East Rockaway, 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 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

8th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~1968, 1969 and 1970~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

Bruce Batchelor , 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 8th day of April , 1977, she served the within  
Notice of Decision by (certified) mail upon Harry Burstein, CPA

(representative of) the petitioner in the within proceeding,

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

Harry Burstein, CPA  
55 West 42nd Street  
New York, New York 10036

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

8th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD KRONSTADT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

Bruce Batchelor , 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 8th day of April , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Henry Gair, CPA

(representative of) the petitioner in the within proceeding,

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

Henry Gair, CPA  
19 Park Avenue  
Manhasset, New York 11030

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

8th day of April , 1977.

Bruce Batchelor

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

April 8, 1977

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

Mr. Bernard Krenstadt  
14 Thompson Drive  
East Rockaway, New York

Dear Mr. Krenstadt:

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

Please take further notice that pursuant to  
Section(5) **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,

*Frank J. Puccio*

**Frank J. Puccio**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
BERNARD KRONSTADT	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1968, 1969 and 1970.	:	

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Petitioner, Bernard Kronstadt, 14 Thompson Drive, East Rockaway, New York, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968, 1969 and 1970. (File No.0-58653084). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1976 at 10:45 A.M. Petitioner appeared with accountants, Harry Burstein and Henry Gair, C.P.A.'s. The Income Tax Bureau appeared by Peter Crotty, Esq., (A. Schwartz, Esq. of counsel).

ISSUE

Was the income derived from the petitioner, Bernard Kronstadt's activities as a sales representative, during the years 1968, 1969

and 1970 subject to the unincorporated business tax imposed under Article 23 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Bernard Kronstadt, and his wife, Peggy, filed New York State income tax resident returns for the years 1968, 1969 and 1970. He did not file unincorporated business tax returns for these years.

2. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Bernard Kronstadt, imposing unincorporated business taxes in the sum of \$4,658.65 upon the income he received during the years 1968, 1969 and 1970.

3. During the years in issue, petitioner, Bernard Kronstadt, was a sales representative engaged in the selling of jewelry. He represented Jack Gutschneider Jewelry Co., Inc. and Kessler Bros. Jewelry Corp. during each of the years and the income he received from each firm was substantially the same. The items sold by him for each firm were non-competitive and the customers to whom he sold, with few exceptions, carried both lines of jewelry.

4. Petitioner, Bernard Kronstadt's activities as a sales representative consisted of selling jewelry to customers in Philadelphia, Boston, Southern Florida, and the New York Metropolitan areas. He was assigned these territories by the principals he represented and was restricted from making sales outside these assigned territories. The customers that he contacted were primarily developed by him. He used

his own discretion as to his division of time and the sales techniques used to develop new accounts and consummate sales.

5. Petitioner, Bernard Kronstadt, reported daily to Kessler Bros. Jewelry Corp. and three days a week to Jack Gutschneider Jewelry Co., Inc. when he was in the New York Metropolitan area. These firms did not provide him with an office, but afforded him an area to work when it was necessary. He was responsible to operate booths for both principals at an annual jewelry show in New York City. He took orders for jewelry while working at the jewelry show but would receive a commission for only those sales made to customers within his territory. His principal reimbursed him for his expenses incurred while working at the jewelry show.

6. Petitioner, Bernard Kronstadt, was compensated by the firms he represented on a commission basis. Kessler Bros. Jewelry Corp. withheld Federal income tax, New York State income tax and social security tax from the commissions paid to him. Jack Gutschneider Jewelry Co., Inc. withheld Federal income tax, New York State income tax and social security tax on \$5,200.00 per year. The balance of the commissions earned for Jack Gutschneider Jewelry Co., Inc. were not subjected to any withholding taxes and a Federal Form 1099 was issued for these wages. He was not a member of either of the firms' pension plans, however, he did maintain his own Keogh Plan.

7. Petitioner, Bernard Kronstadt, was not reimbursed for expenses incurred by him in the performance of his sales activities. He claimed the expenses he incurred as employee business expenses under the miscellaneous itemized deduction section of his U.S. individual income tax return. On his 1970 schedule of employee business expenses he reported a deduction of \$2,600.00 which represented payments made to his wife for performance of per diem work. This income was reported as the wife's income on petitioner's IT-208 New York State and combined income tax return.

8. Petitioner, Bernard Kronstadt, was advised by his accountant that he was not subject to unincorporated business tax.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Bernard Kronstadt, from the firms he represented during the years 1968, 1969 and 1970 constituted income from his regular course of business and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the petitioner, Bernard Kronstadt, using his discretion as to the division of time and selling techniques, and employing an assistant during 1970 and maintaining his own self-employed retirement plan, is not within the purview of section 703(b) of the Tax Law.



C. That the activities of petitioner, Bernard Kronstadt, during the years 1968, 1969 and 1970 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.

D. That the petitioner, Bernard Kronstadt, had reasonable cause for not filing unincorporated business tax returns for the years 1968, 1969 and 1970 and; therefore, the penalties assessed for the year 1968 pursuant to section 685(a) of the Tax Law, and for the years 1969 and 1970, pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are waived.

E. That the petition of Bernard Kronstadt is granted to the extent of cancelling the penalty imposed pursuant to sections 685(a) and 685(a)(1) and (2) of the Tax Law; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued September 29, 1975 and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
April 8, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER