

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE L. ROBBINS

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) ~~xxxxxx~~ :  
1968 through 1973.

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 16th day of March , 1978, ~~he~~ she served the within  
Notice of Decision by (certified) mail upon George L. Robbins

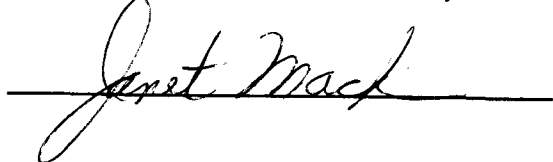
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. George L. Robbins  
420 East 23rd Street  
New York, New York 10010

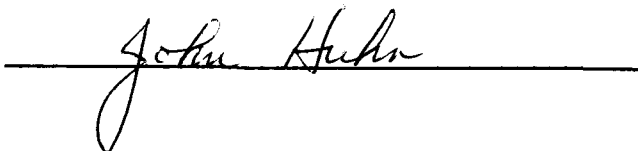
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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~~) petitioner.

Sworn to before me this

16th day of March , 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE L. ROBBINS

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) ~~or Period(s)~~ :  
1968 through 1973.

State of New York  
County of Albany

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 16th day of March, 1978, he served the within  
Notice of Decision by (certified) mail upon Charles Alperin

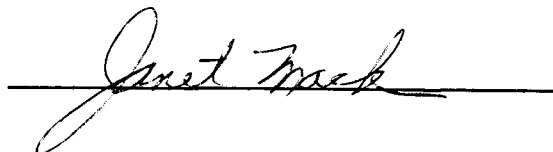
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Charles Alperin, Esq.  
470 Mamaroneck Avenue  
White Plains, New York 10605

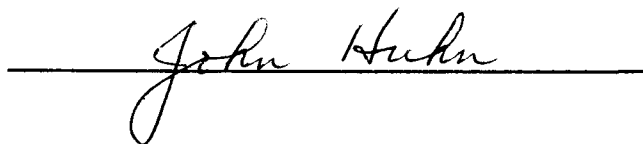
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

16th day of March, 1978.





STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

GEORGE L. ROBBINS : DECISION

for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax  
under Article 23 of the Tax Law for the :  
Years 1968 through 1973.

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Petitioner, George L. Robbins, 420 East 23rd Street, New York, New York 10010, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968 through 1973 (File Nos. 15471 and 15472).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 27, 1977 at 2:45 P.M. Petitioner appeared by Charles Alperin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

#### ISSUES

I. Whether petitioner's selling activities during the years 1968 through 1973 constituted the carrying on of an unincorporated business.

II. If so, whether any of the income derived from petitioner's selling activities was allocable to sources outside New York State and, therefore, not subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, George L. Robbins, timely filed New York State personal income tax returns for the years 1968 through 1973. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's selling activities during the years 1968 through 1973 constituted the carrying on of an unincorporated business. It based its contention on a decision of the State Tax Commission dated February 27, 1975 for the years 1964 through 1967. Accordingly, the Bureau issued a Notice of Deficiency on March 29, 1976 for the years 1968, 1969 and 1970 in the amount of \$3,002.28 in unincorporated business tax, plus \$1,042.43 in interest, for a total due of \$4,044.71. The Income Tax Bureau also issued a Notice of Deficiency on April 12, 1976 for the years 1971, 1972 and 1973 in the amount of \$3,497.68 in unincorporated business tax, plus \$728.30 in interest, for a total due of \$4,225.98.

3. Petitioner performed services for two principals (Sally Gee, Inc. and Kadet Kruger, Inc.) and was paid on a commission basis. He contended that he performed services for Sally Gee, Inc. as an employee; thus, the income derived therefrom was not subject to unincorporated

business tax. He also stated that he performed services as an independent contractor for Kadet Kruger, Inc. and that those activities constituted the carrying on of an unincorporated business. However, he contended that he had no office in New York State from which he conducted business and that all commissions were earned by him outside New York State; therefore, said income was allocable to sources outside New York State.

4. Sally Gee, Inc. issued withholding tax statements to petitioner for three of the six years at issue, i.e., 1971, 1972 and 1973. Income and social security taxes were withheld from his compensation during these years and he was provided with fringe benefits. When not traveling for Sally Gee, Inc., petitioner was required to sell merchandise in its showroom and his duties were directed by its sales manager. Sally Gee, Inc. permitted petitioner to perform services for other principals. He could leave the showroom of Sally Gee, Inc. during working hours and sell merchandise for Kadet Kruger, Inc. at the latter's showroom. When petitioner traveled, he sold merchandise for both principals in the same territory and to mutual customers. There was no clear division of petitioner's time between his principals while traveling and there was no requirement as to the amount of time petitioner was to spend in either principal's showroom.

5. Petitioner was not reimbursed by his principals for any expenses which he incurred. For the years at issue, petitioner filed Federal schedules "C," on which he claimed substantial business deductions including cooperative advertising expenses. All income derived from selling activities was reported on Federal Schedule "C" for the years 1968, 1969 and 1970. A portion of petitioner's income from Sally Gee, Inc. for 1971 was reported on a wage and tax statement (IT-2102), and all income from said firm was reported on wage and tax statements for the years 1972 and 1973. These amounts were reported as wages rather than business income on Federal Schedule "C".

6. Petitioner maintained an office at his home in New York, from which he handled correspondence and contacted customers by telephone. In each of the years at issue, he claimed deductions on Federal Schedule "C" for rent and depreciation of office-related items.

7. During the years at issue, the approximate percentage of income earned from Kadet Kruger, Inc. compared to total income from selling activities varied between 32% and 52%.

#### CONCLUSIONS OF LAW

A. That the selling activities of petitioner, George L. Robbins, on behalf of Kadet Kruger, Inc. and Sally Gee, Inc. during the years 1968 through 1973 constituted the carrying on of an unincorporated

business. Whether or not petitioner acted as an employee of Sally Gee, Inc. is irrelevant, as his activities on behalf of said firm were so interrelated and integrated with his business activities that they constituted a part of the unincorporated business regularly carried on by him, in accordance with the meaning and intent of section 703 of the Tax Law.

B. That petitioner, George L. Robbins, maintained an office in New York State and did not maintain an office outside New York State; therefore, all unincorporated business income is allocable to New York sources in accordance with the meaning and intent of section 707 of the Tax Law.

C. That the petition of George L. Robbins is denied and the notices of deficiency issued March 29, 1976 and April 12, 1976 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
March 16, 1978

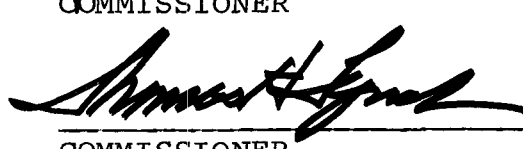
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER



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

**March 16, 1978**

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

**Mr. George L. Robbins  
420 East 23rd Street  
New York, New York 10010**

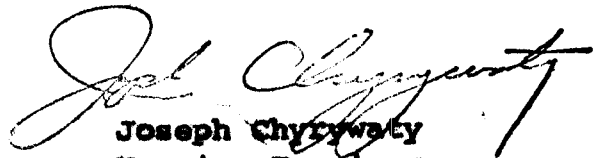
**Dear Mr. Robbins:**

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 ~~(8)~~ **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 Chyzywaty  
Hearing Examiner**

cc: Petitioner's Representative  
  
Taxing Bureau's Representative