

Income Tax Determinations
BUREAU OF LAW

A-Z

MEMORANDUM

*Kletz, Sidney and
Blanche*

TO: State Tax Commission
FROM: Solomon Sies, Hearing Officer
SUBJECT: Sidney & Blanche Kletz

Petition For Redetermination of a
Deficiency or For Refund of Personal
Income Tax Under Article 22 and Unin-
corporated Business Tax Under Article 23
of the Tax Law For the Years 1960, 1961
and 1962.

Formal hearings in the above-captioned matter were
held at the New York City office on April 19, 1966 and
June 15, 1966.

The issue involved herein is whether the activities
of the taxpayer, Sidney Kletz, as a manufacturer's sales
representative for about ten principals constitutes the carry-
ing on of an unincorporated business in accordance with §703,
Article 23 of the Tax Law.

The taxpayer, Sidney Kletz, is a sales agent on a
straight commission basis, representing approximately ten
principals, selling metal and plastic products used for watches,
watchbands and mechanical pencils, covering the assigned ter-
ritory of Metropolitan New York. He is not reimbursed for any
of his expenses. None of the principals, except one, deducted
withholding or Social Security from the commissions paid to the
taxpayer. Sidney Kletz solicited orders from the same custo-
mers for each of the principals whom he represented.

The taxpayer, on his federal income tax return, in-
dicated that he paid "self-employment" tax and deducted on
Schedule "C" rent on business property in the amount of \$600
during each of the years involved. None of the principals
exercised any control or supervision with respect to the tax-
payer's time or specific methods of making sales.

In the case of George H. Britton v. Murphy, 22 A. D.
2d 987, aff'd 19 N.Y. 2d 613, it was held that a multiple line
salesman for eleven principals was subject to unincorporated
business tax.

For the reasons stated above, I recommend that the decision of the Tax Commission in this matter be substantially in the form submitted herewith.

March 20, 1968.

Solomon Dies
Hearing Officer

3-29-68

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION

OF

SIDNEY & BLANCHE KLETZ

FOR REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAX UNDER
ARTICLE 22 AND UNINCORPORATED BUSINESS
TAX UNDER ARTICLE 23 OF THE TAX LAW FOR
THE YEARS 1960, 1961 and 1962.

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The above-named taxpayers having duly filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 and unincorporated business tax under Article 23 of the Tax Law for the years 1960, 1961 and 1962, and hearings having been held in connection therewith on April 19, 1966 and June 15, 1966 before Solomon Sies, Hearing Officer of the Department of Taxation & Finance, 80 Centre Street, New York, N. Y., at which last-mentioned hearing the taxpayer, Sidney Kletz, appeared personally and was represented by Jack Zimmeth, Esq., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Sidney & Blanche Kletz, filed joint New York State income tax resident returns for the years 1960 and 1962 and a New York State combined income tax return for the year 1961; that the taxpayer, Sidney Kletz, reported on Schedule A, Line 5 (Profit From Business or Profession)," net salesman's commissions;" that the aforementioned taxpayer, Sidney Kletz, did not file any unincorporated business tax returns for any of the years 1960, 1961 and 1962; that

on October 5, 1964 the Department of Taxation & Finance issued a Statement of Audit Changes against the taxpayers and imposed additional personal income tax based upon Federal audit and further held that the activities of the taxpayer, Sidney Kletz, as an independent sales agent, constituted the carrying on of an unincorporated business and that the profit derived therefrom was subject to unincorporated business tax; and, accordingly, issued a notice of deficiency against the taxpayers for the years 1960, 1961 and 1962; that the taxpayers are not contesting the additional personal income tax based upon Federal audit.

(2) That during the years 1960, 1961 and 1962 and prior thereto, the taxpayer, Sidney Kletz, was a sales representative for approximately ten principals, selling metal and plastic products for watches, watchbands and mechanical pencils manufactured by the various principals; that the various items were non-competitive; that the taxpayer, Sidney Kletz, was paid on a straight commission basis and was not reimbursed for any of his expenses; that the taxpayer's assigned territory covered the Metropolitan New York area; that the taxpayer, Sidney Kletz, solicited the same customers on behalf of each of the principals whom he represented; that there was no control by any of the principals of the taxpayer with respect to the time spent or the manner or means with which he was to perform his sales activities.

(3) That only one of the aforementioned principals (Solar Steel Corp.) deducted withholding or Social Security tax from the commissions paid to the taxpayer; that Solar Steel Corp. deducted New York State withholding tax from the taxpayer's commissions only for the years 1960 and 1962; that none of the principals supervised the activities of the taxpayer as to his

time or to the manner or means of making sales.

(4) That on Schedule "C" of his federal income tax returns for the years 1960, 1961 and 1962, the taxpayer, Sidney Kletz, deducted rent on business property in the amount of \$600 for each of said years; that on the aforementioned Federal returns the said taxpayer reported self-employment tax paid during each of said years.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

DECIDES:

That during the years 1960, 1961 and 1962 the taxpayer, Sidney Kletz, was not an employee, but an independent contractor carrying on an unincorporated business solely within the State of New York; that the income derived therefrom was subject to unincorporated business tax within the intent and meaning of §703 of the Tax Law; that, accordingly, the Statement of Audit Changes and Notice of Deficiency for the years 1960, 1961 and 1962 are correct; that the same did not include any tax or other charges which could not have been lawfully demanded, and that the taxpayers' petition for redetermination of a deficiency filed by them with respect thereto and the same is hereby denied.

DATED: Albany, N. Y. on the 11th day of April, 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

A. BRUCE MANLEY

COMMISSIONER

/s/

SAMUEL E. DEPLER

COMMISSIONER