STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
LEE FERNANDEZ	:	DECISION
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the Year 1981.	:	

Petitioner, Lee Fernandez, 92-25 220th Street, Queens Village, New York 11428, filed an exception to the determination of the Administrative Law Judge issued on May 25, 1989 with respect to a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1981 (File No. 802088). Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin A. Levy, Esq., of counsel).

Petitioner filed a brief in support of her exception. The Division of Taxation did not file a responding brief to the exception.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether a payment given to the Life Science Church qualifies as a charitable contribution deductible from income under § 170 of the Internal Revenue Code.

II. Whether the Division of Taxation properly imposed the negligence penalty under Tax Law § 685(b) for the taking of such a deduction.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and such facts are stated below.

The Division of Taxation issued a Notice of Deficiency for New York State and New York City personal income tax to petitioner, Lee Fernandez, on April 5, 1985 in the amount of $333.38, plus interest of $119.66 and apenalty for negligence under Tax Law § 685(b) of $16.67, for a total of $469.71. The deficiency consisted of State income tax of $241.75 and City income tax of $91.63.

The deficiency is based on a disallowance of a claimed charitable deduction of $4,100.00 for a payment to the "Life Science Church", taken by petitioner on her 1981 New York State and City of New York Resident Income Tax Return. A Statement of Audit Changes issued January 16, 1985 stated that the deduction had been disallowed because the Life Science Church was not a qualified organization as described in Internal Revenue Code § 170(c).

Petitioner in 1981 resided in Brooklyn. She was employed as a secretary for the City of New York Board of Education.

Petitioner first attended meetings of the Life Science Church with a friend. She described two meetings, both of which were devoted to lectures on appealing to the Legislature on the necessity for tax reduction. She described no other meetings and apparently attended no other meetings.

On November 9, 1981, petitioner gave a check in the amount of $4,100.00 to the Life Science Church. She received a receipt for this amount from a Reverend Ranucci on November 10, 1981.

OPINION

The Administrative Law Judge determined that petitioner had the burden of proof to show that the contribution was made to a qualified organization and that petitioner did not meet this burden. He also held that petitioner had the burden of proof to show that the taking of the

deduction did not amount to negligence or intentional disregard of the Tax Law. The Administrative Law Judge ruled that the payment made to the Life Science Church could not be allowed as a charitable contribution deduction from income and that the negligence penalty was properly imposed and hence sustained.

Petitioner, in response, contends that she did not know that she had the burden of proof to show that the entity to which she made the payment was a qualified organization within the meaning of Internal Revenue Code (I.R.C.) § 170(c) in order for her to claim it as a charitable deduction. She further alleges that her contribution was given in good faith and without intention to violate any law or the Internal Revenue Code.

An itemized deduction for purposes of a resident individual's New York income tax is based generally on that individual's Federal itemized deduction (Tax Law § 615[a]). A Federal charitable deduction can be taken only for amounts meeting the conditions of § 170 of the Internal Revenue Code.

Internal Revenue Code § 170(a)(1) allows as a deduction any charitable contribution "payment of which is made within the taxable year." Section 170(c) defines the term "charitable contribution," in pertinent part, as follows:

> "(c) Charitable Contribution Defined. - For purposes of this section, the term 'charitable contribution' means a contribution or gift to or for the use of -
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> * * *
>
> "(2) A corporation, trust, or community chest, fund, or foundation -
>
> * * *
>
> "(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, . . .
>
> "(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
>
> "(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, ..."

In order to establish entitlement to a charitable contribution deduction, petitioner bears the burden of proving that the recipient-donee meets all of the above statutory requirements (Welch v. Helvering, 290 US 111, 3 USTC ¶ 1164). Petitioner presented absolutely no evidence which would show that the Life Science Church was organized and operated exclusively for religious purposes; that none of its earnings inured to the benefit of any private individual; and that it was not disqualified for tax exemption by reason of attempting to influence legislation.

In the hearing before the Administrative Law Judge, petitioner testified that she did not know very much about the Life Science Church and that she attended their meetings upon the invitation of a friend. She further testified that she joined these meetings because there was then a movement in the church to appeal to the Legislature to reduce income tax for everyone and that such a concept appealed to her and she wanted to support such a cause. This testimony reveals nothing about the organization or operations of the Life Science Church.

On exception, petitioner alleges additionally that the meetings which she attended at the Life Science Church were religious in nature and that the appeal to the Legislature to change the tax laws was only one of the many topics discussed therein. Since petitioner failed to make these assertions during the hearing, we are precluded from considering them as evidence now on exception (Matter of Ronnie's Suburban Inn, Inc., Tax Appeals Tribunal, May 11, 1989). In any event, such vague and overly general testimony would be completely inadequate to show that petitioner was entitled to claim the payment to the church as a charitable contribution deduction.

Petitioner also maintains that she did not know that the burden of proof would be upon her to verify that the Life Science Church was a qualified charitable organization. We are aware that petitioner appeared pro se; however, petitioner's lack of knowledge with respect to our proceedings cannot shift the burden of proof to the Division.

We next consider whether petitioner is liable for the additions to tax under Tax Law § 685(b)(1) for negligence or intentional disregard of rules and regulations. The burden of proof with respect to this issue is also on petitioner (Tax Law § 689[e] and 20 NYCRR 3000.10[d][4]).

Other than stating that she gave her contribution to the Life Science Church in good faith and without intention to violate any law, petitioner produced no evidence on this issue. The record does not indicate that petitioner made any attempt to verify the status of the Life Science Church as a qualified charitable organization prior to claiming the disputed deduction. At the time of the contribution petitioner apparently had little, if any, personal familiarity with the recipient. Nor did petitioner make any effort to consult an attorney or other tax professional regarding the deductibility of the payment to the Life Science Church. We hold that petitioner failed to meet her burden of proof on the issue of negligence or intentional disregard of the rules and regulations and that the Division properly imposed the negligence penalty under Tax Law § 685(b).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the petitioner, Lee Fernandez, is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Lee Fernandez is denied; and

4. The notice of deficiency issued on April 5, 1985 is sustained.

DATED: Troy, New York
February 8, 1990

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner