

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

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

The Division of Taxation filed an exception to the determination of the Administrative Law Judge issued on December 15, 1988 concerning the petition of Kenneth J. Erikson, 7600 Shore Front Parkway, Arverne, New York 11692, for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and City of New York personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1981 (File No. 802133). Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin Levy, Esq., of counsel).

The Division filed a brief on exception. Petitioner did not submit a brief on exception.

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

ISSUE

Whether additions to tax and civil penalties imposed upon the deficiencies of tax at issue herein should be abated on the basis that petitioner's failure to comply with the provisions of the Tax Law and the Administrative Code of the City of New York was due to reasonable cause and not due to willful neglect.

FINDINGS OF FACT

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

Kenneth J. Erikson ("petitioner") timely filed a New York State and City of New York Resident Income Tax Return for the year 1981 whereon the only information furnished was his name, address, social security number, school district code, occupation (reported as "minister"), the amount of State and City taxes withheld and a request for refund of the total taxes withheld. Petitioner signed the return "Reverend Kenneth J. Erikson". Attached to the return was a wage and tax statement issued by Pan American World Airways, Inc. ("Pan Am") which indicated that, for 1981, wages, tips and other compensation in the amount of \$23,036.38 had been paid by Pan Am to petitioner. Also attached to the return was a typewritten document which stated as follows:

"Reverend Kenneth Erikson is a member of a Religious Order who has taken an irrevocable Vow of Poverty and performs services pursuant to direction by the Order as an agent. The income generated is the property of the Church and Order and not personal income to the individual.

For confirmation or clarification you may write to:

Worldwide Religious Order of Almighty God
Section T-1
4395 Austin Boulevard
Island Park, New York 11558"

On April 3, 1985, the Division of Taxation issued a Statement of Audit Changes to petitioner which advised him that, based on Revenue Ruling 77-290, his 1981 salary income was considered taxable. Petitioner's tax liability was calculated using the standard deduction with one exemption and the maximum tax benefit. Tax, penalties and interest were computed as follows:

	<u>STATE</u>	<u>CITY</u>	<u>TOTAL</u>
Total Tax	\$1,338.60	\$476.51	
Less: withholding	<u>480.00</u>	<u>167.00</u>	
Tax due	\$ 858.60	\$309.51	\$1,168.11
§ 685(a)(1) penalty	193.19	69.64	262.83
§ 685(a)(2) penalty	154.55	55.71	210.26
§ 685(b) penalty	42.93	15.48	58.41
		Interest	<u>418.43</u>
		Total	\$2,118.04

On April 12, 1985, the Division of Taxation issued a Notice of Deficiency to petitioner asserting additional tax due of \$1,168.11, penalty of \$531.50 and interest of \$422.35, for a total amount due of \$2,121.96.

Prior to the year at issue, petitioner executed a "Vow of Poverty" which, in essence, stated petitioner's intent to make an irrevocable gift of all of his possessions and all of his income to the Church or Order designated thereon and further stated his intent that all such possessions and income would become the property of the said Church or Order, regardless of whether or not they continued to appear in his personal name, to be used to support the Church or Order. The "Vow of Poverty" contained a statement that outside employment remuneration is not considered to be personal income, but is, instead, income of or a gift to the Church or Order. The Church or Order designated to receive the possessions and income of petitioner was the Order of the Life Science Church.

At some point (petitioner was unclear as to whether it occurred prior to or subsequent to the year at issue), petitioner's church ceased its association with the Life Science Church and became affiliated with the Order of St. Matthew, Province of St. Joachim, 2090 Merrick Avenue, Merrick, New York which was under the direction of Fr. John Brennan, OSM. During his membership in the Order of St. Matthew, petitioner was the educational coordinator and also performed charity and volunteer work for the Order.

Both prior to and during the year at issue, petitioner was employed as a shipping clerk for Pan Am. Pursuant to the "Vow of Poverty" which he executed, petitioner was required to and did deposit his paycheck from Pan Am into an account which had been opened in the name of Life Science Church (and, subsequently, the Order of St. Matthew). Petitioner was required to submit an itemized listing of his monthly living expenses for which he would be reimbursed, from a portion of the proceeds of his paycheck, by a member of the Church. The remainder of petitioner's paycheck was retained by and used for Church purposes.

During the period at issue, petitioner owned an automobile and owned shares in a cooperative apartment wherein he resided. Petitioner's activities for the Church (or Order) were

performed outside the hours of his employment with Pan Am and, therefore, did not conflict with the duties for which he received remuneration. His paychecks from Pan Am were payable solely to petitioner and not to the Church.

For the year at issue, petitioner's income tax return was prepared pursuant to instructions received at a meeting with Church officials. At this meeting, attorneys referred to by petitioner as "IANDRO" (petitioner stated that these were the same attorneys who assisted petitioner and other members in the preparation of their petitions for an administrative hearing relative to the taxability of their income) instructed petitioner and other members of the Church in the preparation of their Federal, State and local income tax returns. Members were instructed to fill in their names and social security numbers only, list all wages, salary or remunerations on a separate sheet of paper, attach applicable Forms W-2 and 1099, attach a money order payable to the Order of St. Matthew or cash in the amount of \$25.00 and return the tax return and attachments to their "guardians". The members were advised that "all remaining information will be done for you." In addition to the advice of the attorneys, each member received a written sheet setting forth the above instructions. The year at issue was the first year for which petitioner claimed that his income from Pan Am was exempt from taxation."

OPINION

In the determination below the Administrative Law Judge decided that petitioner's salary income from his employment with Pan American World Airways, Inc. (hereinafter "Pan Am") was not exempt from taxation on the basis that petitioner was a member of a religious order who turned over his earnings from his employment to such order pursuant to a vow of poverty. Further, it was concluded that the additions to tax and civil penalties imposed upon the deficiencies at issue should be abated because petitioner's failure to comply with the Tax Law and the Administrative Code of the City of New York was due to reasonable cause and not due to willful neglect. In particular, it was determined that petitioner relied in good faith on the advice of counsel that his income was exempt from taxation and that such reliance constituted reasonable cause such that the additions to tax and civil penalties should be abated.

On exception, the Division of Taxation contends that the Administrative Law Judge erred in his conclusion that petitioner's reliance on the advice of counsel that his income was exempt constituted reasonable cause. Specifically, the Division argues that the record does not indicate that an attorney-client relationship existed between petitioner and the alleged counsel, that petitioner did not even know the name of the attorney who offered him advice, that the testimony shows that the attorney's advice was given to serve the religious organization, and that any benefit petitioner might have realized was incidental to the attorney's representation of the religious organization. Lastly, the Division claims that petitioner's payment of \$25.00 for the preparation of his return appears to be a fee by the religious organization for clerical processing rather than a fee for individual professional services rendered to the taxpayer personally.

We reverse the determination of the Administrative Law Judge.

Tax Law §§ 685(a)(1), 685(a)(2) and 685(b) provide for the imposition of penalties for failure to file a return, failure to pay tax shown on a return and for a deficiency due to negligence. The first issue which we will address is the imposition of the penalties for failure to file a return and failure to pay tax shown on a return.

Tax Law § 685(a) provides that the penalties which it imposes may be cancelled if it is shown that the taxpayer's failure which gave rise to the penalties was due to reasonable cause and not due to willful neglect. The grounds for reasonable cause are illustrated in 20 NYCRR 102.7, and include, "[a]ny other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect . . . Ignorance of the law, however, will not be considered as a basis for reasonable cause" (20 NYCRR 102.7[d][4]). We conclude that petitioner has not shown reasonable cause, within the meaning of 20 NYCRR 102.7(d)(4), and that the Tax Law § 685(a)(1) and (2) penalties should be sustained.

In making a determination as to whether reasonable cause exists when a taxpayer has relied on the erroneous advice of a professional, it must be shown that the taxpayer relied in good faith on the advice which he received and it must have been "reasonable" for the taxpayer to rely upon

the particular advice he was given (see, Auerbach v. State Tax Commn., 142 AD2d 390, 536 NYS2d 557, 561; LT & B Realty v. State Tax Commn., 141 AD2d 185, 535 NYS2d 121, 123). When determining whether the taxpayer has shown that his reliance was reasonable, the burden is on the taxpayer to demonstrate that he acted with ordinary business care and prudence in attempting to ascertain his liability for taxes (see, United States v. Boyle, 469 US 241, 85-1 USTC ¶ 13,602 at 88,255). Further, the nature and complexity of the matter giving rise to the dispute should be considered when making a determination as to whether a taxpayer's reliance was reasonable (see, Betson v. Commr., 802 F2d 365, 86-2 USTC ¶ 9826).

The facts in the present case indicate that petitioner attended a meeting at which certain attorneys presented him with an instruction sheet on the manner in which he should complete his return and which called for the payment of \$25.00 by cash or money order, made payable to the Order of St. Matthew. Further, the facts indicate that this was the first year in which petitioner claimed exemption from taxation. We conclude that these particular facts do not support the conclusion that petitioner was free from willful neglect and had reasonable cause sufficient to abate the Tax Law § 685(a) penalties. The record contains no evidence of the experience, expertise or competence of the attorneys to show that the advice petitioner relied upon was given by competent tax counsel (see, Plante v. Commr., T.C. Memo 1985-117, 49 TCM 963, 966). Further, we find petitioner's reliance and belief on the position that he did not have to pay any taxes as a result of his religious activities to be unreasonable under the circumstances. The record reveals that petitioner's income was received by him as a full time employee of Pan Am. After turning this income over to his religious order petitioner had all of his expenses paid for by such order. We conclude that a reasonable person would not believe that he did not have to pay any income taxes when in the position of petitioner. Therefore, even though petitioner, as determined by the Administrative Law Judge, believed the advice he received was accurate, we conclude such a belief was unreasonable and does not provide a ground for abating penalty.

The last issue which we will address is the imposition of the Tax Law § 685(b) negligence penalty. For the reasons stated above we conclude that the Tax Law § 685(b) negligence penalty

should be sustained. The grounds which have established petitioner's lack of reasonable cause and willful neglect also suffice in this instance to demonstrate his negligence. In particular, the record indicates that petitioner's reliance on the advice given to him was on a position which we find to be wholly unreasonable. In addition, the record does not contain any evidence that the advisors petitioner relied upon were competent to give such advice. Under the circumstances presented here, we find petitioner's reliance to be unreasonable such that the negligence penalty should be sustained (see, Zmuda v. Commr., 731 F2d 1417, 84-1 USTC ¶ 9442).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the Division of Taxation is granted;
2. The determination of the Administrative Law Judge with respect to the imposition of penalty is reversed;
3. The petition of Kenneth J. Erikson is denied; and
4. The Notice of Deficiency dated April 12, 1985 is sustained.

DATED: Troy, New York
March 22, 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