

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALEXANDER TEMPLE HOLINESS CHURCH OF GOD, INC. : DECISION
for Redetermination of Exempt Organization :
Status under Articles 28 and 29 of the Tax Law. :

Petitioner, Alexander Temple Holiness Church of God, Inc., 2246 Pacific Street, Brooklyn, New York 11233, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 47593).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 21, 1984 at 10:45 A.M., with all documents to be submitted by November 30, 1984.

ISSUE

Whether the Audit Division's revocation of petitioner's status as an organization exempt from sales and use taxes was proper.

FINDINGS OF FACT

1. On June 1, 1971, petitioner, Alexander Temple Holiness Church, Inc., was accorded by the Audit Division the status of an organization exempt from sales tax pursuant to Tax Law section 1116(a)(4). Thereafter, by letter dated November 5, 1982, as part of its periodic review of organizations with such

exempt status,¹ the Audit Division requested that petitioner complete and submit an Application For An Exempt Organization Certificate (Form ST-119.2), together with the supporting information specified in such document. Petitioner was advised that failure to comply with this request within forty-five days of the date of the letter (November 5, 1982) could result in the revocation of petitioner's exempt status.

2. On or about October 20, 1980, petitioner had changed its location from Albany Avenue, Brooklyn, New York to 2246 Pacific Street, Brooklyn, New York.

3. By letter dated December 31, 1982, petitioner was advised that its failure to submit the requested Form ST-119.2 and attendant documentation had jeopardized its exempt status, and that failure to submit such items within forty-five days of the date of the letter (December 31, 1982) would result in revocation of petitioner's exempt status.

4. A completed Form ST-119.2 dated January 9, 1983, together with a certified copy of petitioner's certificate of incorporation under Article 10 of the Religious Corporation Law was mailed to the Audit Division on January 14, 1983 and stamped received by the Audit Division on January 20, 1983.

5. By letter dated February 3, 1983, the Audit Division requested additional information from petitioner as follows:

- "a. A copy of your organization's bylaws.
- b. The information specified in the attached questionnaire for churches. You may disregard question three.
- c. A statement of receipts and expenditures, in proper accounting form, for your last completed fiscal year. You may refer to Part V(a) of the attached instruction form ST 119.3 for the proper format.

1 In this instance, the review pertained to those organizations which had been granted exempt status prior to December 31, 1972.

- d. A complete statement of assets and liabilities, in proper accounting form, as of the end of your latest completed fiscal year. You may refer to Part V(b) of the attached instruction form ST 119.3 for the proper format.
- e. While your application was submitted under the name Alexander Temple Holiness Church of God, Inc., your Certificate of Incorporation states the name of your organization as the Alexander Temple Holiness Church. Please explain the discrepancy in your organization's name."

6. Petitioner's failure to respond to the above-noted letter requesting further information, and its failure to respond to a subsequent letter dated June 2, 1983 requesting the same information, resulted in a letter advising petitioner of the revocation of its exempt status, effective July 27, 1983.

7. Petitioner timely requested a hearing to contest the revocation of its exempt status. The Audit Division's Answer to petitioner's Perfected Petition indicates the sole reason for denial of exempt status was petitioner's failure to submit the requested information (see Finding of Fact "5").

8. At the instant hearing, petitioner's founder and pastor, Bishop W.G. Alexander, appeared and gave testimony regarding petitioner's organization and its operation, noting that petitioner's bylaws were included in its certificate of organization and that there is no distinction between the name under which petitioner was incorporated, "Alexander Temple Holiness Church, Inc.", and the name commonly used by petitioner (and appearing on its letterhead and its correspondence with the Audit Division), "Alexander Temple Holiness Church of God, Inc."; the "of God" having been added unofficially by petitioner's pastor at or about the time that petitioner moved to its current location (see Finding of Fact "2"). In addition, petitioner was granted a period of time within which to submit the information regarding its financial operation (i.e. assets

and liabilities, income and expenses), which information was timely submitted and reviewed.

9. It does not appear that: (a) petitioner ever distributed its property to members; (b) any part of petitioner's earnings inure to the benefit of any individual; (c) petitioner ever engaged in carrying on propaganda, or advocated or opposed pending or proposed legislation; or (d) petitioner participated in or intervened in any political campaign on behalf of any candidate for public office.

CONCLUSIONS OF LAW

A. That Tax Law section 1116(a)(4) provides an exemption from the sales and compensating use taxes imposed under Article 28 to "[a]ny corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes...". In ascertaining whether an organization is organized exclusively for one or more of the enumerated exempt purposes, the focus is on the provisions of the organizing documents [20 NYCRR 529.7(c)(1)]. On the other hand, in determining whether the organization is operated exclusively for one or more exempt purposes, the focus is on the organization's activities:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if almost all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) of the Tax Law... An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." 20 NYCRR 529.7(d)(2).

B. That the documentary evidence supplied by petitioner, as well as petitioner's pastor's testimony, reveal that petitioner meets both the organizational and operational tests as set forth and is entitled to exemption

pursuant to Tax Law section 1116(a)(4). Accordingly, the Audit Division is directed to reinstate petitioner's status as an exempt organization.

C. That the petition of Alexander Temple Holiness Church of God, Inc. is granted.

DATED: Albany, New York

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STATE TAX COMMISSION

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PRESIDENT

Francis D. K. Oling
COMMISSIONER

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COMMISSIONER