

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

SANFORD I. KLEINMAN

DECISION

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

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Petitioner, Sanford I. Kleinman, 3820 Maple Avenue, Brooklyn, New York 11224, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1981 (File No. 62283).

A hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 13, 1986 at 9:15 A.M., with all briefs to be submitted by November 10, 1986. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

#### ISSUE

Whether petitioner's salary, derived from his employment as a "road car inspector", was properly excluded from his gross income because he **was** a member of a religious order which required him to take a vow of poverty and turn over said salary, earned in his individual capacity, to the church.

FINDINGS OF FACT

1. Sanford I. Kleinman (hereinafter "petitioner") timely filed a New York State and City of New York Resident Income Tax Return for the year 1981 whereon the only information reported was his name, address, social security number, occupation (reported as "Minister"), the school district name and code, the amount of New York State and City taxes withheld and a request for refund of the total taxes withheld. Said return was signed by petitioner on March 24, 1982. Attached to the return was a form letter which stated as follows:

"Reverend Sanford I. Kleinman 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"

Petitioner's name was handwritten in on the blank line of the form letter.

2. A Wage and Tax Statement was attached to petitioner's return indicating that he was employed by the New York City Transit Authority during 1981 and that he earned wage income from said employer of \$28,757.01.

3. On February 8, 1985, the Audit Division issued a Statement of Audit Changes to petitioner wherein his salary income was held subject to both New York State and City personal income taxes "based on Revenue Ruling 77-290." Accordingly, a Notice of Deficiency was issued against petitioner on April 5, 1985, asserting New York State and City personal income taxes of \$502.64 for the year 1981, plus penalties of \$228.72 and interest of \$180.42, for a total due of \$911.78.

4. Petitioner submitted a "Vow of Poverty" dated November 2, 1981. Said document, which was typed under the letterhead of the "Good Friendship Temple" located at petitioner's personal residence, states, ~~inter alia~~, that:

"I, Reverend Sanford I. Kleinman, 3820 Maple Avenue, Brooklyn, New York (11224), hereby make an irrevocable gift of all my possessions, real, personal and otherwise and all my assets whatsoever, regardless of the form of the assets to the Temple and Order herein named, thus divesting myself of all my possessions or assets whatsoever, to be used for religious purposes to support the basic tenets of the Temple or Order hereinafter named, using the teachings of the compassionate Buddha and the Old Testament as my guidance. All such possessions or assets hereinafter will be the property of the Temple or Order regardless of whether or not they continue to appear in my personal name. Secular employment remuneration (when directed by the Order) is not personal remuneration, but a donation to the Temple or Order and not of the individual or the undersigned.

The Temple or Order designated to receive said donation and possessions is the Good Friendship Temple and the Order of God's Friend On Earth.."

5. Both before and after his ordination, petitioner apparently worked as a road car inspector for the New York City Transit Authority.

6. Petitioner alleged that he is entitled to a contribution deduction equal to his income since he donated all of his income to the Church. He further alleged that his house was donated to the Church and that an altar was built in his living room from which religious services were held every Wednesday.

7. No evidence was submitted to support any of petitioner's allegations. Petitioner's Vow of Poverty was dated November 2, 1981, yet he claimed his income for the entire year 1981 was exempt from tax. Moreover, petitioner failed to submit credible evidence showing whether he had ever conducted any services for the church or whether he ever did any **work** for the church in any form.

8. Although petitioner was granted a period of one month subsequent to the hearing within which to submit documentary evidence supporting his position, he failed to do **so**.

9. Subsequent to the hearing petitioner advised that he received an adverse decision on this same matter from a Federal court. On October 7, 1986 he submitted an amended 1981 return whereon he claimed itemized deductions. Said return showed a refund due petitioner of \$11.00, Although petitioner claimed that the amended return was the result of the Federal court decision against him, he failed to submit a copy of such decision. Additionally, he failed to submit documentation to substantiate the itemized deductions claimed on such return.

#### CONCLUSIONS OF LAW

A. That section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income includes all income from whatever source derived. Section 61(a)(1) specifically includes compensation for services as an item of income. Where, pursuant to **an** agreement, services are rendered to a person for the benefit of a religious or charitable organization described in section 170(c) of the Internal Revenue Code and the amount for such services is paid to such organization by the person to whom the services are rendered, the amount **so** paid is income to the person performing the services (Treas. Reg. §161-2[c]). "An individual who turns over his entire annual income to a church is still taxable **on** that income, subject to the deduction allowed for charitable contributions" (McGahenv. Commissioner, 76 T.C. **468** ~~affd~~ 720 F2d **664**). "A member of a religious order under a vow of poverty is not immune from Federal income tax by reason of his clerical status or his vow of poverty, but is subject to tax to the same extent as any other person on.

income earned or received in his individual capacity" (id. at 478. ~~See also~~ Rev. Rul. 77-290, 1977-2 C.B. 26).

B. That, in Stephenson v. Commissioner (79 T.C., 995) the taxpayer had a similar arrangement with the Life Science Church and the court, in ruling against the taxpayer, stated that "the 'church', by its very nature, merges the secular with the sacerdotal and must be seen as an impermissible attempt to transmute the commercial into the ecclesiastical and thus avoid the congressional separation of taxable individual income and tax-exempt religious order income" (79 T.C. at 1001 [citing McGahen, *supra*, at 480]).


C. That the record is completely lacking in any testimony or documentation showing that the Good Friendship Temple ever negotiated with petitioner's employer or exercised any control over the conduct of his activities as a road car inspector. It **is** clear that petitioner's agreement to work for his employer was entered into prior to him joining the Good Friendship Temple and his employment was left completely unaltered by joining the church. It is doubtful that petitioner's employer employed him for his ability as a road car inspector as an agent of the church rather than as **an** individual. Therefore, the income received by petitioner during the year in issue was not received by him as an agent of the Good Friendship Temple, but was received by him in his individual capacity and was thus subject to tax.

D. That the petition of Sanford I. Kleinman is denied and the Notice of Deficiency issued April 5, 1985 is sustained together with such additional penalty and interest as may be lawfully owing.

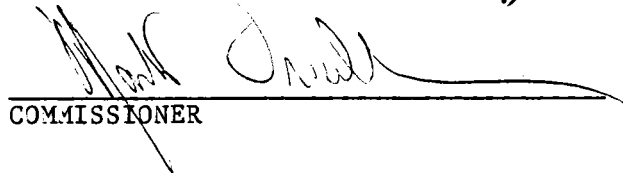
DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER