

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DECISION

ROBERT J. BIVOLCIC

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 Nonresident Earnings Tax under Chapter 46, Title U of the Administrative Code of the City of New York for the Year 1981.

Petitioner, Robert J. Bivolcic, 3 Hawthorne Drive, Englishtown, New Jersey 07726, 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 nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1981 (File No. 62421).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 4, 1986 at 10:45 A.M., with all briefs to be submitted by January 15, 1987. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUE

Whether wages received by petitioner as compensation for his labor are subject to New York State and New York City personal income tax.

FINDINGS OF FACT

1. Petitioner, Robert J. Bivolcic, filed a New York State Nonresident Income Tax Return together with New York City nonresident earnings tax, for the year 1981. Wage and tax statements issued to petitioner by Concord Construction Company, Andrew Catapano Industries, Andrew Catapano Enterprises,

Inc. and Andrew Catapano Co., Inc. were appended to the return and reflected wages, tips or other compensation in the total sum of \$26,148.00, from which New York State personal income tax of \$943.45 and New York City tax of \$113.09 was withheld. Also appended to the return was a statement indicating that petitioner had taken a Vow of Poverty with an organization known as "Worldwide Religious Order of Almighty God Section T-1". Petitioner claimed a refund on the return for the entire amount withheld of \$1,056.54.

2. On March 25, 1985, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1981 wherein petitioner's wage income of \$26,148.00 was considered subject to New York State personal income tax and New York City nonresident earnings tax.

3. Based on the Statement of Audit Changes, the Audit Division, on April 8, 1985, issued a Notice of Deficiency to petitioner asserting New York State and New York City personal income tax for 1981 of \$706.97, plus penalty of \$321.67 and interest of \$254.03, for a total due of \$1,282.67.

4. Petitioner took the position that he received no "income" during 1981, but rather received only wages in equal exchange for his labor and that labor is not subject to New York State and New York City personal income tax. Petitioner relies on various Federal cases cited in his brief. Petitioner did not dispute the calculation of the deficiency asserted against him nor did he present any evidence or argument with respect to the penalty asserted due.

CONCLUSIONS OF LAW

A. That it is by now beyond dispute that compensation received in exchange for services constitutes gross income and that the United States, New York State and New York City governments possess the constitutional and statutory power to tax wages (Matter of Emil C. Lampe, State Tax Commission, December 31, 1984 and the authorities therein cited).

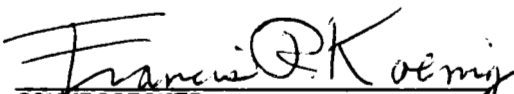
B. That the petition of Robert J. Bivolcic is denied and the Notice of Deficiency issued April 8, 1985 is sustained, together with such additional penalty and interest as may be due and owing.


DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987


PRESIDENT


COMMISSIONER


COMMISSIONER