

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD A. ENGERT

DECISION

for Redetermination of a Deficiency or for :
Refund of New York State and New York City :
Personal Income Tax 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, Richard A. Engert, 484 67th Street, Brooklyn, New York 11220, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax 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. 62744).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 21, 1986 at 2:45 P.M. Petitioner appeared *pro se*. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner's wage income from his employment with the New York City Transit Authority was exempt from taxation on the basis that he was a member of a religious order who turned over his earnings to the order under a vow of poverty.

FINDINGS OF FACT

1. Petitioner, Richard A. Engert, filed a New York State and City of New York Resident Income Tax Return on form IT-201 for 1981 reporting no income or tax due, but claiming a refund of \$1,335.88 in New York State and New York City

taxes withheld. The return listed petitioner's occupation as "Minister". Attached to the return was a wage and tax statement issued to petitioner by his employer, the New York City Transit Authority, showing wages, tips and other compensation of \$28,575.20 and State and local income tax withheld **of** \$1,335.88. Federal income tax and FICA were also withheld.

2. On February 8, 1985, the Audit Division issued a Statement **of** Audit Changes to petitioner holding petitioner's income taxable based on Revenue Ruling 77-290. (This ruling involves income from secular employment received by members of **a** religious order under a vow **of** poverty.) The Audit Division calculated petitioner's tax by allowing the standard deduction and maximum tax benefit, resulting **in** New York State personal income tax **of** \$1,892.53 and New York City personal income tax **of** \$688.98. After applying the amounts withheld by the New York City Transit Authority, New York State personal income tax due was \$909.56 and New York City tax due was \$336.07. Penalties were imposed under Tax Law § 685(a)(1), (2) and **(b)**, totaling \$404.76, and under Administrative Code **of** the City of New York § T46-185.0(a)(1),(2) and **(b)**, totaling \$149.55.

3. On April 5, 1985 the Audit Division issued to petitioner a Notice **of** Deficiency for \$1,245.63 **in** tax and \$566.76 **in** penalty, plus interest. The notice was timely protested by petitioner.

4. Petitioner has been employed by the New York City Transit Authority since August 12, 1968. For years prior to the year at issue, petitioner filed tax returns reporting his income from the New York City Transit Authority and paid taxes thereon.

5. Petitioner was the founder and one **of** the three trustees of The Church of Modern Enlightenment ("The Church") established **on** September 1, 1981. The two other trustees were Phyllis A. Engert and Reverend Sanford **I.** Kleinman.

6. On October 20, 1981, petitioner executed a vow of poverty donating all of his assets to The Church and The Order of the Circle of Golden Light. The vow provided, in pertinent part, as follows:

"I, Reverend Richard A. Engert, 484 67th Street, Brooklyn, New York (11120), 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 Church 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 Church or Order hereinafter named, using the teachings of the compassionate Buddha as my guidance. All such possessions or assets hereinafter will be the property of the Church or Order regardless of whether or not they continue to appear in my personal name. Secular employment remuneration (when directed by the Church) is not personal remuneration, but a donation to the Church or Order and not belonging to the individual or the undersigned.

The Church or Order designated to receive said donation and possessions is the Church of Modern Enlightenment and the Order of the Circle of Golden Light. Therefore I, Reverend Richard A. Engert, hereby make this irrevocable vow of poverty, and in so doing, rid myself of all worldly and temporal possessions."

7. The Church's offices are located in petitioner's residence, an apartment at 484 67th Street, Brooklyn, New York.

8. The Church's activities consist of distributing religious literature at the services, which are held once a week.

9. Petitioner testified that services are conducted on a temporary basis in a building owned by The Good Friendship Temple and/or Richard Kleinman.

10. The Church's checking account was opened in September 1981. Petitioner is not a signatory on the account. The signatories are the other trustees, Phyllis A. Engert and Reverend Sanford I. Kleinman.

11. Starting in September 1981, petitioner endorsed his New York City Transit Authority payroll checks over to The Church and they were deposited in The Church's checking account. Petitioner received a \$600.00 per month parsonage allowance.

12. The Church's application for status as an exempt organization was denied by the Internal Revenue Service. This denial, as well as a deficiency in petitioner's Federal income tax for the year at issue, are on appeal in the Federal Courts.

CONCLUSIONS OF LAW

A. That even assuming that The Church of Modern Enlightenment was a tax exempt organization (which status was denied by the Internal Revenue Service and appeal of such denial is still pending in the Federal Courts), petitioner is nevertheless liable for personal income tax. A member of a religious order under a vow of poverty is subject to tax on income earned or received in his individual capacity. Petitioner's income from the New York City Transit Authority was earned by him in his individual capacity and not as an agent of The Church of Modern Enlightenment (Matter of the Petition of Thomas E. Newby, Jr., State Tax Commission, May 8, 1986). In view of this holding, it is unnecessary to deal with the fact that petitioner excluded all income from the New York Transit Authority in 1981, although his salary was not turned over to The Church until September of that year.

B. That Tax Law § 685(a)(1) and (2) and Administrative Code § T46-185.0(a)(1) and (2) provide penalties for failure to file a timely tax return and pay the tax required to be shown as due thereon. A form IT-201 which does not contain sufficient data from which a taxpayer's liability can be computed does not constitute a valid return (~~see~~ Ulysses S. Bonneau, Jr. v. Commissioner, 49 TCM 160). Petitioner has not shown reasonable cause for failure to file a proper return or pay the tax due. Accordingly, these penalties are sustained.


C. That Tax Law § 685(b) and Administrative Code § T46-185.0(b) provide for penalties where any portion of a deficiency **is** due to negligence or intentional disregard of the laws or regulations. Petitioner has not sustained his burden of proof to show why these penalties should not be imposed. Accordingly, they are sustained.

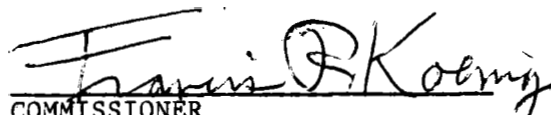
D. That the petition of Richard A. Engert **is** denied and the Notice of Deficiency issued April 5, 1985 **is** sustained.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 24 1987


PRESIDENT


COMMISSIONER


COMMISSIONER