

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Stanley DuBois :

AFFIDAVIT OF MAILING

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 1978. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of October, 1984, he served the within notice of Decision by certified mail upon Stanley DuBois, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley DuBois  
260 Audubon Ave., Apt. 28G  
New York, NY 10033

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
5th day of October, 1984.

David Parchuck

James J. O'Connell  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 5, 1984

Stanley DuBois  
260 Audubon Ave., Apt. 28G  
New York, NY 10033

Dear Mr. DuBois:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
STANLEY DUBOIS	:	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 1978.	:	

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Petitioner, Stanley DuBois, 260 Audubon Avenue, Apt. 28G, New York, New York 10033, 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 1978 (File No. 38995).

A small claims 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 March 15, 1984 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner's salary, derived from his employment as a systems analyst, 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. Stanley DuBois (hereinafter petitioner) filed a New York State Income Tax Resident Return for the year 1978 whereon the only information reported was

his name, address, social security number, the amount of New York State and New York City taxes withheld and a request for refund of the total taxes withheld. The bottom of said return bore the typewritten statement "I am a member of a religious order who have taken a vow of poverty, copy attached with my directive letter. I am therefore exempt from State Income Tax". Attached to said return was a Wage and Tax Statement for 1978 indicating that petitioner was employed by Chase Manhattan Bank ("Chase") and earned \$21,292.07 during such year. Also attached were a statement in affidavit form dated November 25, 1978 entitled "Vow of Property", a Certificate of Ordination from the Life Science Church dated July 14, 1978 and an undated form letter from one William E. Drexler, D.D., J.D., Bishop of the Life Science Church, Chief of Order of Almighty God.

2. On February 10, 1982, the Audit Division issued a Statement of Audit Changes to petitioner wherein his 1978 salary income was held subject to New York State and City personal income taxes based on the explanation that such wages "constitute gross income in accordance with section 61 of the Internal Revenue Code and clarified by Revenue Ruling 77-290". Accordingly, a Notice of Deficiency was issued against petitioner on April 7, 1982 asserting New York State personal income tax of \$360.76, New York City personal income tax of \$129.58, plus interest of \$140.19, for a total due of \$630.53.

3. The aforestated undated form letter attached to petitioner's return stated in part that:

"We understand that, during the time that Brother DuBois has been employed as a Systems Analyst, his services have been satisfactory. Considering that fact, and the present needs of the Order for financing of its charitable works, the Order will require that Brother DuBois retain his position as a Systems Analyst as our agent."

In the above passage, petitioner's name and occupation were typed in the blank spaces provided in the form letter.

4. The "Vow of Poverty" which petitioner executed before a notary public on November 25, 1978, stated in part that:

"I Stanley DuBois...hereby make an irrevocable gift of all my possessions, real, personal and otherwise and all my income whatsoever, regardless of the form of the income, to the Church or Order herein named, thus divesting myself of all my possessions and income whatsoever to be used for Religious purposes to support the basic Biblical Law of the Church or Order hereinafter named. All such possessions and income, if any, hereinafter being the property of the said church or order regardless of whether or not they continue to appear in my personal name. Outside employment renumeration [sic] (when directed by the church or order) is not personal income, but rather income/gift to the church/order and not of the individual or the undersigned.

The Church or Order designated to receive said income and possessions is an Order of the Life Science Church designated as THE ORDER OF ALMIGHTY GOD 101128, Chapter."

5. Both prior to and subsequent to his ordination, petitioner was employed as a systems analyst for Chase. His employment was not altered subsequent to his joining the Life Science Church.

6. Petitioner claimed that he worked for Chase as an agent of the Life Science Church; however, there is no evidence in the record to show that his employer was even aware of his affiliation with the Life Science Church.

7. Although petitioner was ordained a minister of the Life Science Church on July 14, 1978, he claims exemption from New York State and City taxation for the entire year 1978.

8. Individuals of any religious persuasion were acceptable for ordination as ministers of the Life Science Church.

9. Petitioner alleged that during his first year with the Life Science Church he attended religious training sessions on a weekly basis at the church's Secaucus, New Jersey office. He further alleged that during the year at issue

he had performed religious services for a group of individuals. Neither of these allegations were supported by documentary evidence.

10. Petitioner established a checking account for his chapter of the church. He deposited all his income into this account and drew checks from the account to pay his living expenses.

11. Petitioner filed his 1978 Federal return using a format identical to that of his New York State return. On the Federal return, petitioner claimed a refund of \$2,949.43. Said amount represented the total Federal income taxes withheld in 1978.

12. Petitioner's 1978 Federal return was audited by the Internal Revenue Service. As the result of said audit, certain changes were made. Such changes were explained by the Internal Revenue Service as follows:

"(a) It is determined that the amount of \$21,292.00 which was claimed as excludable from your gross income is includible in your gross income under Section 61 of the Internal Revenue Code as compensation for services rendered.

(b) It is determined that you realized taxable income from Broward Marine Inc., in the amount of \$549.00 which you did not report on your return.

(c) It is determined that you received taxable income which was not shown on your return from the following sources in the amounts shown:

Chase Manhattan Bank	\$ 55.00
Harlem Savings Bank	51.00
TOTAL	<u>\$106.00</u>

(d) You have been given credit for one exemption, for yourself, in order to compute your taxable income."

13. Petitioner claimed that he appealed the aforestated Federal audit changes; however, he did not know the current status of his appeal.

14. The Audit Division, through its Answer of January 10, 1984, sought to assert a greater deficiency based on the aforestated Federal audit changes.

15. No evidence, documentary or otherwise, was submitted to show whether the Life Science Church ever negotiated with petitioner's employer or exercised any control over the conduct of his activities as a systems analyst.

16. Petitioner argued alternatively that should it be determined that his income is taxable, he is entitled to a contribution deduction of \$5,000.00 and two additional exemptions for his sister's children.

17. In support of petitioner's claimed contributions he submitted copies of two checks. Each was for \$2,500.00 and was paid to the order of the Life Science Church East Coast. Petitioner claimed he received no benefit for these payments and that said payments did not represent fees for his ordination as a minister. The checks, which were dated July 6 and July 27, 1978, were drawn on the account of Stanley DuBois.

18. The two additional exemptions petitioner now claims are for his sister's two children. Petitioner submitted a sworn affidavit of his sister, Sandra DuBois, which stated:

"For the years 1978 and 1979 my brother, Stanley DuBois, provided more than half the support for my two children, Terry and Didi."

Attached to said affidavit were copies of the birth certificates of Sandra DuBois' children. Both children were minors during the year at issue. No other documentation was submitted with respect to the claimed exemptions.

#### CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that the New York adjusted gross income of a resident individual is his Federal adjusted gross income for the taxable year with certain modifications not applicable herein. Section T46-112.0(a) of Chapter 46, Title T of the Administrative Code of the City of New York contains a similar provision with respect to New York City adjusted gross income.

B. 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 to charitable contributions" (McGahen v. Commissioner, 76 T.C. 468 aff'd 720 F.2d 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).

C. 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]).

D. That petitioner would be entitled to exclude his salary income if he could show it was paid to him as an agent of the Life Science Church rather than in his individual capacity. Since the record is completely lacking in any testimony or documentation showing that the Life Science Church ever negotiated



with petitioner's employer or exercised any control over the conduct of his activities as a systems analyst, it must be held that his income was paid to him in his individual capacity and was thus subject to tax.

E. That petitioner has failed to shoulder his burden of proof, imposed by section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that the checks totaling \$5,000.00 paid to the Life Science Church East Coast represented bona fide charitable contributions. Additionally, he failed to show that he is properly entitled to the exemptions for his sister's two children.

F. That section 689(d)(1) of the Tax Law provides that:

"If a taxpayer files with the tax commission a petition for redetermination of a deficiency, the tax commission shall have power to determine a greater deficiency than asserted in the notice of deficiency..., if claim therefor is asserted at or before the hearing under the rules of the tax commission."


Section T46-189.0(d)(1) of the Administrative Code of the City of New York is substantially identical to section 689(d)(1) of the Tax Law.

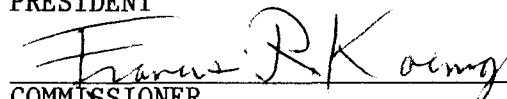
G. That pursuant to section 689(d)(1) of the Tax Law and section T46-189.0(d)(1) of the Administrative Code of the City of New York, the Tax Commission hereby determines a greater deficiency than asserted in the Notice of Deficiency based on the Federal audit changes as outlined in Finding of Fact "12", supra.


H. That the petition of Stanley DuBois is denied and the Notice of Deficiency dated April 7, 1982 is to be modified to be consistent with the decision rendered herein.

DATED: Albany, New York

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

RETURNED  
TO  
SENDER  
UNCLAIMED  
New York, N.Y. 10033

Stanley DuBois  
260 Audubon Ave., Apt. 2  
New York, NY 10033

CERTIFIED

P 693 168 840

MAIL

OCT 584  
N V

69790

CLAIM CHECK  
NO.

689603

10/19

DATE

1ST NOTICE

OCT 19 1984

2ND NOTICE

OCT 24 1984

RETURN

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 5, 1984

Stanley DuBois  
260 Audubon Ave., Apt. 28G  
New York, NY 10033

Dear Mr. DuBois:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

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Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

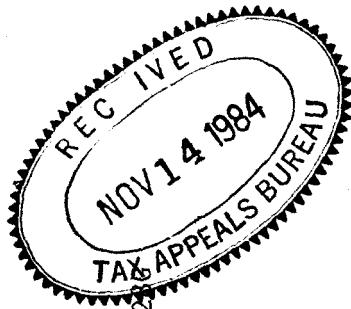
cc: Taxing Bureau's Representative

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

U.S. N.Y. 10033

Stanley DuBois  
260 Audubon Ave., Apt. 2B  
New York, NY 10033



CLAIM CHECK  
NO.

☐ HOLD

DATE

10/9  
1ST NOTICE

OCT 19 1984

2ND NOTICE

OCT 24 1984

RETURN

**CERTIFIED**

P 693 168 840

**MAIL**

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

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#### CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that the New York adjusted gross income of a resident individual is his Federal adjusted gross income for the taxable year with certain modifications not applicable herein. Section T46-112.0(a) of Chapter 46, Title T of the Administrative Code of the City of New York contains a similar provision with respect to New York City adjusted gross income.

B. 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 to charitable contributions" (McGahen v. Commissioner, 76 T.C. 468 aff'd 720 F.2d 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).

C. 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]).

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with petitioner's employer or exercised any control over the conduct of his activities as a systems analyst, it must be held that his income was paid to him in his individual capacity and was thus subject to tax.

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F. That section 689(d)(1) of the Tax Law provides that:

"If a taxpayer files with the tax commission a petition for redetermination of a deficiency, the tax commission shall have power to determine a greater deficiency than asserted in the notice of deficiency..., if claim therefor is asserted at or before the hearing under the rules of the tax commission."

Section T46-189.0(d)(1) of the Administrative Code of the City of New York is substantially identical to section 689(d)(1) of the Tax Law.


G. That pursuant to section 689(d)(1) of the Tax Law and section T46-189.0(d)(1) of the Administrative Code of the City of New York, the Tax Commission hereby determines a greater deficiency than asserted in the Notice of Deficiency based on the Federal audit changes as outlined in Finding of Fact "12", supra.

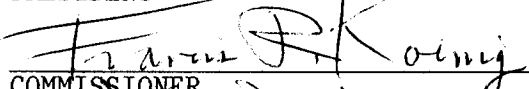
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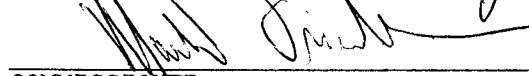
DATED: Albany, New York

OCT 05 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER