

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Guy Powell :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of 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 1978.

State of New York }
County of Albany } ss.:

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 Barry Lasky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barry Lasky
Ira Liebowitz, Lasky & Peterson
585 Stewart Ave.
Garden City, NY 11530

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

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

David Parchuck

James A. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Guy Powell : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency for Refund of :
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 1978.

State of New York }
County of Albany } ss.:

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 Guy Powell the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Guy Powell
130-39 222nd St.
Laurelton, NY 11413

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'Donnell
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Guy Powell
130-39 222nd St.
Laurelton, NY 11413

Dear Rev. Powell:

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, 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: Petitioner's Representative
Barry Lasky
Ira Liebowitz, Lasky & Peterson
585 Stewart Ave.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GUY POWELL	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of 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 1978.	:	

Petitioner, Guy Powell, 130-39 222nd Street, Laurelton, New York 11413, filed a petition for redetermination of a deficiency or for refund of 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 1978 (File No. 38964).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 24, 1984 at 1:15 P.M., with all briefs to be submitted by April 30, 1984. Petitioner appeared by Ira H. Leibowitz, Lasky & Peterson, Esqs. (Barry M. Lasky, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner's wages from his employment as a metal worker were excludable 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 the salary earned in his individual capacity to the church.

FINDINGS OF FACT

1. Petitioner, Guy Powell, filed a New York State Income Tax Resident Return (IT-201/208) for 1978. The only information reported on the return,

other than petitioner's name and address, was the amount of New York State and New York City tax withheld and a claim for refund of the entire amount which totalled \$2,557.46. In a note at the bottom of the IT-201/208, petitioner stated that "I have taken a Vow of Poverty (copy attached) and am an agent for my Church, and am therefore exempt from State and City income taxes." Attached to the return was a Wage and Tax Statement for 1978 indicating that petitioner was employed by Hygrade Metal Moulding Mfg. Corp. ("Hygrade") and earned \$30,756.15 during the year. Also attached to the return were a statement in affidavit form dated December 26, 1978 entitled "Vow of Poverty", a Certificate of Ordination from the Life Science Church dated December 11, 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 April 7, 1982, the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$949.84, plus interest of \$271.55, for a total due of \$1,221.39 for the tax year 1978. A Statement of Audit Changes issued February 10, 1982 explained that petitioner's wages earned during 1978 constituted "gross income in accordance with Section 61 of the Internal Revenue Code and clarified by Revenue Ruling 77-290."

3. On or about December 11, 1978, petitioner received a letter from William Drexler, Chief of the Order, stating in part:

"2. You are to secure and distribute the document containing the fundamental beliefs and philosophy of the Life Science Church which is the Bible of the Life Science Church and the Order. A copy is presented herewith.

3. This Church is founded on the beliefs contained in the Church Bible, the Declaration of Independence and Sacred scripture and upon the principle that a man owns his own life and is bound by the sacred natural Law Golden Rule, 'DO UNTO OTHERS AS YOU WOULD HAVE THEM DO UNTO YOU'.

You are to use your occupation as a [sic] Operator as a vehicle and instrument to carry out and put into effect the principles of the Church and Order. In order to persuade and encourage other people to practice and apply this Church's Creed and philosophy and teachings to their social, private and business activities and also to the mental and spiritual sector of their lives you are to constantly set a good example by the practice of these principles and creed yourself.

4. You are directed to keep employment and work in order to earn income to use to support yourself and your family as a vehicle to carry out the purposes of this Church and Order.

5. You are directed to use the income of the Order and Church as you see fit and reasonable to carry out the purposes of the Order."

4. The "Vow of Poverty" which was subscribed and sworn to by petitioner on December 26, 1978, stated in part:

"I Rev. Guy Powell D.D....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 remuneration [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 101380, Chapter."

5. Both before and after his ordination, petitioner apparently worked as a metal worker for Hygrade. Petitioner did not testify at the hearing nor did he offer any evidence in any form whatsoever indicating whether he owned a home or any motor vehicles, the title to which was transferred to the Life Science Church. There was no evidence offered to show that petitioner turned over any of his wages earned during 1978 to the church. Petitioner only became a member of the Life Science Church in December of 1978, yet he claimed his income for the entire year was exempt from tax. Petitioner offered no evidence indicating

whether any wages earned prior to his becoming a member of the church were turned over to the church at any time. Moreover, petitioner submitted no evidence showing whether he ever conducted any services for the church or whether he ever did any work for the church in any form.

6. Petitioner filed a Federal Form 1040 (U.S. Individual Income Tax Return) for 1978 using a format identical to his IT-201/208 filing and claiming a refund of \$5,056.44. The United States Treasury apparently paid the claim by check dated May 25, 1979 in the amount of \$5,056.44. The record does not indicate whether an audit of petitioner was conducted by the Internal Revenue Service for tax year 1978.

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 third party for the benefit of a religious or charitable organization described in section 170(c) of the Internal Revenue Code and an amount for such services is paid to such organization by the third party, 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" (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 the amounts in issue if he could show they were paid to him as an agent of the Life Science Church rather than in his individual capacity. The record, however, 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 metal worker. It is clear that petitioner's agreement to work for Hygrade was entered into at least a year prior to his joining the Life Science Church and petitioner's employment was left completely unaltered by his joining the church in December, 1978. It is doubtful that Hygrade employed petitioner for his abilities as a metal worker as an agent of the church rather than as an individual. In fact, there is no evidence that any management personnel from Hygrade even knew that petitioner was a member of the Life Science Church. Therefore, the income received by petitioner during

the year in issue was not received by him as an agent of the Life Science Church, but was received by him in his individual capacity and was thus subject to tax.

E. That in light of Conclusion of Law "D", it is unnecessary to address the Audit Division's alternative argument that, since petitioner did not become an ordained minister until December, he is not entitled to an exemption for the entire year. Moreover, since petitioner produced no evidence that he contributed any funds to the Life Science Church, he is not entitled to a deduction for charitable contributions under section 170 of the Internal Revenue Code.

F. That the petition of Guy Powell is denied and the Notice of Deficiency issued April 7, 1982 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984

Rodrich A. Kan
PRESIDENT

Francis R. Koony
COMMISSIONER

COMMISSIONER

1 abstain.

Mark J. Judd