

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John Bonaccorso : 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 Nonresident Earnings Tax under Chapter 46, :
Title U of the Administrative Code of the City :
of the New York for the Year 1981. :
:

State of New York :

ss.:

County of Albany :

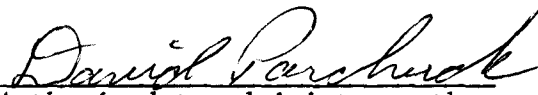
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 23rd day of April, 1987, he/she served the within notice of Decision by certified mail upon John Bonaccorso the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

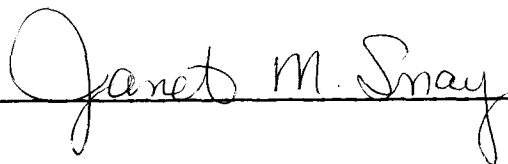
John Bonaccorso
65 Red Maple Drive North
Levittown, NY 11756

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
23rd day of April, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

April 23, 1987

John Bonaccorso
65 Red Maple Drive North
Levittown, NY 11756

Dear Mr. Bonaccorso:

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 U 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

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JOHN BONACCORSO	:	DECISION
for Redetermination of a Deficiency or for	:	
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Title U of the Administrative Code of the City	:	
of New York for the Year 1981.	:	

Petitioner, John Bonaccorso, 65 Red Maple Drive North, Levittown, New York 11756, 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. 58074).

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 2, 1986 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUE

Whether petitioner is subject to penalties for failure to file an income tax return for 1981, for failure to pay the tax when due and for negligence.

FINDINGS OF FACT

1. Petitioner, John Bonaccorso, did not file a New York State Resident Income Tax Return for 1981. Petitioner had taken a Vow of Poverty with the Life Science Church and believed that his income was exempt from Federal, State and city income taxes.

2. On May 18, 1984, the Audit Division issued a Statement of Audit Changes to petitioner wherein his 1981 salary income of \$29,053.45 was held subject to New York State personal income tax and New York City nonresident earnings tax "based on Revenue Ruling 77-290". Accordingly, a Notice of Deficiency was issued against Mr. Bonaccorso on November 5, 1984, asserting additional tax due of \$2,575.70, plus penalties of \$1,093.61 and interest of \$782.71, for a total due of \$4,452.02. Said penalties were asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law for failure to file and pay the New York State tax due and negligence, respectively. No penalty was asserted with respect to petitioner's failure to pay New York City nonresident earnings tax.

3. Petitioner became a minister in the Life Science Church sometime in the middle part of 1980. He filed an income tax return for that year. In 1982, petitioner withdrew his association with the Life Science Church when he learned that a Federal court found the organization to be fraudulent. Petitioner filed an income tax return for 1982.

4. Following a pre-hearing conference with the Tax Appeals Bureau, petitioner filed a New York State Resident Income Tax Return and a City of New York Nonresident Earnings Tax Return for 1981 on which he showed taxes due of \$1,280.82 and \$107.39, respectively. On October 3, 1985, petitioner executed a withdrawal of petition whereby he agreed to the foregoing deficiencies; however, the withdrawal indicated that petitioner disagreed with the following penalties imposed thereon:

<u>Penalty</u>	<u>New York State</u>	<u>New York City</u>
685(a)(1)	\$288.18	\$24.16
685(a)(2)	262.57	22.01 ¹
685(b)	64.04	5.37

Petitioner was advised to file for amnesty on the penalties. Petitioner, however, felt that such an application would be an admission of guilt and chose to have a hearing.

5. Petitioner took the position that he was not required to file an income tax return for 1981 and as such penalties should not be imposed. Petitioner argued further that he at all times acted in good faith to follow the laws of New York State.

CONCLUSIONS OF LAW

A. That section 685(a)(1) of the Tax Law and section U46-35.0(a) of the Administrative Code of the City of New York provide for the imposition of penalty for failure to file a tax return. Section 685(a)(2) of the Tax Law provides for a penalty to be imposed for failure to pay the tax shown on the return. Said penalties may be cancelled if it is shown that the failure to file and/or pay was due to reasonable cause and not willful neglect. Tax Law § 685(b) and Administrative Code § U46-35.0(b) impose an additional penalty if the deficiency is due to negligence.

B. That petitioner failed to establish that reasonable cause existed for his failure to file and timely pay New York State and New York City personal income taxes for 1981. Accordingly, the penalties asserted pursuant to Tax Law

1 The Audit Division incorrectly imposed a penalty for failure to pay New York City nonresident earnings tax. There is no provision for such penalty under section U46-35.0 of the City Administrative Code, nor was such penalty asserted on the Notice of Deficiency.

sections 685(a)(1), 685(a)(2) and 685(b) and Administrative Code sections U46-35.0(a) and U46-35.0(b) are sustained. However, the penalty shown on the withdrawal of petition for failure to pay New York City nonresident earnings tax is cancelled.

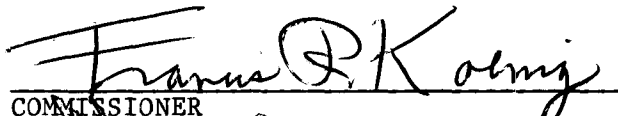
C. That the petition of John Bonaccorso is granted to the extent indicated in Conclusion of Law "B"; and that, except as so granted, the petition is in all other respects denied.

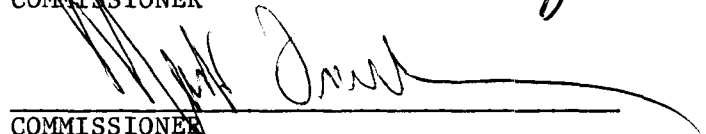
DATED: Albany, New York

STATE TAX COMMISSION

APR 23 1987


PRESIDENT


COMMISSIONER


COMMISSIONER