

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Alexander Temple Holiness Church of God, Inc. :
for Redetermination of Exempt Organization Status :
under Articles 28 and 29 of the Tax Law. :

AFFIDAVIT OF MAILING

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 6th day of March, 1985, he served the within notice of Decision by certified mail upon Alexander Temple Holiness Church of God, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alexander Temple Holiness Church of God, Inc.
c/o W. G. Alexander
711 Pine St.
Brooklyn, NY 11208

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
6th day of March, 1985.

David Parchuck

Annice A. Hagelberg
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 6, 1985

Alexander Temple Holiness Church of God, Inc.
c/o W. G. Alexander
711 Pine St.
Brooklyn, NY 11208

Gentlemen:

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) 1138 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ALEXANDER TEMPLE HOLINESS CHURCH OF GOD, INC.
for Redetermination of Exempt Organization
Status under Articles 28 and 29 of the Tax Law. :

DECISION

Petitioner, Alexander Temple Holiness Church of God, Inc., 2246 Pacific Street, Brooklyn, New York 11233, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 47593).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 21, 1984 at 10:45 A.M., with all documents to be submitted by November 30, 1984.

ISSUE

Whether the Audit Division's revocation of petitioner's status as an organization exempt from sales and use taxes was proper.

FINDINGS OF FACT

1. On June 1, 1971, petitioner, Alexander Temple Holiness Church, Inc., was accorded by the Audit Division the status of an organization exempt from sales tax pursuant to Tax Law section 1116(a)(4). Thereafter, by letter dated November 5, 1982, as part of its periodic review of organizations with such

exempt status,¹ the Audit Division requested that petitioner complete and submit an Application For An Exempt Organization Certificate (Form ST-119.2), together with the supporting information specified in such document. Petitioner was advised that failure to comply with this request within forty-five days of the date of the letter (November 5, 1982) could result in the revocation of petitioner's exempt status.

2. On or about October 20, 1980, petitioner had changed its location from Albany Avenue, Brooklyn, New York to 2246 Pacific Street, Brooklyn, New York.

3. By letter dated December 31, 1982, petitioner was advised that its failure to submit the requested Form ST-119.2 and attendant documentation had jeopardized its exempt status, and that failure to submit such items within forty-five days of the date of the letter (December 31, 1982) would result in revocation of petitioner's exempt status.

4. A completed Form ST-119.2 dated January 9, 1983, together with a certified copy of petitioner's certificate of incorporation under Article 10 of the Religious Corporation Law was mailed to the Audit Division on January 14, 1983 and stamped received by the Audit Division on January 20, 1983.

5. By letter dated February 3, 1983, the Audit Division requested additional information from petitioner as follows:

- "a. A copy of your organization's bylaws.
- b. The information specified in the attached questionnaire for churches. You may disregard question three.
- c. A statement of receipts and expenditures, in proper accounting form, for your last completed fiscal year. You may refer to Part V(a) of the attached instruction form ST 119.3 for the proper format.

1 In this instance, the review pertained to those organizations which had been granted exempt status prior to December 31, 1972.

- d. A complete statement of assets and liabilities, in proper accounting form, as of the end of your latest completed fiscal year. You may refer to Part V(b) of the attached instruction form ST 119.3 for the proper format.
- e. While your application was submitted under the name Alexander Temple Holiness Church of God, Inc., your Certificate of Incorporation states the name of your organization as the Alexander Temple Holiness Church. Please explain the discrepancy in your organization's name."

6. Petitioner's failure to respond to the above-noted letter requesting further information, and its failure to respond to a subsequent letter dated June 2, 1983 requesting the same information, resulted in a letter advising petitioner of the revocation of its exempt status, effective July 27, 1983.

7. Petitioner timely requested a hearing to contest the revocation of its exempt status. The Audit Division's Answer to petitioner's Perfected Petition indicates the sole reason for denial of exempt status was petitioner's failure to submit the requested information (see Finding of Fact "5").

8. At the instant hearing, petitioner's founder and pastor, Bishop W.G. Alexander, appeared and gave testimony regarding petitioner's organization and its operation, noting that petitioner's bylaws were included in its certificate of organization and that there is no distinction between the name under which petitioner was incorporated, "Alexander Temple Holiness Church, Inc.", and the name commonly used by petitioner (and appearing on its letterhead and its correspondence with the Audit Division), "Alexander Temple Holiness Church of God, Inc."; the "of God" having been added unofficially by petitioner's pastor at or about the time that petitioner moved to its current location (see Finding of Fact "2"). In addition, petitioner was granted a period of time within which to submit the information regarding its financial operation (i.e. assets

and liabilities, income and expenses), which information was timely submitted and reviewed.

9. It does not appear that: (a) petitioner ever distributed its property to members; (b) any part of petitioner's earnings inure to the benefit of any individual; (c) petitioner ever engaged in carrying on propaganda, or advocated or opposed pending or proposed legislation; or (d) petitioner participated in or intervened in any political campaign on behalf of any candidate for public office.

CONCLUSIONS OF LAW

A. That Tax Law section 1116(a)(4) provides an exemption from the sales and compensating use taxes imposed under Article 28 to "[a]ny corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes...". In ascertaining whether an organization is organized exclusively for one or more of the enumerated exempt purposes, the focus is on the provisions of the organizing documents [20 NYCRR 529.7(c)(1)]. On the other hand, in determining whether the organization is operated exclusively for one or more exempt purposes, the focus is on the organization's activities:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if almost all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) of the Tax Law... An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." 20 NYCRR 529.7(d)(2).

B. That the documentary evidence supplied by petitioner, as well as petitioner's pastor's testimony, reveal that petitioner meets both the organizational and operational tests as set forth and is entitled to exemption

pursuant to Tax Law section 1116(a)(4). Accordingly, the Audit Division is directed to reinstate petitioner's status as an exempt organization.

C. That the petition of Alexander Temple Holiness Church of God, Inc. is granted.

DATED: Albany, New York

MAR 06 1985

STATE TAX COMMISSION

Rodnick W. Cline
PRESIDENT

Francis D. K. Oling
COMMISSIONER

[Signature]
COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to	<i>Alexander Temple Holmes</i>
Street and No.	<i>1111 1st Ave.</i>
P.O., State and ZIP Code	<i>Brooklyn NY 11208</i>
Postage	<i>7 11 Pmc</i> \$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	