

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CHARLES W. DENN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes 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, Charles W. Denn, 231-13 148th Avenue, Rosedale, New York 11413, filed an exception to the determination of the Administrative Law Judge issued on February 1, 1990 with respect to his petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes 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. 802132). Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin A. Levy, Esq., of counsel).

Petitioner filed a brief on exception. Oral argument was requested by the petitioner but not granted.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether the Division of Taxation had any basis upon which to issue a Notice of Deficiency for the year 1981 against petitioner, Charles W. Denn.

II. If so, whether the Division of Taxation correctly calculated the amount of the Notice of Deficiency issued against petitioner for the year 1981, which deficiency represents tax due in excess of the amount of tax withheld from petitioner's wages.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and such facts are stated below.

On April 12, 1985, the Division of Taxation issued a Notice of Deficiency to petitioner Charles W. Denn, asserting additional New York State and New York City personal income tax due for the year 1981 in the aggregate amount of \$1,770.85, plus penalty (Tax Law § 685[a][1], [2] and [b]) and interest.

On or about April 10, 1982, petitioner signed and submitted to the Division of Taxation a Form IT-201 (New York State and City of New York Resident Income Tax Return) for tax year 1981. This Form IT-201 indicated petitioner's address, county of residence, social security number and spouse's social security number. It also listed petitioner's occupation as "minister", and indicated the choice of filing status "4" (married filing separately on separate forms). The Form IT-201 was otherwise devoid of markings or information, save for a listing of the amounts of New York State and New York City tax withheld from petitioner's wages (aggregating \$1,325.55), shown also as the amount of refund sought by petitioner. As noted, the form was dated April 10, 1982 and was signed by petitioner as "Reverend Charles W. Denn". Attached to the Form IT-201 was a typed statement indicating petitioner's claim to have taken an irrevocable vow of poverty from a religious order known as the "Worldwide Religious Order of Almighty God", thereby rendering petitioner's income "the property of the Church and Order and not personal income to the individual." Also attached to the Form IT-201 was a Wage and Tax Statement listing petitioner's employer as the City of New York, indicating wages, tips and other compensation of \$29,679.22, and reflecting State and local (New York City) income tax withholdings in the aggregate amount of \$1,325.55.

On April 2, 1985, prior to issuance of the aforementioned Notice of Deficiency, the Division of Taxation issued to petitioner a Statement of Audit Changes reflecting its computation

of petitioner's tax liability for the year 1981. This statement indicated petitioner's total income to be equal to the \$29,679.00 amount shown on the Wage and Tax Statement attached to Form IT-201, and also reflected a calculation of tax due thereon after allowances for statutory adjustments, exemptions, maximum tax benefit, as well as credit for the \$1,325.55 of tax withheld. This statement indicated personal income tax due, as stated on the Notice of Deficiency, in the aggregate amount of \$1,770.85 consisting of State tax of \$1,279.90 and City tax of \$490.95. Computations of penalty and interest to the date of issuance of the statement were also provided.

As correspondence introduced in evidence reveals, petitioner initially took the position that all of his income was earned in the capacity of an agent of the religious order and therefore was not properly subject to tax. Petitioner's case was originally included with a number of other cases having the same legal representative and alleging the same vow of poverty basis for nontaxability. Petitioner, however, chose not to continue to be represented along with such other group of taxpayers and pursued the matter separately. As specified at hearing by petitioner, the claim of nontaxability based on the vow of poverty as initially advanced by petitioner has been abandoned. Rather petitioner specified that the only issues remaining in the case were whether the Division of Taxation had established any basis justifying issuance of the Notice of Deficiency against petitioner and, if so, whether the tax calculated due thereon was correct. Petitioner requested and was afforded a period of time subsequent to the hearing (specifically until December 15, 1989) to provide calculations or other evidence showing error or miscalculations by the Division of Taxation. More specifically, petitioner alleged that the amount of tax withheld may have been sufficient to meet tax due on petitioner's income, and that the Division's calculation showing liability in excess of withholding may have been erroneous. No such calculations or evidence in support of these assertions, other than a general claim that his tax liability was zero, was provided by petitioner.

OPINION

In the determination below the Administrative Law Judge decided that the Division was clearly entitled to issue a Notice of Deficiency against petitioner. The Administrative Law Judge

also found it is well settled that a legitimately issued Notice of Deficiency is entitled to a presumption of correctness therein, and petitioner bears the burden of proving error. Since petitioner produced no evidence to refute in any way the accuracy of the Division's calculation of liability and failed to advance any evidence or argument to support reduction or abatement of any of the penalties imposed, the Administrative Law Judge sustained the Notice including interest and penalty.

On exception, petitioner alleges the State has failed to show how he is liable for tax. The petitioner further alleges that the Division has failed to show the statute that makes his wages taxable and the evidence that makes him a "taxpayer" as determined by the statute.

We affirm the determination of the Administrative Law Judge.

The record before us includes Tax Form IT-201 (New York State & City of New York Resident Income Tax Return) for the year 1981. This form was filed in the name of Reverend Charles W. Denn and signed on April 10, 1982 by Reverend Charles W. Denn, Social Security number xxx-xx-xxxx (redacted). Attached to said tax form is a copy of a Wage and Tax Statement for 1981 in the name of C. Denn, Social Security number xxx-xx-xxxx (redacted), showing wages in the amount of \$29,679.22. When these documents were being marked in evidence, Mr. Denn, when asked by the Division attorney, "Mr. Denn, are you the C. Denn listed in this W-2?", stated, "Yes." Further, when asked by the Division attorney, "And this is your signature (handing)?" stated, "That's right" (Tr. p. 10).

Tax Law § 681(a) provides, in relevant part, as follows:

"General.--If upon examination of a taxpayer's return under this article the tax commission determines that there is a deficiency of income tax, it may mail a notice of deficiency to the taxpayer."

Further, under Article 22, § 689(e) the burden of proof is generally upon the petitioner. In the matter at hand, petitioner has failed in his burden of proof and, instead, attempts to shift the burden to the Division by alleging the State has failed to show he is liable for tax.

It has been held that a presumption of correctness arises with respect to a notice of deficiency properly issued under the Tax Law and that a petitioner who fails to present any proof

as to the incorrectness of the deficiency surrenders to this presumption (Matter of Tavalacci v. State Tax Commn., 77 AD2d 759, 431 NYS2d 174, 175). Based entirely on information submitted by petitioner, the Notice of Deficiency issued to petitioner has a rational basis (cf., Matter of Fortunato, Tax Appeals Tribunal, February 22, 1990 [where an assessment was found to be without a rational basis because it was not based on any information relative to the year in question]).

We find no basis in the record before us for modifying the Administrative Law Judge's determination in any respect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner, Charles W. Denn, is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Charles W. Denn is denied; and
4. The Notice of Deficiency dated April 12, 1985 is sustained.

DATED: Troy, New York
October 25, 1990

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner