

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ELMIRA MISSION OF THE CHURCH OF SCIENTOLOGY
for Redetermination of Exempt Organization
Status under Articles 28 and 29 of the Tax Law. :

DECISION

Petitioner, Elmira Mission of the Church of Scientology, 350 West Water Street, Elmira, New York 14905, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 36134).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, State Office Building Annex, 164 Hawley Street, Binghamton, New York, on January 14, 1983 at 9:00 A.M., with all briefs to be submitted by June 1, 1983. Petitioner appeared by Joseph R. Amisano, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On February 5, 1982, the Audit Division advised petitioner, Elmira Mission of the Church of Scientology, that petitioner's Exempt Organization Certificate issued on April 7, 1976 was revoked as of February 5, 1982. This letter of revocation was the culmination of several months of correspondence between petitioner and the Audit Division involving specific and detailed questions and answers concerning petitioner's organization and its operational

methods. The Audit Division's revocation letter indicated as the basis for revocation that a portion of petitioner's net earnings inured to the benefit of its members. The letter asserted specifically that the aforementioned correspondence did not adequately support petitioner's contention that payments made by it to its Field Staff Members ("FSM's") constituted reasonable compensation for services rendered, and thus petitioner was not in compliance with section 1116(a)(4) of the Tax Law and entitled to exemption from sales and use taxes thereunder.¹

2. Petitioner is a not-for-profit corporation organized under Article 10 of the Religious Corporations Law, whose principal purpose, as stated in its by-laws, is to "establish a mission to promote, administer and encourage the religion of Scientology and its goals". Petitioner has on its staff trained ministers who conduct regular services for its members, performed in individual sessions called "auditing".

3. As a means of increasing its membership and of raising revenues for use in promoting the ideals of Scientology, petitioner offers to pay its FSM's ten percent of the donations actually received from persons who come to the church to receive a church service as the result of being recruited by the FSM.

4. All of petitioner's approximately 15 FSM's are church members, and all church members are eligible to be FSM's. Generally, most church members are appointed FSM's, with the appointment made by the church's Director of Clearing. No specific qualifications are required to be an FSM; it is open to all church members and training is encouraged, but is not required. An FSM is first appointed provisionally, after demonstrating an interest in the church by

¹ The Audit Division maintains that such payments violated the prohibition against "...net earnings (of petitioner) inuring to the benefit of any private shareholders or individuals" as provided in section 1116(a)(4).

joining and making a donation. If the provisional FSM continues in good standing in the church, does not act detrimentally to the church and acts responsibly as an FSM, he becomes, after about one year, a permanent FSM.²

5. An FSM is involved with trying to recruit new members for Scientology by encouraging persons, called selectees, to join the church and make a donation. The four basic steps used by an FSM in accomplishing this process, known as selection, are summarized as follows:

a) contact - meeting and making friends with persons for possible selection;

b) handle - explaining "true" data on and refuting negative views toward Scientology;

c) salvage - determining those area(s) of the potential selectee's life which that person would like to improve upon or better understand;

d) bring to understanding - demonstrating or explaining how some technique or service offered by Scientology would help the person improve his life.

6. When a person is selected, the FSM completes a selection slip showing the selectee's name, the FSM's name, and the hour, date and place of selection. This slip is completed in quadruplicate, with the copies given to the selectee, the FSM, the organization (i.e. petitioner), and the Director of Clearing, respectively. Thereafter, if and when the selectee comes to the church for one or more of its services and actually makes a donation, the Director of Clearing verifies the selection sheet on that individual and issues a check to the FSM

² A person can request to be an FSM without joining the church and donating, but must at least demonstrate a knowledge of Scientology (as learned through books or from a course in Scientology). All of petitioner's FSM's have joined and made donations.

who selected that person equal to ten percent (10%) of the amount actually donated.

7. A selectee does not become a member of the organization until he actually comes in and takes a service and makes a donation. A person may be selected repeatedly (in fact, as often as the FSM is able to do so), if he does not come in the first time he is selected. However, once he is selected, makes a donation and becomes a member, he would not be selected again unless he left the church. A person may take additional services after he becomes a church member, but the FSM would not get any payment (by percentage or otherwise) out of the donations made for these additional services.

8. Neither the FSM nor the selection slip states or reports the amount of time spent or the expense incurred in recruiting a selectee, and the selection process may involve only one meeting or may span several meetings over a number of years.

9. The FSM, during the process of selection, helps the selectee decide which service(s) the selectee needs or would like to take. The church has set fixed donation amounts which it requests in return for its different types of services.

10. The ten percent amount paid to the FSM's is called a commission, is recorded under payroll and commissions on petitioner's books, and is always calculated on the actual amount of donation(s) received from the selectee as recruited by the individual FSM. The FSM's are not on petitioner's regular payroll, as are other church staff members who hold various posts in the church, are not paid on a regular basis, and are not reimbursed for the expenses they incur. None of petitioner's FSM's are voting members or trustees of petitioner.

11. The rate of commission paid is never more (or less) than ten percent, calculated on the actual amount of donation received.

12. The amount of commissions an FSM may earn depends only upon how active and successful the FSM is at recruiting (i.e., how many people he or she can convince to come into the church and take a service). An FSM is not permitted to accept any money from the selectee(s) and is responsible for all expenses incurred in the course of recruiting. None of petitioner's FSM's earn their living from their activities as FSM's.³ Both provisional as well as permanent FSM's are entitled to the ten percent commission on donations they generate.

13. If a donation paid by a selectee were to be refunded to him by petitioner, the FSM would be required to pay back to the petitioner the ten percent commission he had earned.

14. The Audit Division asserts that payment to the FSM's of ten percent of the donations they generate constitutes the inurement of a portion of petitioner's net earnings to the benefit of private individuals, and thus violates section 1116(a)(4) of the Tax Law. The Audit Division maintains that paying ten percent in all cases does not constitute an ordinary and necessary reasonable payment for services rendered, since there is no knowledge of or correlation between the amount of commission paid and the amount of time, effort and

³ Included as a part of State's Exhibit "I" in evidence was a breakdown of commissions paid by petitioner to its FSM's during 1980. Such commissions, totalling \$3,482.84 out of \$34,828.40 in FSM-generated donations, were distributed as follows:

<u>NAME OF FSM</u>	<u>AMOUNT PAID</u>	<u>NAME OF FSM</u>	<u>AMOUNT PAID</u>
John Lee	\$ 512.20	Leo Dunkley	\$ 429.22
Marty Shapiro	350.50	Joan Page	15.00
Karen Helsing	80.00	Dave Helsing	204.70
Dick Baldwin	4.00	Reed Slatkin	237.32
Jean Sawyer	2.50	Paula Martens	437.40
Michael Marks	1,210.00	Total	<u>\$3,482.84</u>

expense put forth by the FSM to merit receiving the commission. It was simply ten percent regardless of the amount or purpose of the donation.

15. Petitioner asserts, by contrast, that the FSM's activities promote the church, increase its membership and raise revenues necessary to support the church and to pay those professional church staff members who actually conduct the services chosen by the selectees. Petitioner maintains that the FSM program is not unlike other means of promotion and revenue generation, and that while the FSM's time, effort and expenses will vary from selectee to selectee, the payment of a flat ten percent for the services rendered is reasonable in light of the return to the church on this expense and the efficiency of the method. In this regard, petitioner compares donations in the amount of \$87,500.27 received as the result of non-FSM related promotional activities (primarily television, radio and newspaper advertisements) at a cost of \$59,123.55 (a 148 percent return), to donations of \$34,828.40 received as the result of FSM activity at a cost of \$3,482.84 (a 1,000 percent return). Finally, petitioner maintains that paying a flat ten percent commission on FSM-generated donations in all cases is a means of inducing the FSM's to expend time and effort at recruiting and is a more reasonable means of fixing compensation for the FSM's than is maintaining (voluminous) records of time and expenses incurred by each of its FSM's and trying to correlate compensation to time and effort spent.

CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law, in pertinent part, provides for exemption from sales and use tax for "[a]ny corporation, ..., organized and operated exclusively for religious, charitable, scientific, ...or educational purposes, ..., no part of the net earnings of which inures to the benefit of any private shareholder or individual,..." (emphasis supplied). There is no

allegation raised herein that petitioner was not organized for exclusively religious purposes. Rather, the question is whether petitioner's payments to its FSM's constituted operational non-compliance under section 1116(a)(4) as violating the prohibition against the inurement of net earnings to the benefit of private individuals.

B. That section 1116(a)(4) of the Tax Law is modeled after section 501(c)(3) of the Internal Revenue Code and thus Federal law may be looked to for guidance and interpretation (see Yellin v. New York State Tax Commission, 81 A.D.2d 196).

C. That an otherwise qualifying organization does not lose its exemption by reason of disbursements (including salaries) to private individuals or to its members which are ordinary and necessary in carrying on its activities (e.g. in return for goods or services rendered) [see Saint Germain Foundation v. Commissioner of Internal Revenue, 26 T.C. 648 (1956)]. Furthermore, a contingent compensation arrangement does not necessarily violate statutory conditions [see Broadway Theatre League of Lynchburg, Va., Inc. v. U.S., 293 F. Supp. 346 (1960)].

D. That "[t]he term 'private shareholder or individual' refers to persons who have a personal and private interest in the payor organization. The term does not refer to unrelated third parties. In other words, §501(c)(3) denies exempt status to an organization where founders or controlling members have a personal stake in that organization's receipts." [People of God Community v. Commissioner of Internal Revenue, 75 T.C. 127 (1980); see also 20 NYCRR 529.7(d)(3)].

E. That the FSM's undeniably perform a valuable service for petitioner, specifically by promoting (through direct contact) the precepts of scientology, by recruiting new members into the church, and in so doing, by generating

revenues to the petitioner. Although called Field Staff Members, these individuals are church members only and are not trained as ministers, do not provide or conduct the services rendered by petitioner's professional staff, are not members of petitioner's staff or of the church's hierarchy, are not trustees or voting members of petitioner and have no voice in establishing church policy. They are essentially recruiters who, in compensation for their time and effort, are offered the incentive of a ten percent payment out of those gross revenues they are responsible for having generated. Their remuneration is never more than ten percent, nor is it ever calculated on any figure other than the actual donation received from the selectee selected by the individual FSM. Payment is guaranteed only upon actual donation by a selectee.

F. That since the commission is ten percent of the donation in all instances, with no correlation between the FSM's time and effort and his commission amount, the Audit Division implies there may arise situations wherein an FSM expends minimal time and effort on a selectee who purchases substantial services, thus allowing the FSM to receive a disproportionately large payment. However, the facts do not support this inference (see Finding of Fact "12"). Undoubtedly there occurred instances where no donation nor any resultant commission was paid, notwithstanding the time, effort and expense put forth by the FSM's on selectees.⁴

G. That under the facts and circumstances presented, petitioner's payment of ten percent of gross FSM-generated donations to the FSM's responsible for

⁴ It was noted that the church sets the amounts of donation for its various services (see Finding of Fact "9"). It is arguable that the FSM's are able to determine the amount of potential donation from the services they suggest to potential selectees, calculate the approximate commission thereon (at 10 percent) and thus determine at what point recruitment efforts on a particular selectee should be discontinued since the potential commission is less than the value to the FSM of the time, effort and expense he is expending.

their generation does not violate the requirement that net earnings may not inure to the benefit of private shareholders or individuals. Said commissions represented a reasonable payment in return for the services rendered of generating funds, increasing church membership and promoting church precepts. These payments, as reasonable expenses, reduced gross FSM-generated earnings to net FSM-generated earnings, and no further payments from such net earnings were made to the FSM's. Furthermore, the FSM's, although members of the church and closer in relationship than mere "unrelated third parties", work in a manner analogous to fundraisers or agents hired by the church and thus are not among those individuals, such as founders or controlling members, having a (direct) personal stake in (or control over) the petitioner's receipts. Accordingly, petitioner's tax exempt status should not have been revoked.

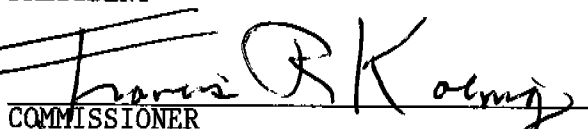
H. That the petition of Elmira Mission of the Church of Scientology is granted and the petitioner's status as a tax exempt organization is hereby reinstated.

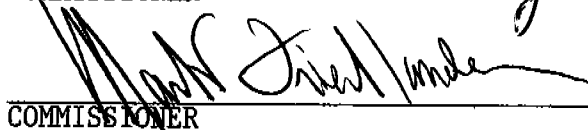
DATED: Albany, New York

STATE TAX COMMISSION

JUL 06 1984


PRESIDENT


COMMISSIONER


COMMISSIONER