

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Thomas E. Newby, Jr. : 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 New York for the Years 1980 & 1981. :  
:

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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 8th day of May, 1986, he/she served the within notice of Decision by certified mail upon Thomas E. Newby, Jr. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas E. Newby, Jr.  
2090 Merrick Ave./Finance Dir.  
Merrick, NY 11566

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  
8th day of May, 1986.

David Parchuck

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Frank L. Eckmuller : AFFIDAVIT OF MAILING  
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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 :  
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Frank L. Eckmuller  
2090 Merrick Ave./Finance Dir.  
Merrick, NY 11566

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Robert M. Levine  
Leibowitz & Peterson  
585 Stewart Ave., Suite 600  
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  
8th day of May, 1986.

David Parchuck

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Sworn to before me this  
8th day of May, 1986.

David Parchuck

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

May 8, 1986

Thomas E. Newby, Jr.  
2090 Merrick Ave./Finance Dir.  
Merrick, NY 11566

Dear Mr. Newby:

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

Petitioner's Representative:  
Robert M. Levine  
Leibowitz & Peterson  
585 Stewart Ave., Suite 600  
Garden City, NY 11530

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

May 8, 1986

Frank L. Eckmuller  
2090 Merrick Ave./Finance Dir.  
Merrick, NY 11566

Dear Mr. Eckmuller:

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.

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Very truly yours,

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cc: Taxing Bureau's Representative

Petitioner's Representative:  
Robert M. Levine  
Leibowitz & Peterson  
585 Stewart Ave., Suite 600  
Garden City, NY 11530

STATE OF NEW YORK

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In the Matter of the Petition  
of  
THOMAS E. NEWBY, JR.  
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 Years 1980 and 1981.

DECISION

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In the Matter of the Petition  
of  
FRANK L. ECKMULLER  
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 Years 1980 and 1981.

Petitioners, Thomas E. Newby, Jr., 2090 Merrick Avenue/Finance Dir.,  
Merrick, New York 11566, and Frank L. Eckmuller, 2090 Merrick Avenue/Finance  
Dir., Merrick, New York 11566, filed petitions for redetermination of deficiencies  
or for refunds 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 years 1980 and 1981  
(File Nos. 53930 and 52108).

A consolidated hearing was held before Allen Caplowaith, Hearing Officer,  
at the offices of the State Tax Commission, Two World Trade Center, New York,  
New York, on August 1, 1985 at 9:15 A.M., with all briefs to be submitted by

September 1, 1985. Petitioners appeared by Robert M. Levine, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

### ISSUES

I. Whether petitioner Thomas E. Newby, Jr.'s salary, derived from his employment as an English teacher, was properly excluded 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 said salary, earned in his individual capacity, to the church.

II. Whether petitioner Frank L. Eckmuller's salary, derived from his employment as a supervisor, was properly excluded 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 said salary, earned in his individual capacity, to the church.

### FINDINGS OF FACT

1. Petitioner Thomas E. Newby, Jr. timely filed New York State income tax resident returns for the years 1980 and 1981 whereon the only information reported was his name, address, social security number, occupation (reported as "Minister"), the amount of New York State and City taxes withheld and a request for refund of the total taxes withheld. The bottom of his 1980 return bore the handwritten statement, "I have taken an irrevocable Vow of Poverty (copy attached) and have received a directive from the head of my order (copy attached) and am therefore EXEMPT from city and state income taxes." The bottom of his 1981 return bore the handwritten statement, "A special letter has been attached to this form." Attached to each of the aforestated returns were wage and tax statements indicating that he was employed during said years as follows:



<u>Year</u>	<u>Employer</u>	<u>Salary</u>
1980	City of New York, Board of Education	\$24,474.39
1980	Gateway Community Restoration, Inc.	332.00
	Total 1980 salary	<u>\$24,806.39</u>
1981	City of New York, Board of Education	\$26,932.71
1981	Gateway Community Restoration, Inc.	936.00
	Total 1981 salary	<u>\$27,868.71</u>

2. Attached to Mr. Newby's 1980 return was a "Vow of Poverty" and a form letter dated April 9, 1980 from one William E. Drexler, D.D., J.D., Bishop of the Life Science Church, Chief of Order of Almighty God. Attached to his 1981 return was a typewritten letter which stated as follows:

"The Rev. Thomas E. Newby, Jr. is a member of a Religious Order who has taken an irrevocable Vow of Poverty and performs services pursuant to direction by the Order as an Agent. The income generated is the property of the Church and Order and not personal income to the individual.

For information and clarification you may write:

Worldwide Religious Order of Almighty God  
Section T-1  
4395 Austin Boulevard  
Island Park, New York 11558"

3. The aforestated letter attached to Mr. Newby's 1981 return bore no letterhead or signature and appears to be his statement rather than a statement from the Order.

4. Petitioner Frank L. Eckmuller timely filed New York State income tax resident returns for the years 1980 and 1981 whereon he reported only that information as was reported on Mr. Newby's returns. Mr. Eckmuller also reported his occupation as "Minister". The top of his 1980 return bore the same handwritten statement as was made on Mr. Newby's return. His 1981 return bore no such statement; however, attached thereto was a typewritten form letter identical

in context to the statement attached to Mr. Newby's 1981 return. Attached to Mr. Eckmuller's 1980 return was a "Vow of Poverty" and a form letter dated March 6, 1980, both of which were identical to those attached to Mr. Newby's 1980 return.

5. Also attached to each of the aforestated returns was a Wage and Tax Statement indicating that Mr. Eckmuller was employed by Eastern Air Lines, Inc. and earned salary income of \$26,851.92 (1980) and \$28,935.80 (1981).

6. On March 21, 1984, the Audit Division issued a Statement of Audit Changes to petitioner Thomas E. Newby, Jr. wherein his 1980 and 1981 salary income 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. Newby on April 12, 1984 asserting New York State personal income tax of \$2,655.08, penalties of \$564.71 and interest of \$825.49, for a total due of \$4,045.28. Said penalties were asserted pursuant to sections 685(a)(2) and 685(b) of the Tax Law for failure to pay the New York State tax due and negligence, respectively. No penalties were asserted with respect to New York City nonresident earnings tax since Mr. Newby's New York City withholding more than covered his City liability, resulting in a credit, rather than an amount of City tax due, being incorporated into the aforestated deficiency.

7. On February 21, 1984, the Audit Division issued a Statement of Audit Changes to petitioner Frank L. Eckmuller wherein his 1980 and 1981 salary income 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. Eckmuller on April 12, 1984 asserting

New York State personal income tax of \$3,285.80, plus penalties of \$986.54 and interest of \$929.58, for a total due of \$5,201.92. Said penalties were asserted pursuant to sections 685(a)(1) and 685(b) of the Tax Law for failure to file New York State returns and negligence, respectively. As in the case of Mr. Newby, no penalties were asserted with respect to New York City nonresident earnings tax since Mr. Eckmuller's New York City withholding more than covered his City liability, resulting in a credit, rather than an amount of City tax due, being incorporated into the aforestated deficiency.

8. The aforestated form letters attached to both Mr. Newby's and Mr. Eckmuller's 1980 returns stated, in part, that:

"You are to use your occupation as \_\_\_\_\_ as a vehicle and instrument to carry out and put into effect the principles of the Church and Order.

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 purpose of this Church and Order.

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."

9. In the above passage, petitioners' respective occupations were typed in the blank space provided in the form letter. Mr. Newby's occupation was reported on said form as "English teacher". Mr. Eckmuller's occupation was reported as "Supervisor".

10. Each petitioner subscribed a "Vow of Poverty", under oath, before a notary public. Mr. Newby's vow was subscribed on March 9, 1980. Mr. Eckmuller's vow was subscribed on December 1, 1980. Said vows, which were in identical form letter format, stated, in part, that:

"I...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 will be the property of the said Church or Order regardless of whether or not they continue to appear in my personal name. Outside employment remuneration (when directed by the Church or Order) is not personal income, but rather income/gift to the Church or Order and not of the individual or the undersigned."

11. In the case of both petitioners herein, the Church or Order designated to receive said income and possessions was the Order of the Life Science Church designated as THE ORDER OF ALMIGHTY GOD, Chapter 11972 for Mr. Newby and Chapter 11663 for Mr. Eckmuller.

12. Both before and after their ordination, petitioner Thomas E. Newby, Jr. apparently worked as a teacher for the New York City Board of Education and petitioner Frank L. Eckmuller apparently worked as a supervisor for Eastern Air Lines, Inc. Petitioners did not personally appear at the hearing. No evidence in any form whatsoever was submitted to indicate whether petitioners owned homes or motor vehicles, the titles to which were transferred to the Life Science Church. There was no evidence offered to show that petitioners turned over any of their wages earned during 1980 and 1981 to the church. Petitioner Thomas E. Newby, Jr. became a member of the Life Science Church in March, 1980. Petitioner Frank L. Eckmuller became a member of said church in December, 1980. However, they each claimed their income for the entire year 1980 was exempt from tax. Petitioners offered no evidence indicating whether any wages earned prior to becoming a member of the church were turned over to the church at any time. Moreover, petitioners submitted no evidence showing whether they had ever conducted any services for the church or whether they ever did any work for the church in any form.

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. That section U46-2.0(a)(1) of the Administrative Code of the City of New York imposes a tax on the wages earned within the city of every nonresident individual. There has been no claim or showing that any of the wages earned by either petitioner herein has been so earned without the City of New York.

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 person for the benefit of a religious or charitable organization described in section 170(c) of the Internal Revenue Code and the amount for such services is paid to such organization by the person to whom the services are rendered, 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 McGahan, supra. at 480]).

D. That the record is completely lacking in any testimony or documentation showing that the Life Science Church ever negotiated with either petitioner's employer or exercised any control over the conduct of their activities as an English teacher and a supervisor, respectively. It is clear that petitioners' agreements to work for their respective employers were entered into prior to their joining the Life Science Church and their employment was left completely unaltered by joining the church. It is doubtful that petitioners' employers employed them for their abilities as an English teacher and supervisor, respectively, as agents of the church rather than as individuals. In fact, there is no evidence that any management personnel from petitioners' respective employers even knew that they were members of the Life Science Church. Therefore, the income received by petitioners during the years in issue was not received by them as agents of the Life Science Church, but was received by them in their individual capacities and was thus subject to tax.

E. That the petition of Thomas E. Newby, Jr. is denied and the Notice of Deficiency issued against him on April 12, 1984, is sustained.

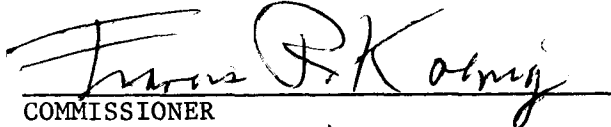
F. That the petition of Frank L Eckmuller is denied and the Notice of Deficiency issued against him on April 12, 1984, is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 08 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER