STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DAVID SEELOW	:	DETERMINATION DTA NO. 812448
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1988.	:	

Petitioner, David Seelow, P.O. Box 539, Port Jefferson Station, New York 11776, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1988.

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on July 11, 1994 at 9:15 A.M., with all documentation and briefs to have been filed by October 14, 1994. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Laura J. Witkowski, Esq., of counsel).

ISSUE

Whether $4,483.00 received by petitioner for his teaching assistant services rendered to the State University of New York at Stonybrook in 1988 should have been included in his New York State adjusted gross income for the same year.

FINDINGS OF FACT

On or about April 14, 1989, petitioner, David Seelow, filed a New York State Resident Income Tax Return, Form IT-201, with the New York StateDepartment of Taxation and Finance in which he declared wages in the sum of $21,355.00 (line 1).

On line 18, where the form asks for total Federal adjustments to income, petitioner wrote the following:

> "(? Uncertain -- Stonybrook income $4,483 grant for student service. See last year's return enclosed, need ruling -- (4,483) --."

On April 13, 1989, petitioner wrote to the Internal Revenue Service in Holtsville, New York stating that he was "unclear about my Stonybrook income -- which is a grant for student activities performed as part of my program."

However, unlike petitioner's action taken with respect to the New York tax return for the year 1988, petitioner did not deduct the $4,483.00 received as a grant from his Federal adjusted gross income, listed on line 13 of his United States Individual Income Tax Return, Form 1040A, for 1988, dated April 13, 1989.

When it came to the attention of the Division of Taxation ("Division") that petitioner had not used Federal adjusted gross income as his starting point for New York tax purposes, an audit of his 1988 New York State Resident Income Tax Return was performed. As a result of the audit, the Division issued to petitioner a Statement of Proposed Audit Changes, dated January 23, 1992, which added the $4,483.00 back to taxable income and recomputed the total New York State tax due based upon the adjustment in taxable income. Corrected tax due was calculated to be $898.00. Petitioner had paid $538.00 in tax with his return.

Subsequent to the issuance of the Statement of Proposed Audit Changes, the Division issued to petitioner a Notice of Deficiency, dated March 9, 1992, which set forth additional tax due for the year 1988 in the sum of $360.00, plus penalty and interest.

On May 18, 1992, petitioner filed a Request for Conciliation Conference seeking a redetermination of the deficiency.

On September 24, 1992, the Division sent a letter to petitioner indicating that it had reviewed his Request for Conciliation Conference, but indicated that it remained confident in its position that the $4,483.00 received by petitioner should have been included as wages on his New York tax return for the year 1988 as it was included in his wages reported for Federal income tax purposes. The Division stated that the starting point for computing New York tax is Federal adjusted gross income and attached a copy of the recomputation. The letter also stated the basis for the Division's rationale as follows:

"The Tax Reform Act of 1986 restricts the exclusion of scholarships and fellowship

grants made after August 16, 1986. In general the exclusion no longer applied to amounts received as payment for teaching, research or other sources.

"It appears that you were on a yearly renewal for the graduate student stipend in the form of a teaching assistantship. You attached a copy of the stipend offer for the 1986-1987 year that was offered on August 13, 1986. Nothing was submitted regarding the stipend applicable to the 1988 academic year. It appears that the offer for the 1988 stipend was offered after August 16, 1986 and therefore would be restricted by the provisions of the Tax Reform Act of 1986."

On September 10, 1993, a Conciliation Order was issued which sustained the additional tax assessed but cancelled penalty.

Petitioner earned his undergraduate degree in English literature from SUNY Stonybrook before attending Columbia University for his Master's Degree in 1983. Although accepted into Columbia University's doctoral program, petitioner could not acquire a grant in aid and decided to attend SUNY Stonybrook beginning in September 1984 to pursue his doctorate.

Petitioner received a graduate student stipend in the form of a teaching assistantship for each of four academic years 1984-1985, 1985-1986, 1986-1987 and 1987-1988. In fact, these teaching assistantships were considered requirements of the doctoral program.

In evidence are three separate letters from the chairs of the Department of Comparative Literature, graduate program in comparative literature. The first, dated March 17, 1988, from Robert Goldenberg, indicated that petitioner had received a graduate student stipend in the form of a teaching assistantship for the academic year 1986-1987. Additionally, Mr. Goldenberg stated that petitioner was offered the stipend/teaching assistantship on August 13, 1986 and that the offer was accepted by petitioner on August 21, 1986.

The second letter, dated June 30, 1993, from Roman de la Campa, confirmed that petitioner was engaged as a teaching assistant between the years 1984 and 1988 and that said assistantships were requirements of the doctoral program. Mr. de la Campa indicated that petitioner taught undergraduate courses during the academic years 1984 through 1988.

Finally, in a letter dated August 25, 1994 from Donald Petrey it was stated that "[d]uring the years of his study in the program, Mr. Seelow was awarded Teaching Assistantships, particularly between the years 1984 and 1988." Mr. Petrey also stated that the teaching

assistantships entitled graduate students to tuition waivers and also defrayed the costs of attending the graduate program and general living expenses.

CONCLUSIONS OF LAW

A. Tax Law § 612(a) provides that the New York adjusted gross income of a resident individual means his Federal adjusted gross income as defined in the laws of the United States for the taxable year. For the tax year 1988, petitioner received wages from the State University of New York at Stonybrook in the sum of $4,483.10.

In his 1988 United States Individual Income Tax Return, dated April 13, 1989, Mr. Seelow included the wages from SUNY Stonybrook in his Federal adjusted gross income. However, on his 1988 New York State Resident Income Tax Return, dated April 14, 1989, Mr. Seelow excluded the $4,483.00, stating on the return that he was uncertain as to how the income should be treated and that he needed a ruling on the issue. Mr. Seelow completed the return without the SUNY Stonybrook wages and calculated his tax accordingly.

Because petitioner did not state a reason for purposely excluding his income from SUNY Stonybrook for New York tax purposes, the Division issued a Notice of Deficiency based upon that omission. Petitioner has the burden of demonstrating that the deficiency assessment was erroneous (Spartacus Delia v. Chu, 106 AD2d 815, 484 NYS2d 204). It is further noted that when a taxpayer challenges an income tax assessment, that taxpayer has a heavy burden of proof, as the courts regularly defer to determinations of the agency which have a rational basis (Baird v. New York State Tax Commn., 102 AD2d 958, 477 NYS2d 822).

B. Internal Revenue Code § 117(a) provides, in part, as follows:

> "Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii)."

The term "qualified scholarship", as used in this section, means any amount received by an individual as a scholarship or fellowship grant to the extent that the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses (IRC § 117[b][1]). Qualified tuition and expenses, in turn, is defined as

tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii) and also fees, books, supplies and equipment required for courses of instruction at said educational organization (IRC § 117[b][2][A], [B]).

As clearly set forth in IRC § 117(b)(1), the burden is upon the individual receiving the "qualified scholarship" to establish that the grant was used specifically for tuition and related expenses. It is determined that petitioner has not demonstrated that the amount he received in 1988 was used for those purposes.

IRC § 117(c) provides:

> "Subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction."

Although petitioner testified that the teaching was merely a part of his training and that the monies he received were given so that he could devote full time to his educational program, the August 25, 1994 letter from Donald Petrey indicated that Mr. Seelow was awarded successive teaching assistantships during the years 1984 through 1988 and that said teaching assistantships provided financial assistance in the form of tuition waivers and monies to defray the costs of attending the graduate program and general living expenses. The June 30, 1993 letter from Roman de la Campa said much the same as the Petrey letter, adding that the teaching assistantship was a requirement and an integral part of the duties and requirements of the program with which all doctoral candidates must comply. Mr. de la Campa also indicated that, for the services performed, doctoral candidates received a tuition waiver and a stipend. The March 17, 1988 letter from Robert Goldenberg also indicated that petitioner received a stipend "in the form of a teaching assistantship."

Although the tuition waivers might arguably fall within the purview of qualified tuition and related expenses, the general stipend referred to in the Department chairs' letters is not clear enough to warrant a finding that the full amount of the wages received by petitioner from the university constituted tuition-related expenses. Proposed Treasury Regulation § 1.117-6(e) provides that, in order to be eligible to exclude from gross income any amount received as a

qualified scholarship, the recipient must maintain records that establish the amounts used for qualified tuition and related expenses. The same regulation goes on to state as follows:

> "The recipient must also submit, upon request, documentation that establishes receipt of the grant, notification date of the grant, and the conditions and requirements of the particular grant" (Proposed Treas Reg § 1.117-6[e]).

Given these recordkeeping requirements and the burden placed upon petitioner, it is found that he has not carried his "heavy burden" of demonstrating what portion, if any, of his wages was attributable to qualified tuition and related expenses (Tax Law § 689[e]). Therefore, the Notice of Deficiency is sustained.

C. Even if petitioner were able to show that the amounts received were for qualified tuition and related expenses, petitioner would not be eligible to exclude any portion of the amount received as wages for his teaching assistantship for teaching, research or other services where the service was required as a condition for receiving the qualified scholarship or qualified tuition reduction. It is critical to note that the restriction or limitation placed on the exclusion of qualified scholarships pertained to those scholarships and fellowships granted after August 16, 1986. Unlike under prior law, under the new limitation the restriction applied regardless of whether or not all candidates for the degree were required to perform such services (Proposed Treas Reg § 1.117-6[d]).

It was petitioner's own testimony that confirmed the services were required in order to receive the stipend and that, although the services were required for graduation, not all graduate students received stipends. Mr. Seelow also pointed out that only those students who qualified based on financial need and academic performance received the paid teaching assistantships. He also stated that some candidates received more money than others, depending upon their qualifications and need.

Petitioner also argued that the grant or scholarship was made in a four-year block in 1984, when he first began his studies at SUNY Stonybrook, presumably to show that his scholarship was granted prior to August of 1986 and therefore not subject to the limitation on the exclusion introduced by the Tax Reform Act of 1986 in IRC § 117(c). However, petitioner was unable to

substantiate his claim that the grant he received was a four-year grant and the March 17, 1988 letter from Robert Goldenberg indicated that he had been granted a stipend in the form of a teaching assistantship for the one academic year 1986-1987, thereby strongly inferring that such stipends were granted on a year-to-year basis. Consistent with this inference was the use of the plural "teaching assistantships" awarded to Mr. Seelow, referred to by Donald Petrey in his letter of August 25, 1994. Given petitioner's failure to prove the terms and conditions of the grant which he alleges to have been issued for four years in 1984, and the inferences to the contrary set forth in the letters of Donald Petrey and Robert Goldenberg, it is found that petitioner has not established that the grant was for four years and the evidence indicates that it was a year-to-year grant. With this in mind, it is clear that IRC § 117(c), placing the limitation on qualified scholarships, specifically applied to petitioner's teaching assistantship, performed by him as a condition to receiving his scholarship or qualified tuition reduction.

D. Petitioner has not met his burden under any theory that any payment received by him for services he rendered as a teaching assistant was not includable in his gross income because it was a scholarship or a fellowship grant. The clear indication is that the payments were received as compensation for services rendered and the record is devoid of any evidence to the contrary.

The salient facts of this case which weigh most favorably for petitioner are not as strong as those found in Farmer v. Commissioner (59 TCM 439 [where, even though the petitioner produced specific letter offerings from the University of Louisville for graduate teaching assistantships and provided the court with a wealth of information with regard to the source of the funds used to pay the assistantships and the criteria used by the university for the award of said scholarships, the Tax Court held that stipends received by the petitioner were not scholarships or fellowship grants within IRC § 117(a)]).

Perhaps it was best stated in Bingler v. Johnson, 394 US 741, 751, 226 L Ed 2d 695, 704 [1969]), where the Supreme Court said:

> "[T]he definitions supplied by the Regulation clearly are prima facie proper, comporting as they do with the ordinary understanding of 'scholarships' and

> 'fellowships' as relatively disinterested, 'no strings' educational grants, with no requirement of any substantial quid pro quo from the recipients."

The important inquiry is whether the scholarship or grant was awarded to the recipient to pay him for working or to pay him to study. The line between these two areas is often difficult to draw, and must be done in accordance with the facts and circumstances of each particular matter. In the instant matter, petitioner did not present clear, consistent and substantial evidence of his teaching assistantships and thus has failed to carry his burden of proof.

E. The petition of David Seelow is denied and the Notice of Deficiency dated March 9, 1992 is sustained.

DATED: Troy, New York
March 16, 1995

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE