

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL DAVID KANDEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) ~~xxxx~~ Period(s) 1971:

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Paul David Kandel

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Paul David Kandel
Route 3
Mount Kisco, New York 10549

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
24th day of September, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

September 24, 1976

TELEPHONE: (518) 457-3850

Mr. Paul David Kandel
Route 3
Mount Kisco, New York 10549

Dear Mr. Kandel:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~690~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,
Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

~~XX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PAUL DAVID KANDEL : DECISION
for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year :
1971. :

Petitioner, Paul David Kandel, Route 3, Mount Kisco, New York 10549, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for 1971. (File No. 1-75278993). On May 1, 1976, petitioner advised the State Tax Commission in writing that he desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file.

ISSUE

Whether or not income received by the petitioner while in training at a hospital is taxable.

FINDINGS OF FACT

1. Petitioner, Paul David Kandel, and his spouse filed an amended 1971 personal income tax return on March 12, 1973, changing their election from joint to separate returns on form

IT-208 and requesting a refund in the amount of \$83.78 in the husband's column.

2. On audit, the Income Tax Bureau disallowed a \$3,600.00 exclusion from income and issued a Notice of Deficiency dated November 26, 1973 in the amount of \$76.41 plus interest.

3. The Income Tax Bureau held that interns and resident physicians in training in a hospital, who are primarily performing services for the hospital, are receiving income.

4. Petitioner received a medical degree in Bologna, Italy. New York State licensing requires physicians trained in foreign countries to have approved hospital training. Petitioner applied to and was accepted by Northern Westchester Hospital to fulfill this requirement. At the hospital, he attended the private patients of physicians on the hospital attending staff. His only compensation was the usual amount paid to an intern at hospitals in this and various other areas. Petitioner received a withholding slip showing his compensation as wages, and deductions were made for social security and for Federal and State taxes.

5. A brochure published by the hospital for prospective interns states in capital letters, "ALL PATIENTS IN THIS PROGRAM ARE A DIRECT RESPONSIBILITY OF THE INTERN."

6. The brochure outlines other duties of the interns to be performed in the emergency room and outpatient department. It also points out that the maximum value of training is derived from the actual care of the ill patients by the intern under supervision.

CONCLUSIONS OF LAW

A. That the hospital's primary function was caring for patients and not for education.

B. That the stipend was treated as compensation by the hospital, which withheld tax and social security.

C. That the services were primarily for the grantor's (hospital) benefit.

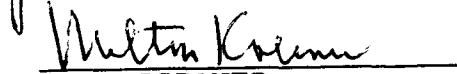
D. That the stipend does not qualify for exclusion under section 117 of the Internal Revenue Code.

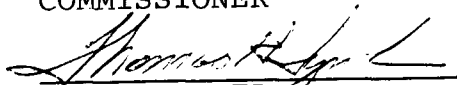
E. That the petition of Paul David Kandel is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York
September 24, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER