

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CARL KIRSCHNER

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) ~~or Period(s)~~ 1973.:  
~~XXXXXXXXXX~~

State of New York  
County of Albany

Bruce Batchelor , 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 4th day of March , 19 77, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Carl Kirschner  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Carl Kirschner  
140-21 Burden Crescent  
Jamaica, New York 11435

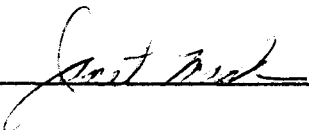
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

4th day of March , 19 77

Bruce Batchelor



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CARL KIRSCHNER

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) ~~1973~~ 1973.:

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of March, 1977, he served the within  
Notice of Decision by (certified) mail upon Theodore Mausner

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Theodore Mausner  
1006 Bay 25th Street  
Far Rockaway, NY 11691

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

4th day of March, 1977.

Bruce Batchelor

sent mail



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

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. Carl Kirschner  
140-21 Burden Crescent  
Jamaica, New York 11435

Dear Mr. Kirschner:

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

Please take further notice that pursuant to  
Section(~~6~~) **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.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
CARL KIRSCHNER  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article  
22 of the Tax Law for the Year 1973.

---

:  
:  
:  
:  
:  
:  
:

DECISION

Petitioner, Carl Kirschner, residing at 140-21 Burden Crescent, Jamaica, New York 11435, has 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 1973 (File No. 3-49185473).

A small claims hearing was held before Joseph Marcus, Hearing Officer, on September 23, 1976 at 2:45 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared with his representative, Theodore Mausner. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq. of counsel).

ISSUE

Whether a stipend received by petitioner as a graduate student is excludable from gross income in accordance with section 117 of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioner, Carl Kirschner, filed a New York State combined income tax return for 1973. Petitioner omitted therein amounts received from Life Office Management Associates and New York University,

aggregating \$3,951.00. In the case of New York University, the stipend was paid to petitioner, Carl Kirschner, as a graduate teaching assistant. The funds he received from Life Office Management Associates were paid to him as a research assistant.

2. On July 1, 1974, the Income Tax Bureau issued a Statement of Audit Changes disallowing the omission of the aforementioned stipends. In connection therewith, the Income Tax Bureau issued a Notice of Deficiency on April 11, 1975 covering the disallowance.

3. Petitioner, Carl Kirschner, contended that in pursuit of a doctorate in his specialty, industrial psychology, he was required to complete his assistantship and research internship, a requirement set by the Department of Psychology, New York University. The research and teaching activities performed by the petitioner were activities required of all candidates for a doctoral degree in industrial psychology at New York University as a condition to receiving such degree.

4. The grantors, in each case, withheld payroll taxes from the stipends.

5. The requirement mandating the necessity for the graduate student's participation in teaching assistantships and research internships was attested to in a letter dated February 4, 1974, addressed "To Whom It May Concern" and signed by Joseph Weitz, Professor of Psychology Coordinator, Graduate Industrial Psychology Program, New York University.

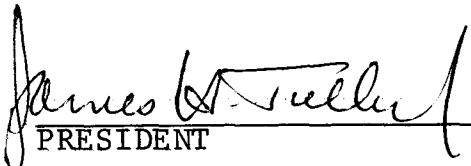
CONCLUSIONS OF LAW

A. That petitioner, Carl Kirschner, in fulfilling his requirements for a Doctorate in Industrial Psychology, received stipends which were not includable in gross income, in accordance with the meaning and intent of section 117(b)(1) of the Internal Revenue Code.

B. That the petition of Carl Kirschner is sustained and the Notice of Deficiency dated April 11, 1975 is rescinded.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER