

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANKLIN BOLLHORST AND ELEANOR BOLLHORST

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(X)~~ 22 of the :  
Tax Law for the Year ~~(X) XXXX XXXXX (X)~~ 1969. :

State of New York  
County of Albany

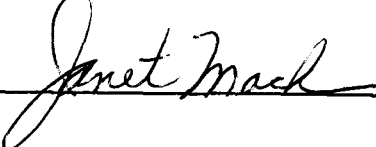
John Huhn , being duly sworn, deposes and says that  
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of February , 1978, ~~she~~ she served the within  
Notice of Decision by (certified) mail upon Franklin & Eleanor  
Bollhorst (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. & Mrs. Franklin Bollhorst  
83 The Fairway  
Cedar Grove, New Jersey 07009

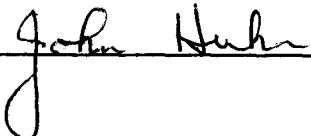
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~  
~~XXXXXX~~) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

6th day of February , 1978.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition

of

FRANKLIN BOLLHORST AND ELEANOR BOLLHORST

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year ~~(x) 1968~~ (x) 1969.:

\_\_\_\_\_  
State of New York  
County of Albany

John Huhn , 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 6th day of February , 19 78, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Allen P. Essner, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Allen P. Essner, Esq.

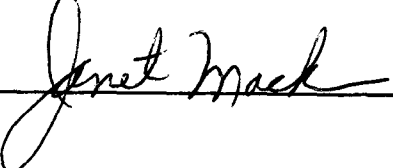
as follows: Trubin, Sillcocks, Edelman & Knapp  
375 Park Avenue  
New York, New York 10022

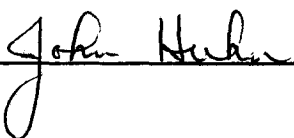
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

6th day of February , 1978

  
\_\_\_\_\_

  
\_\_\_\_\_



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

**February 6, 1978**

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Mr. & Mrs. Franklin Bollhorst  
83 The Fairway  
Cedar Grove, New Jersey 07009**

**Dear Mr. & Mrs. Bollhorst:**

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 ~~5~~ **590** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty  
Hearing Examiner**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
FRANKLIN BOLLHORST AND ELEANOR BOLLHORST : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year 1969 :

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Petitioners, Franklin Bollhorst and Eleanor Bollhorst, residing at 83 The Fairway, Cedar Grove, New Jersey 07009, 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 1969 (File No. 00186).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 15, 1976 at 9:15 a.m. Petitioners appeared by Allen P. Essner, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the income received by petitioner Franklin Bollhorst, a nonresident, during the year 1969, constituted income from New York sources, thus making it subject to New York State income tax.

FINDINGS OF FACT

1. Petitioners, Franklin Bollhorst and Eleanor Bollhorst, were residents of the State of New Jersey during the year 1969. They timely filed a New York State nonresident income tax return for the year 1969, on which they excluded from income subject to New York taxation, the salary paid to petitioner Franklin Bollhorst by First National City Bank.

2. On January 31, 1972, the Income Tax Bureau issued a Notice of Deficiency against the petitioners based on a Statement of Audit Changes which held that the salary petitioner Franklin Bollhorst received from his New York employer while he was continuing his education, was fully taxable for New York State income tax purposes. Also, the days spent outside New York State at an educational institution and at home could not be considered for allocation of income outside New York State.

3. Petitioner Franklin Bollhorst was an employee of First National City Bank. On September 4, 1968, said petitioner became a recipient of a National City Foundation Award, an educational award which allowed him to pursue his education on a full-time basis from the fall of 1968 through the early part of 1970. During the aforesaid period, petitioner Franklin Bollhorst was neither obligated to nor did he perform any services in New York State. Further, he was not obligated to render any future services to the bank upon completion of his studies. He chose to attend Rutgers University in Newark, New Jersey.

4. From the fall of 1968 through the early part of 1970, petitioner Franklin Bollhorst was granted a leave of absence by First National City Bank. He continued to receive his full salary in the sum of \$12,535.40.

5. Petitioner Franklin Bollhorst was employed by First National City Bank for a number of years prior to 1969. Upon completion of his education in 1970, he returned to their employ. During the year 1969, said petitioner did not perform any services for the bank either within or without New York State.

6. Petitioner Franklin Bollhorst maintained that the education award he received from First National City Bank was not based upon his prior services to the bank, but rather, on his selection as a person with academic promise and by virtue of the fact that he had previously completed two years of college. No documentary evidence was submitted nor was any made available to verify his contentions.

7. Petitioner Franklin Bollhorst contended that the amount he received from First National City Bank during 1969 in the sum of \$12,535.40, represented a scholarship exempt from New York State personal income taxes in accordance with section 117 of the Internal Revenue Code. However, he reported said amount on his New York State nonresident income tax return on Schedule "A", line "1", in the Federal column as wages, salaries, tips, etc.

8. Petitioner Franklin Bollhorst did not submit any documentary evidence regarding the full and specific terms of the award.

CONCLUSIONS OF LAW

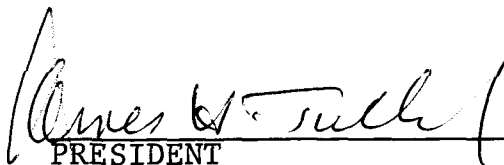
A. That petitioners, Franklin Bollhorst and Eleanor Bollhorst, did not sustain the burden of proof required by section 689(e) of the Tax Law, to show that the income received by Franklin Bollhorst during the year 1969 qualified as a scholarship or fellowship grant, in accordance with section 117 of the Internal Revenue Code and Article 22 of the Tax Law.

B. That the petitioner Franklin Bollhorst has failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that the educational award granted to him by First National City Bank was not based on services previously rendered wholly within New York State. Therefore, said income is taxable as income derived from New York sources in accordance with the meaning and intent of section 632 of the Tax Law.

C. That the petition of Franklin Bollhorst and Eleanor Bollhorst is denied and the Notice of Deficiency issued January 31, 1972 is sustained.

DATED: Albany, New York  
February 6, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER