

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALLAN L. and MARSHA H. SCHERR

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) or Period (s)~~ 1971.:
~~(x) or Period (s)~~

State of New York
County of Albany

John Huhn

, 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 24th day of January , 19 79, He served the within

Notice of Decision by (certified) mail upon Allan L. & Marsha H. Scherr

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

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

as follows: Allan L. & Marsha H. Scherr
6 Scott Court
Poughkeepsie, New York 12601

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)~~
~~xxxxx~~ 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 January , 19 79

John Huhn

William J. Papineau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALLAN L. and MARSHA H. SCHERR

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 (xxxxxx) 1971.:
~~(xxxxxx)~~

State of New York
County of Albany

John Huhn

, 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 24th day of January , 19 79, ~~He~~ served the within

Notice of Decision by (certified) mail upon Robert L. Ostertag, Esq.

(representative of) the petitioner in the within proceeding,

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

as follows: Robert L. Ostertag, Esq.
75 Washington Street
Poughkeepsie, New York 12601

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 January , 19 79.

Marilyn J. Papineau

John Huhn



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

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

January 24, 1979

Allan L. & Marsha H. Scherr
6 Scott Court
Poughkeepsie, New York 12601

Dear Mr. & Mrs. Scherr:

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 **(B) 690** 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 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 CHYRWATT
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 | : | |
| ALLAN L. and MARSHA H. SCHERR | : | DECISION |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Year | : | |
| 1971. | : | |

Petitioners, Allan L. and Marsha H. Scherr, 6 Scott Court, Poughkeepsie, New York 12601, 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 1971 (File No. 13396).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 21, 1977 at 9:00 A.M. Petitioners appeared by Robert L. Ostertag, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether an award received by petitioner Allan L. Scherr from the IBM Corporation in 1971 was taxable income to him for personal income tax purposes.

FINDINGS OF FACT

1. Petitioners, Allan L. and Marsha H. Scherr, timely filed a New York State personal income tax return for 1971, on which petitioner Allan L. Scherr excluded from taxable income \$15,000.00 of the \$44,395.17 shown as wages on the wage and tax statement which was issued to him by his employer, the IBM Corporation (hereinafter "IBM").

2. Petitioner Allan L. Scherr contended that the amount excluded constituted a nontaxable "Outstanding Contribution Award" from IBM, in recognition of a scientific achievement embodied in a thesis which he wrote in 1965 before his employment by IBM. He further contented that he was selected for the award without his knowledge and without any action on his part, and that he was not required to render future services as a condition for receiving said award.

3. The Income Tax Bureau contended that the award was given to petitioner by his employer in recognition of past accomplishments in connection with his employment and was, therefore, includible in taxable income. Accordingly, it issued a Notice of Deficiency against petitioners on May 21, 1973 for 1971 in the sum of \$1,149.76.

4. As a requirement for his Ph.D. in electrical engineering at the Massachusetts Institute of Technology, petitioner wrote a thesis in 1965 entitled "Analysis of Time Share Computer Systems." The thesis was published by the M.I.T. Press in late 1966. The "general approach" to time sharing of computers was the subject of the thesis. The thesis was basic and general in nature and not tailored to IBM's products.

5. Petitioner was hired by IBM (which had full knowledge of his thesis) on June 1, 1965, as a staff engineer in their systems architecture department. He was engaged in the design of new computers. At this time IBM was developing time sharing, using the "special purpose approach". IBM was having problems with this approach. Petitioner wrote a memorandum to management favorably comparing his "general approach" (which was compatible with IBM hardware) to the "special purpose approach". In late 1966, he was given a special assignment to study implementation, feasibility and costs of his approach to suit IBM's needs, which

assignment lasted until approximately the end of 1967. On December 23, 1967, petitioner was promoted to the position of design manager for time share option and until July of 1970, was involved in the actual implementation of his concept. During all of the time that petitioner worked for IBM, he regularly received merit increases in salary. The project proved to be successful. Petitioner gave up the rights to his concept to IBM. In September of 1971, he received the \$15,000.00 Outstanding Contribution Award.

6. The Outstanding Contribution Award was given (under written guidelines) by IBM to selected individuals in its employ throughout the world. The purpose of the award was to recognize contributions of its employees which were well above and beyond or outside the normal scope of both their employment and the service normally recognized by merit increases in salary. It was usually bestowed on employees for technical contributions that resulted in some benefit to IBM technology or its marketable products, or that in some way, resulted in increases in IBM's profits or revenues. The award served as a form of incentive to IBM's employees.

7. Petitioner's name was submitted as a candidate for the award by one of his managers who stated that "this award was in recognition of scientific and technical work that he (petitioner) did primarily during the years 1967 through 1969 in devising a technical approach for providing a general purpose time sharing capability with IBM System/360 computer systems."

8. Petitioner did not submit documentary or any substantial evidence to show that the award was given to him in recognition of his concept, rather than for the implementation of his concept.

CONCLUSIONS OF LAW

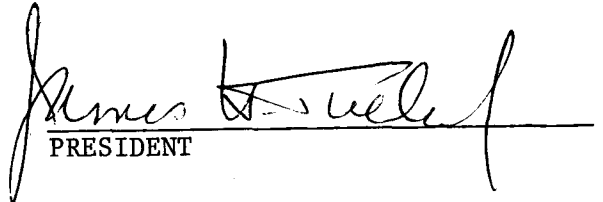
A. That petitioner Allan L. Scherr did not sustain the burden of proof required (in accordance with section 689(e) of the Tax Law) to show that the Outstanding Contribution Award in the amount of \$15,000.00 was bestowed on him by IBM in recognition of his general concept for time sharing of computers (which was developed by him prior to his employment by IBM), rather than in recognition of his achievement in implementing his general concept to IBM products, while performing such services as an employee of said corporation.

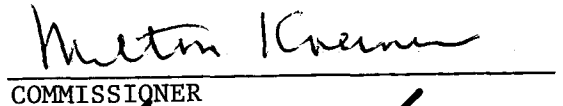
B. That the award received by petitioner from IBM in 1971 was taxable income to him in accordance with the meaning and intent of section 74 of the Internal Revenue Code and Treas. Reg. section 1.74-1.

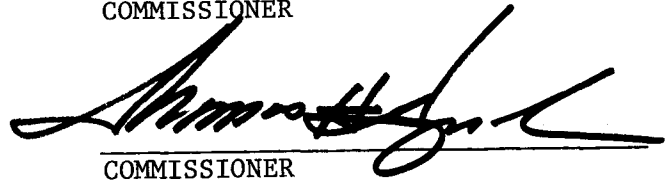
C. That the petition of Allan L. and Marsha H. Scherr is denied and the Notice of Deficiency issued May 21, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER