

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SANFORD P. and DELIA C. TEMES

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(s) ~~or Period(s)~~  
1972 and 1973

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 , 1979 , he served the within  
Notice of Decision by (certified) mail upon Sanford P. and  
Delia C. Temes (~~XXXXXXXXXXXX~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Sanford P. and Delia C. Temes  
909 Westcott Street  
Syracuse, NY 13210

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 (~~XXXXXXXXXXXX~~  
~~of the~~) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~XXXXXXXXXXXX~~) petitioner.

Sworn to before me this

24th day of January , 1979.

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

**Sanford P. and Delia C. Tamas**  
**909 Westcott Street**  
**Syracuse, NY 13210**

**Dear Mr. & Mrs. Tamas:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(x) 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 **four 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 Chyrywat**  
**Hearing Examiner**

cc: ~~Rebelle's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
SANFORD P. and DELIA C. TEMES : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article :  
22 of the Tax Law for the Years 1972 and :  
1973. :

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Petitioners, Sanford P. and Delia C. Temes, 909 Westcott Street, Syracuse, New York 13210, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 13433).

On December 27, 1977, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

I. Whether compensation received by petitioner Sanford P. Temes while in training at a hospital was excludable from gross income as a scholarship or fellowship grant, in accordance with section 117 of the Internal Revenue Code.

II. Whether a determination by the National Labor Relations Board that interns, residents and clinical fellows were students rather than employees was binding on the Income Tax Bureau.

III. Whether petitioners may change their filing status election for 1972 and 1973 from filing jointly to filing separately, in order to more accurately represent their personal income tax liability.

FINDINGS OF FACT

1. Petitioners, Sanford P. and Delia C. Temes, timely filed New York State joint personal income tax returns for 1972 and 1973, on which petitioner Sanford P. Temes excluded \$1,800.00 in 1972 and \$3,600.00 in 1973 as adjustments to gross income. He contended that the adjustments were allowable as scholarship or fellowship grants, in accordance with section 117 of the Internal Revenue Code.

2. The Income Tax Bureau contended that petitioner Sanford P. Temes, an intern training at a hospital, received compensation for services he performed for the hospital and, therefore, that said compensation was not excludable from gross income. Accordingly, it issued a Notice of Deficiency against petitioners on March 31, 1975 for 1972 and 1973 of \$135.80 in personal income tax, plus \$16.93 in interest, for a total of \$152.73.

3. Petitioner Sanford P. Temes was a physician. From July 1, 1972 through 1973, he was an intern and resident at the Upstate Medical Center in Syracuse, New York, working towards qualification as a certified urologist and towards a

specialty in surgery. Petitioner received a wage and tax statement from the hospital. Income taxes and social security taxes were withheld from his compensation. The compensation he received was termed a stipend which varied in amount to each individual intern and resident, according to his level of education.

4. Petitioner gained knowledge and experience through his supervised care of the hospital's patients. He was on duty weekends and every third night. He received two weeks vacation. Besides his compensation from the hospital, petitioner received fringe benefits.

5. On March 9, 1976, the National Labor Relations Board determined that interns, residents and clinical fellows were students rather than employees.

#### CONCLUSIONS OF LAW

A. That the furtherance of the education of interns and residents, rather than the care of patients, was not the primary function of the hospital. That the services rendered by petitioner Sanford P. Temes in caring for patients were performed primarily for the grantor's (hospital) benefit; thus, the income so derived was not given without the expectation of services being performed for the grantor and, therefore, was not excludable from gross income as a scholarship or fellowship, in accordance with the meaning and intent of section 117 of the Internal Revenue Code.

B. That the determination by the National Labor Relations Board that interns, residents and clinical fellows were students rather than employees is not binding on the State Tax Commission in its determination of whether or not compensation received by said interns, residents and clinical fellows constituted taxable income for personal income tax purposes.

C. That petitioners may change their filing status election from joint to separate personal income tax returns. The change is not barred by the statute of limitations to the extent that said change of election serves to offset a deficiency of tax, but may not result in a refund for the same taxable year, in accordance with the meaning and intent of section 660 of the Tax Law and 20 NYCRR 154.4(c). The change of election for 1972, including all income, results in an additional personal income tax due of \$22.31. For 1973 the change of election, including all income, results in an overpayment of \$57.15. However, such change of election may only serve to offset the deficiency in full for 1973 and may not result in a refund, in accordance with 20 NYCRR 154.4(c).

D. That the petition of Sanford P. and Delia C. Temes is granted to the extent that the deficiency for 1973 is cancelled and the deficiency for 1972 is reduced to \$22.31,

together with any interest that may be lawfully owing. The Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued March 31, 1975 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
January 24, 1979

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
**TAX APPEALS BUREAU**

TO..... Sec. to Tax Commission .....

Notice of Decision remailed

January 31, 1979.

M-75 (5/76)



**SMALL CLAIMS**

TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

*Edward J. [unclear]*

Samford P. and Delia C. Temes  
909 Westcott Street  
Syracuse, NY 13210

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by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
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c/o Sanford Temes, Major, USAF  
4025-2 Ashwood Circle  
Andrews AFB, MD 20331  
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last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

31st day of January, 1979

Marilyn Papineau

John Huhn