

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Anthony J. Buscaglia :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1973. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Anthony J. Buscaglia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony J. Buscaglia
76 Washington Hwy.
Snyder, NY 14226

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

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 2, 1980

Anthony J. Buscaglia
76 Washington Hwy.
Snyder, NY 14226

Dear Mr. Buscaglia:

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(s) 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 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ANTHONY J. BUSCAGLIA : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1973. :

Petitioner, Anthony J. Buscaglia, 76 Washington Highway, Snyder, New York 14226, filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 11940).

A small claims hearing was held before Carl Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on April 26, 1979 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq. of counsel).

ISSUE

Whether any portion of the amounts received by petitioner during 1973, while in training at a hospital, was excludable from gross income as a fellowship grant, in accordance with section 117 of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioner Anthony J. Buscaglia and his spouse filed a New York State Combined Income Tax Resident Return for the calendar year 1973. He excluded, as a fellowship exclusion, the sum of \$3,600.00 from his adjusted gross income

2. On June 30, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, on the grounds that the stipends received by petitioner constituted compensation for services rendered and were not excludable from income. A Notice of Deficiency was issued on June 30, 1975 in the amount of \$281.12 personal income tax, plus interest of \$23.39, less a refund of \$23.00 which was claimed on petitioner's return, for a total due of \$281.51.

3. In July 1971, petitioner completed medical school and a year internship in internal medicine. Rather than practicing medicine, the petitioner chose to further his training in internal medicine by undertaking two additional years of education, with the last year being at E.J. Meyer Memorial and Buffalo General Hospitals in Buffalo, New York. During this period, the petitioner became a licensed New York physician in July 1972.

4. In July 1973, having completed the residency program in internal medicine, it was petitioner's decision to take further training in internal medicine. This was in a respiratory (pulmonary) disease training program for a period of two years at the E.J. Meyer Memorial Hospital. He received stipends for this program from Erie County. It is the income from this program which the petitioner contends constitutes a fellowship grant. Petitioner's duties consisted of laboratory and library research performed under the auspices of the Pulmonary Department at the hospital. During this period, Dr. Buscaglia gained knowledge and experience through his supervised care of the hospital's patients in the Intensive Care Unit and pulmonary consultation service. He also spent two hours per week at the hospital's chest clinic. This training program also required the petitioner to spend two months in the Pathology Department at the VA Hospital in Buffalo, New York studying the pathology of lung disease.

5. Petitioner's compensation was the usual amount paid to a resident at the E.J. Meyer Memorial Hospital although unlike a resident, he was not required to take night calls, write orders or supervise the care of patients. Petitioner received withholding slips showing his compensation as wages, and deductions were made for social security and for Federal and State taxes. He received two weeks vacation and two weeks military leave. Besides his compensation from the hospital, petitioner was provided with medical insurance.

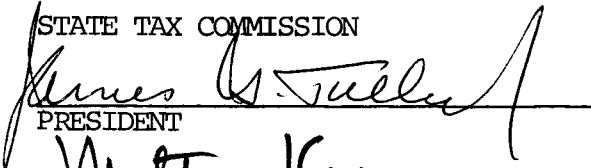

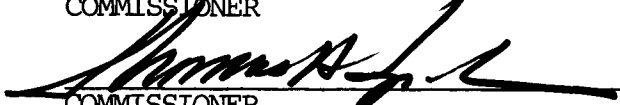
CONCLUSIONS OF LAW

A. That petitioner Anthony J. Buscaglia has not sustained the burden of proof required (pursuant to section 689(e) of the Tax Law) to show that the amounts received by him during 1973 did not represent compensation for his services and that his services were not primarily for the benefit of the hospital, within the meaning of Treasury Regulation section 1.117-4(c). The fact that an individual is engaged in work which may result in an educational benefit to himself and/or others does not transform a payment received for such work into an excludable scholarship or fellowship grant in accordance with Revenue Ruling 64-212, 1967 2 CB40. Accordingly, no part of the payment made to said petitioner is to be considered an amount received as a scholarship or fellowship grant for purposes of section 117 of the Internal Revenue Code.

B. That the petition of Anthony J. Buscaglia is denied and the Notice of Deficiency issued June 30, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 2 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER