

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
John J. & Rita M. Fruin :
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 Years 1968, 1969. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

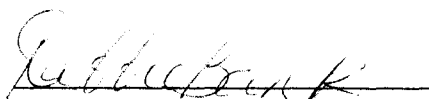
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of October, 1980, he served the within notice of Decision by certified mail upon John J. & Rita M. Fruin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

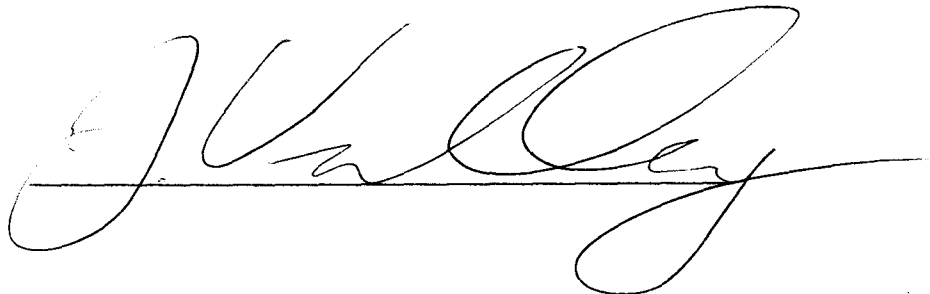
John J. & Rita M. Fruin
7 Anchor Dr.
Massapequa, NY 11758

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
3rd day of October, 1980.





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

October 3, 1980

John J. & Rita M. Fruin
7 Anchor Dr.
Massapequa, NY 11758

Dear Mr. & Mrs. Fruin:

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 :
JOHN J. FRUIN and RITA M. FRUIN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1968 and :
1969. :

Petitioners, John J. Fruin and Rita M. Fruin, 7 Anchor Drive, Massapequa, New York 11758, 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 1968 and 1969 (File No. 01157).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 5, 1977 at 2:45 P.M. Petitioner John J. Fruin appeared pro se and for his wife, Rita M. Fruin. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether a fellowship for study toward a Ph.D. degree awarded by petitioner's employer was excludable from Federal gross income under section 117 of the Internal Revenue Code of 1954.

FINDINGS OF FACT

1. Petitioners, John J. Fruin and Rita M. Fruin, timely filed joint New York State income tax resident returns for 1968 and 1969.
2. On June 28, 1971, the Income Tax Bureau issued a revised Statement of Audit Changes advising petitioners that payments received from the Port of New

York Authority in 1968 and 1969 were deemed to be compensation in consideration of past, present or future services and that as such, did not qualify as a fellowship grant. On November 29, 1971, the Income Tax Bureau issued a Notice of Deficiency against petitioners for tax of \$911.81, plus interest of \$108.38, for a total allegedly due of \$1,020.19 for 1968 and 1969.

3. Petitioner John J. Fruin entered the employ of the Port of New York Authority ("Port Authority") in 1954 as a civil engineer and planning technician. He had a Bachelor of Civil Engineering from Manhattan College, a Master's degree in Civil Engineering and a Master's degree in Transportation Planning from Polytechnic Institute of Brooklyn ("Institute"). Mr. Fruin worked full-time for the Port Authority and taught engineering part-time at the Institute.

4. On August 15, 1968, at an official meeting of the commissioners, the Port Authority voted to extend to petitioner John J. Fruin the Howard S. Cullman Fellowship Award. The fellowship review committee selected Mr. Fruin out of sixteen applicants. The minutes of the meeting stated the purpose of the award in general:

"...to provide an opportunity for a staff member to undertake a unique project which promises to be of material benefit to the authority. Specifically, the fellow may (1) participate in research or innovative studies, (2) obtain on-the-job training with other organizations, (3) enroll in graduate or undergraduate studies at an accredited university, or (4) observe special engineering, management, production, operating or maintenance techniques.

This Committee recommends that the Fellowship be awarded to MR. JOHN J. FRUIN. Specifically, Mr. Fruin will study and develop more effective standards of patron comfort, convenience, and movement through our Terminal facilities. The project will also be submitted as a Dissertation for a Doctorate of Philosophy, Transportation Planning, at Polytechnic Institute of Brooklyn.

During his Fellowship year, Mr. Fruin will establish objective criteria for the design of air, bus, marine, and rail passenger facilities by studying pedestrian traffic volumes at doors, in corridors, and on stairs, ramps, and escalators through the use of time lapse photography

and by establishing acceptable standards of waiting times in these areas. The goal is improved service to the public. He will also study and research the most recent advancements in pedestrian service techniques and inspect first hand modern transit facilities in this country and Europe."

5. Petitioner John J. Fruin enrolled as a full-time student at the Institute for the academic year 1968-1969. He was accepted as a candidate for the degree of Doctor of Philosophy in Transportation Planning.

6. During his full-time study at the Institute, petitioner John J. Fruin performed no services for the Port Authority, rendered no time or other reports and continued to receive his regular salary from the Port Authority. The Port Authority paid for cameras, film and other expenses incurred by petitioner John J. Fruin during his research.

Pension, insurance and other employee benefits to petitioner John J. Fruin were continued during the fellowship grant.

7. No written or formal agreement was made between the Port Authority and petitioner John J. Fruin, that he was obligated to continue in the employ of the Port Authority after petitioner had completed his research grant. Petitioner John J. Fruin published his dissertation in 1971 through the National Academy of Engineering. It became available to many public agencies, as well as to the Port Authority.

8. Petitioner John J. Fruin timely filed Federal income tax reports for 1968 and 1969, claiming exemption for the fellowship grant under Section 117(a)(1)B of the Internal Revenue Code of 1954. His returns were accepted as filed and have not been audited by the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That the fellowship grant made to petitioner John J. Fruin by the Port of New York Authority while Mr. Fruin attended graduate school in 1968 and 1969 was not compensation for past, present or future services and was not

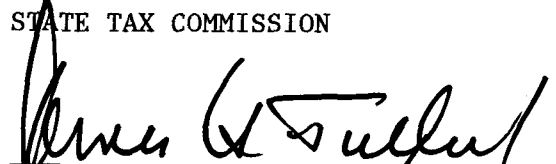
an amount paid to enable him to pursue studies or research primarily for the benefit of the grantor. Accordingly, the grant is to be excluded from gross income under Section 117(a)(1)B of the Internal Revenue Code of 1954 and Treas. Reg. Sec. 1.117-1 and Sec. 1.117-4.

B. That the petition of John J. Fruin and Rita M. Fruin is granted and the Notice of Deficiency dated November 29, 1971 is cancelled.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER

I dissent:
Thomas R. Hanig