

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kenneth L. Fontecchio :
AFFIDAVIT OF MAILING
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 :
1971.

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Kenneth L. Fontecchio, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenneth L. Fontecchio
17 Ledge tree Rd.
Medfield, MA 02052

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
30th day of October, 1981.

Annex A. Highland

J. Vredenburg

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

October 30, 1981

Kenneth L. Fontecchio
17 Ledge tree Rd.
Medfield, MA 02052

Dear Mr. Fontecchio:

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
KENNETH L. FONTECCHIO
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1971.
DECISION

Petitioner, Kenneth L. Fontecchio, 17 Ledge-tree Rd., Medfield, Massachusetts 02052, 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. 13564).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1981 at 1:15 P.M. Petitioner, Kenneth L. Fontecchio appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (M. Gitter and A. Haber, Esqs., of counsel).

ISSUE

Whether \$3,600.00 received by petitioner during 1971 is excludable from gross income as a scholarship or fellowship grant.

FINDINGS OF FACT

1. Petitioner, Kenneth L. Fontecchio, timely filed a New York State combined income tax nonresident return for the year 1971 on which an adjustment of \$3,600.00 was deducted.
2. On September 30, 1974 the Audit Division issued a Notice of Deficiency for \$282.04, plus interest along with an explanatory Statement of Audit Changes on which the adjustment of \$3,600.00 was disallowed, since petitioner had

failed to answer the Audit Division's letters of January 11, 1973 and August 23, 1973.

3. Petitioner, Kenneth L. Fontecchio, was a participant in a postgraduate program at New York University (University) for a certificate in Periodontology. In addition to formal classroom study, this program required a two-year period of clinical research and training of all students in the program. Based on financial need, two participants were normally chosen by the University to obtain the necessary clinical requirements at the Veterans Administration Hospital (Hospital), who would pay the participant a fixed stipend. Petitioner Kenneth L. Fontecchio was one of the participants chosen by New York University to conduct the required clinical research and training at the Hospital. All other students were required to meet their clinical requirements, without compensation, at a clinic in the University.

4. Although the stipend was paid in the form of a salary and was subjected to the withholding of payroll taxes, petitioner was not an employee of the Hospital. He was not a career resident and did not enjoy employee fringe benefits normally available to the Hospital's employees.

5. The number of hours spent at the Hospital varied in accordance with petitioner's school schedule, and did not affect the amount of the stipend paid to petitioner.

6. Petitioner's activities at the Hospital were supervised and consisted of research and clinical training with patients who belonged to other doctors. Petitioner's supervisor at the Hospital rendered quarterly reports of petitioner's progress to New York University. In addition, petitioner was periodically tested by the University and was required to submit research papers to them.

7. In May, 1972, New York University, College of Dentistry, Postgraduate Division, awarded petitioner Kenneth L. Fontecchio a certificate in Periodontology.

CONCLUSIONS OF LAW

A. That the stipend received by petitioner Kenneth L. Fontecchio from the Veterans Administration Hospital during the year 1971 constituted a scholarship and/or fellowship grant within the meaning and intent of section 117 of the Internal Revenue Code and as such, is excludable from New York gross income to the extent of \$3,600.00 (\$300.00 a month for twelve months) as limited by section 117(b)(2)(B) of the Internal Revenue Code. (Paul H. Chesmore, 33 T.C.M. 1226, (1974) William and Doris Wells v. Commissioner, 40 T.C. 40, (1963); Richard A. Anderson v. United States, 61-1 U.S.T.C. ¶9162, (1961).

B. That the petition of Kenneth L. Fontecchio is granted and the Notice of Deficiency issued September 30, 1974 is cancelled.

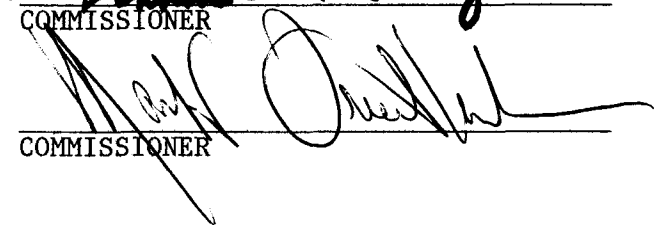
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER