

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ruth Sager :
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 :
1973.

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 Ruth Sager, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

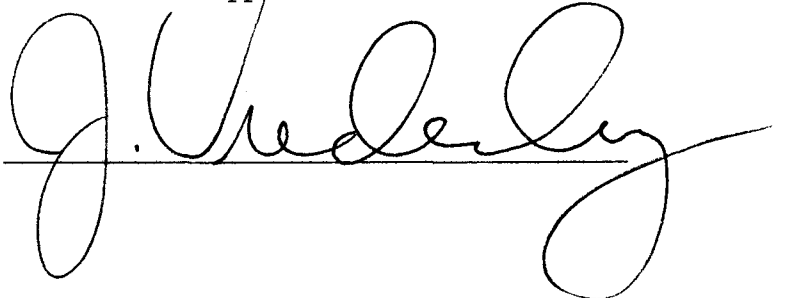
Ruth Sager
30 Codman Rd.
Brookline, MA 02146

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.





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

October 30, 1981

Ruth Sager
30 Codman Rd.
Brookline, MA 02146

Dear Ms. Sager:

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	:	
RUTH SAGER	:	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, Ruth Sager, 30 Codman Road, Brookline, Massachusetts 02146, 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 1973 (File No. 10530).

On November 4, 1980, petitioner informed the State Tax Commission, in writing, that she 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. After due consideration of the record, the Commission renders the following decision.

ISSUES

I. Whether monies received by petitioner during 1973 from the John Simon Guggenheim Memorial Foundation (hereinafter "Foundation"), as a Fellowship is excludible from gross income in accordance with section 117 of the Internal Revenue Code.

II. Whether "away from home living expenses" may be deducted by petitioner as ordinary and necessary business expenses under section 162 of the Internal Revenue Code.

III. Whether petitioner's claimed deductions for a fellowship award, and aliquot portions of rent, telephone and utility expenses for maintaining an

office in her apartment are ordinary and necessary expenses incurred in carrying on a trade or business under section 162 of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioner, Ruth Sager, filed a New York State Income Tax Resident Return (Form IT-201) for 1973 indicating her period of New York residence from September 1, 1973 to December 31, 1973. On said return, petitioner deducted as an adjustment to income, "Employee Business Expenses" in the sum of \$10,025.00; itemized deductions attributable to maintaining an office in her apartment consisting of rent in the amount of \$1,417.00, telephone expenses of \$48.00, utilities of \$18.00 and a fellowship award of \$2,400.00.

2. On October 27, 1975, the Audit Division issued a Notice of Deficiency against petitioner asserting personal income tax of \$1,735.17, plus interest of \$199.67, for a total of \$1,944.84. The Notice of Deficiency was based on an audit, resulting in the following adjustments for subject year:

<u>Adjustments To Gross Income</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
(1) Away From Home Living Expenses	\$8,424.00	-0-	\$ 8,424.00
(2) Conventions	-0-	\$384.00	(384.00)
<u>Miscellaneous Deductions</u>			
(3) Home Rent	1,417.00	-0-	1,417.00
(4) Home Telephone	48.00	-0-	48.00
(5) Home Utilities	18.00	-0-	18.00
(6) Guggenheim Fellowship	2,400.00	-0-	<u>2,400.00</u>
Total Adjustments			<u>\$11,923.00</u>

Item (1): For subject year, petitioner deducted, as an adjustment to income, the sum of \$10,025.00 as "Employee Business Expenses". Of said amount, \$8,424.00 was disallowed by the Audit Division as a result of an audit. Item (2) is not contested by petitioner, and, therefore, is not at issue. Items (3) through (5), claimed as itemized deductions, were disallowed in total based on

said audit. Item (6) represents a deduction of \$300.00 per month for eight (8) months awarded petitioner as a fellowship.

3. Petitioner's personal income tax return for year in issue as originally processed, was computed by the Audit Division as if petitioner was a part-year resident (see Finding of Fact #1, supra). The computation by the Audit Division is in error as petitioner was a resident for the entire year although absent from New York for part of the year. As a result of this audit adjustment, petitioner paid additional tax plus interest of \$73.11.

4. Petitioner, who was not a candidate for a degree, was awarded a Fellowship grant by the Foundation, an organization that is exempt from tax under section 501(a) of the Internal Revenue Code. The grant was awarded petitioner to enable her to further her studies of cytoplasmic genes in mamilian cells at the Imperial Cancer Research Fund Laboratories in London, England.

For subject year petitioner received \$7,494.00 from the Foundation which she included as income on both her Federal and New York State income tax returns. The grant was specifically designated by the Foundation to cover petitioner's expenses for travel, accomodations, clerical help and equipment incidental to the Fellowship and an award. The amount of \$5,694.00 received by petitioner for expenses was fully expended by her for the specified purposes during the subject year; and accounted for by her to the Foundation. The balance of the award viz \$1,800.00 represents the grant.

Petitioner contends that she spent a total of 234 days "away from home" for which she incurred expenses of \$8,424.00. Petitioner failed to submit any evidence in support of excess expenditures previously allowed by the Audit Division.

5. Petitioner contended that one room of her four room apartment was used entirely as a study; housing her books and papers, equipped with file cabinets, bookshelves, typewriters, tape recorder and transcriber, etc. On her 1973 New York State Income Tax Resident Return she deducted one fourth of the home rent, one fourth of home utilities and one half of telephone bills.

6. Petitioner for subject year claimed, as an itemized deduction, \$2,400.00 as a Fellowship grant under section 117 of the Internal Revenue Code. The amount petitioner should have claimed as an itemized deduction is \$1,800.00, (see Finding of Fact #4, supra).

CONCLUSIONS OF LAW

A. That the \$5,694.00 received by the petitioner, Ruth Sager, which she included in her New York personal income tax return for subject year, constituted a grant specifically designated by the foundation to cover expenses for travel accommodations, clerical help and equipment incidental to the Fellowship and as such is excludable from New York gross income in accordance with the meaning and intent of section 117(a)(2) of the Internal Revenue Code.

B. That petitioner has failed to sustain the burden of proof within the meaning and intent of section 689(e) of the Tax Law that she was entitled to a greater deduction of away from home living expenses than allowed by the Audit Division.

C. That petitioner has failed to sustain the burden of proof within the meaning and intent of section 689(e) of the Tax Law that the room in her apartment was used regularly and extensively for business purposes that was proximately related to her business. Further, petitioner has also failed to show that said room set aside in her apartment was not used for personal entertaining.

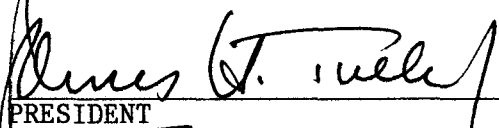
D. That the fellowship award claimed by petitioner as an itemized deduction in the amount of \$2,400.00 is limited for period in issue to \$1,800.00 in accordance with the meaning and intent of section 117(b)(2)(B) of the Internal Revenue Code.

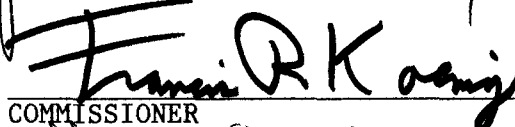
E. That petitioner's personal income tax return for subject year be computed on the basis that petitioner was a resident of New York State for the entire year.

F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated October 27, 1975 to be consistent with Conclusions of Law determined hereto; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER