

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William & Kathleen Bronston : 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 :
1974.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon William & Kathleen Bronston, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William & Kathleen Bronston
1304 Silver Ridge Way
Sacramento, CA 95831

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
9th day of April, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
William & Kathleen Bronston :

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 :
1974.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Richard A. Levy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard A. Levy
Eisner, Levy, Steel & Bellman
351 Broadway
New York, NY 10013

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

Sworn to before me this
9th day of April, 1982.

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

April 9, 1982

William & Kathleen Bronston
1304 Silver Ridge Way
Sacramento, CA 95831

Dear Mr. & Mrs. Bronston:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard A. Levy
Eisner, Levy, Steel & Bellman
351 Broadway
New York, NY 10013
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM BRONSTON and KATHLEEN BRONSTON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, William Bronston and Kathleen Bronston, 1304 Silver Ridge Way, Sacramento, California 95831, 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 1974 (File No. 25440).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 15, 1981 at 1:15 P.M. Petitioners appeared by Richard A. Levy, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

Whether certain payments received by petitioner William Bronston during taxable year 1974, are properly excludable from gross income as a fellowship or scholarship grant.

FINDINGS OF FACT

1. Petitioners, William Bronston and Kathleen Bronston timely filed a New York State Combined Income Tax Return for the year 1974 whereon William Bronston (hereinafter petitioner) excluded \$29,273.00 from gross income. Said amount, which was reported as wages on a Wage and Tax Statement annexed to his return, was excluded in its entirety as a "scholarship".

2. On August 11, 1975 the Audit Division issued a Statement of Refund Adjustment to petitioners wherein their refund claimed per said return of \$2,407.88 was reduced to \$480.76 resulting from a recomputation of tax in which petitioner's reported "scholarship" exclusion was held to be taxable income. The stated basis for such adjustment was that:

"The exclusion from total income of \$29,272.71, representing income received from the New York State Department of Mental Hygiene for Post - Doctoral study program is disallowed as this amount was paid to you for the grantor's benefit and is not excludable from gross income."

Accordingly, payment of the adjusted refund of \$480.76, plus interest was made to petitioners, and a formal notice of disallowance of claim was issued on May 31, 1979.

3. Petitioner was employed by the New York State Department of Mental Hygiene as a physician at the Willowbrook Developmental Center (Willowbrook), Staten Island, New York from 1970 until mid 1973. During his tenure at the institution, he was involved in organizing parents and concerned members of the community to oppose conditions at Willowbrook which he believed jeopardized the health and well being of its resident patients. Petitioner and a co-worker were primarily responsible for bringing the press and media to Willowbrook in 1972 to expose such conditions. Petitioner's activities also lead directly to the commencement of a class action law suit against the State of New York and the Department of Mental Hygiene which resulted in the issuance of a decree under which the United States District Court for the Eastern District of New York is monitoring conditions at the institution.

4. Petitioner's aforestated activities engendered a hostile response from the administration in Albany and at Willowbrook and lead to what he felt was harrassment. In response, he commenced grievance proceedings against Willowbrook

and certain individuals. As a result of negotiations between his counsel and the representatives of the State, an agreement was reached whereby the State provided him with a grant to pursue post - doctoral studies in his field of interest, developmental disabilities, at an appropriate university. Specifically, the terms of said agreement provided for petitioner to engage in post - doctoral studies at Syracuse University under an educational grant from the Department of Mental Hygiene. Such grant, was to be provided "tax free" and did not constitute compensation for past, present or future services.

5. During the period of petitioner's grant, from September, 1973 to July, 1975, he spent full time in post - doctoral studies at Syracuse University. His title was Post Doctoral Fellow in Community Consultation. During his first year at Syracuse University he was associated with the Center on Human Policy. In the second year he studied with the Institute on Planning, Leadership and Change Agency.

6. No portion of the grant petitioner received constituted payment for teaching, research, or other services in the nature of part-time employment required as a condition to receiving such grant.

7. At the culmination of his post doctoral studies petitioner left Syracuse University, and commenced working in the State of California.

8. Petitioner had no obligation to, and in fact did not return to work for the State of New York on completion of his post - doctoral studies.

9. During the hearing held herein the Audit Division's sole position was that the grant represented salary income from Willowbrook and therefore did not qualify for exclusion from gross income. Whether or not petitioner was a candidate for a degree was not at issue.

CONCLUSIONS OF LAW

A. That the grant received by petitioner from the New York State Department of Mental Hygiene was not paid as compensation for services or for the benefit of the grantor. Accordingly, such grant is excludable from petitioner's income for the taxable year 1974 pursuant to section 117(a)(1)(B) of the Internal Revenue Code and Treas. Reg. Section 1.117-2.

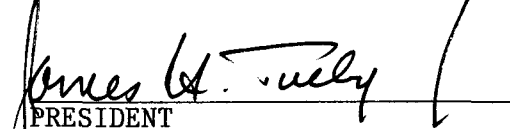
B. That the petition of William Bronston and Kathleen Bronston is granted and the Notice of Disallowance of Claim dated May 31, 1979 is hereby cancelled.

C. That the Audit Division is hereby directed to authorize the issuance of the balance of the refund to petitioners, as claimed per their return.

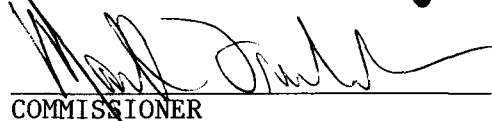
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSIONER


PRESIDENT


COMMISSIONER


COMMISSIONER