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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE D. RICE and MARY G. RICE

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year(s) 1970 and 1971 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

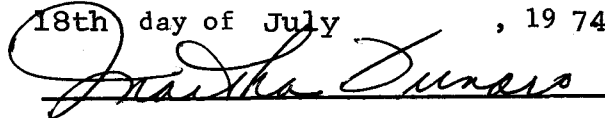
State of New York
County of Albany

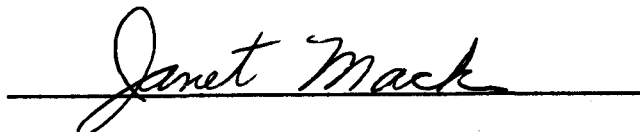
Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 18th day of July , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon George D. Rice
and Mary G. Rice (~~representative of the~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. George D. Rice
Craig State School
Sonyea, New York 14556
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of the~~
~~xxf~~) 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

18th day of July , 19 74





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE D. RICE and MARY G. RICE

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1970 and 1971 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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State of New York
County of Albany

Janet Mack , 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 18th day of July , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Raymond L.
Sciarrino, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Raymond L. Sciarrino, Esq.

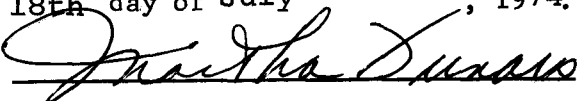
106 Main Street
Mount Morris, New York 14510

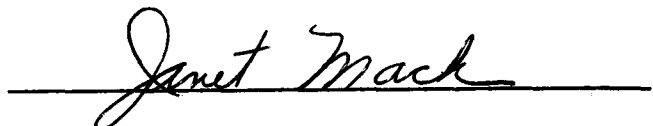
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

18th day of July , 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
~~Mario A. Procaccino~~
~~X DE MANLEY X DE LUK X~~ PRESIDENT

A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York

July 18, 1974

Mr. & Mrs. George D. Rise
Craig State School
Sonyea, New York 14556

Dear Mr. & Mrs. Rise:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE D. RICE and MARY G. RICE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970 and 1971.	:	

Petitioners, George D. Rice and Mary G. Rice, petitioned for a redetermination of deficiency of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971. (File No. 1-84097684.) A formal hearing was scheduled at the offices of the State Tax Commission, 1 Marine Midland Plaza, Rochester, New York, for May 22, 1974, at 10:30 A.M. On May 16, 1974, petitioners, in writing, waived a hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Was compensation received by petitioner, George D. Rice, during 1970 and 1971 for educational leave with pay excludable from gross income as a scholarship?

FINDINGS OF FACT

1. Petitioners, George D. Rice and Mary G. Rice, filed New York State income tax resident returns and Federal income tax returns for the years 1970 and 1971. They excluded from

gross income amounts received from the New York State Department of Mental Hygiene under its Educational Assistance program.

2. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes imposing personal income tax on the amounts received from the Department of Mental Hygiene on the grounds that this compensation did not qualify as a fellowship or scholarship. In accordance with the aforesaid Statement of Audit Changes, the Bureau issued a Notice of Deficiency against the petitioners in the sum of \$517.58.

3. Petitioner, George D. Rice, is an Associate Personnel Administrator at the Craig State School, Sonyea, New York. He was placed on educational leave with pay, effective September 9, 1970, and remained in the status through September 2, 1971. The purpose of this leave was to enable Mr. Rice to improve those skills necessary in his present occupation as Associate Personnel Administrator.

4. During said period of educational leave, petitioner, George D. Rice, was granted student assistance by the Bureau of Education and Training of the Office of Manpower and Training of the New York State Department of Mental Hygiene under its Educational Assistance program. The purpose of this grant was to permit the petitioner to advance his education and increase his qualifications. The selection of specialization and course work was not imposed upon him by the Department of Mental Hygiene, but was made by the petitioner.

5. The payments made to petitioner under the student assistance program were subject to withholding of New York State and Federal income tax. The Department of Mental Hygiene made these payments through its established regular payroll procedure in order to eliminate a costly independent system for making assistance payments to students.

6. The grant of educational leave with pay imposed upon the petitioner the obligation to return to the same job at Craig State School after completion of studies.

7. The Craig State School is a part of the Department of Mental Hygiene. While petitioner was employed at the school, he was also an employee of the aforesaid Department.

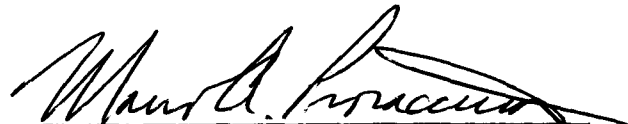
CONCLUSIONS OF LAW

A. That the compensation received by petitioner, George D. Rice, in 1970 and 1971, from the Department of Mental Hygiene was primarily for the grantor's benefit, and therefore includible in gross income, in accordance with the meaning and intent of section 117 of the Internal Revenue Code. (Reg. §1.117-4(c), Paul J. Ussery and Allean M. Ussery, 61-2 USTC ¶9740.)


B. That the petition of George D. Rice and Mary G. Rice is denied and the Notice of Deficiency issued on November 26, 1973, is sustained.

DATED: Albany, New York
July 18, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER