

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Irwin B. & Ruby L. Kaplan :

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

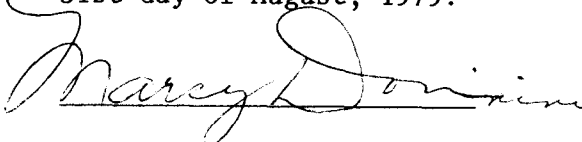
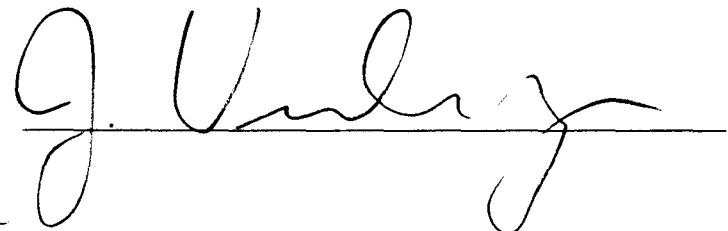
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Irwin B. & Ruby L. Kaplan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irwin B. & Ruby L. Kaplan
28 Hilltop Place
Monsey, NY 10952

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
31st day of August, 1979.



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

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Irwin B. & Ruby L. Kaplan
28 Hilltop Place
Monsey, NY 10952

Dear Mr. & Mrs. Kaplan:

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
IRWIN B. KAPLAN and RUBY L. KAPLAN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1973. :

Petitioners, Irwin B. Kaplan and Ruby L. Kaplan, 28 Hilltop Place, Monsey, New York 10952, 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. 14777).

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 July 12, 1978 at 2:45 P.M. Petitioner appeared pro se and for his wife, petitioner Ruby L. Kaplan. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the amounts received by petitioner Irwin B. Kaplan during 1973 were excludable from gross income as a fellowship or scholarship grant.

FINDINGS OF FACT

1. Petitioners, Irwin B. Kaplan and Ruby L. Kaplan, timely filed a joint New York State income tax resident return for 1973, on which they excluded \$6,256.47 from their gross income. This was

done on the grounds that said amount represented a fellowship or scholarship grant.

2. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1973, asserting personal income tax of \$337.68, plus interest of \$10.60, less an overpayment shown on petitioners' tax return of \$261.81, for a net tax due of \$86.47. Said Notice was issued on the grounds that the \$6,256.47 was not excludable from gross income and was fully taxable.

3. Petitioner Irwin B. Kaplan was a full-time student at New York University (hereinafter "the university") during 1973, studying for a Ph.D. in industrial psychology. All candidates for this doctorate were required to serve a research internship for the purpose of obtaining training in an industrial setting.

4. The university developed an internship program with the Equitable Life Assurance Society of the United States (hereinafter "Equitable"), whereby its students were able to conduct research to further their education and training.

5. On January 15, 1972, petitioner Irwin B. Kaplan began a one-year internship as a research associate at Equitable in its Personnel Research and Consulting Division. As such, his research duties consisted of data collection, analysis and coding, as well as calculations on projects dealing primarily with operating-unit effectiveness.

6. Petitioner Irwin B. Kaplan did not have fixed daily hours at Equitable. He was required to work a minimum of fifteen hours a

week, in order to receive appropriate research credit from the university. Petitioner Irwin B. Kaplan was paid on a fixed hourly rate, which was previously agreed on by Equitable and the university. Payroll taxes were withheld from the compensation paid to petitioner Irwin B. Kaplan; however, he was not allowed to participate in regular employee programs or fringe benefits such as pension and medical insurance plans. The regular employees of Equitable were paid on a bi-weekly basis and enjoyed all fringe benefits.

7. Petitioner Irwin B. Kaplan was under the direction and control of a university faculty member who was also an employee of Equitable. The services rendered by said petitioner resulted in research reports which were required to be turned over to the university.

8. Prior to, during, and after his internship, petitioner Irwin B. Kaplan was under no obligation to Equitable, other than his scholastic obligation to comply with degree requirements as mandated by the university.

9. Payroll stubs issued by Equitable labeled Mr. Kaplan's compensation as "additions and/or deductions" rather than "basic salary" or "overtime," which was the normal labeling used with regular employees.

CONCLUSIONS OF LAW

A. That the stipend received by petitioner Irwin B. Kaplan from Equitable Life Assurance Society of the United States constituted a scholarship and/or fellowship grant (within the meaning and intent of section 117 of the Internal Revenue Code) and as such, was

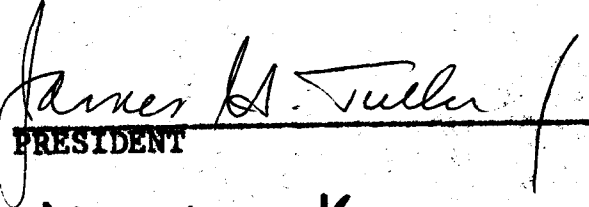
excludable from New York gross income.

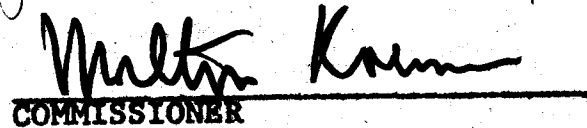
B. That the petition of Irwin B. Kaplan and Ruby L. Kaplan is granted and the Notice of Deficiency issued February 24, 1976 is cancelled.

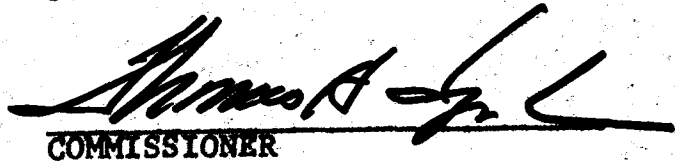
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER