

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
DONALD A. AND BEVERLY FEINSTEIN)

For Appellants: Arthur M. Wilkof
Attorney at Law

For Respondent: Jean Harrison Ogrod
Counsel

O P I N I O N

This appeal is made by Beverly Feinstein, individually, pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Donald A. and Beverly Feinstein against a proposed assessment of additional personal income tax in the amount of \$195.00 for the year 1970.

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The question presented is whether certain payments received by appellant constituted a fellowship grant excludable from gross income.

Appellant Beverly Feinstein is a physician. In 1969 she accepted an appointment to serve a ~~three~~-year clinical residency in psychiatry at the U.C.L.A. Neuropsychiatric Institute. When she accepted the appointment, appellant apparently agreed to work for the State of California for one year upon completing her residency, provided that she completed at least one year in the residency program. At the time she entered it in 1969, the Institute's residency program was administered jointly by the University of California and the State Department of Mental Hygiene, and was funded through a grant to the Department from the National Institutes of Health. Prior to the end of appellant's first year of residency, however, the Department of Mental Hygiene withdrew from the program, and the University thereafter assumed all financial and administrative responsibility for the program. Since appellant had not completed a full year of residency at the time of this transition, she did not become obligated to work for the **State** of California after finishing her residency.

During the period when the Department of Mental Hygiene participated in the program, appellant received a monthly State of California paycheck. Following the Department's withdrawal, she received monthly University of California paychecks. This was the only change in appellant's status occasioned by the Department's withdrawal. Throughout her three-year residency, appellant performed a wide variety of medical and psychiatric work under the supervision and control of U.C.L.A.'s senior medical staff; she received paid vacation time, sick leave, and health and malpractice insurance: the State of California and the University both regarded their monthly payments to appellant as "salary" and withheld federal and state income taxes from them; and the amount of payment received by a resident such as appellant was based on the resident's level of experience and not upon his or her financial need.

Appellant and her husband reported the monthly payments she received as income on their joint 1970 personal income tax return, but they also claimed a \$300 per month exclusion from gross income on the ~~theory~~ that the payments were a "fellowship." Respondent disallowed the exclusion and proposed the additional assessment in

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issue. Following receipt of a protest filed by appellant and her husband, respondent notified them that it would defer action on their protest pending resolution of two similar cases then pending before this board, the Appeal of Charles B. and Irene L. Larkin, decided June 22, 1976, and the Appeal of William M. and Barbara R. Clover, decided May 10, 1977. Based on those decisions, respondent subsequently denied the Feinsteins' protest, giving rise to this, appeal.

Subject to certain limitations, Revenue and Taxation Code section 17150 allows an exclusion from gross income for amounts received as scholarship or fellowship grants. Where the recipient is not a candidate for a degree, the exclusion is limited to \$300 times the number of months during the taxable year for which the recipient received the grant, provided that the total number of months covered by the grant does not exceed 36. While the terms "scholarship" and "fellowship" are not specifically defined by section 17150, respondent's regulations provide that amounts paid as "compensation for past, present, or future employment services" or as "payment for services which are subject to the direction or supervision of the grantor" are not considered to be scholarships or fellowships. (Cal. Admin. Code, tit. 18, reg. 17150(d), subd. (3).) Thus, the regulations adopt the common understanding of scholarships and fellowships as disinterested grants made primarily to further the education of the recipient, with no requirement of any 'substantial quid pro quo. Such no-strings payments are to be distinguished from those made primarily to reward or induce the recipient's performance of services for the-benefit of the grantor. (See generally Appeal of Charles B. and Irene L. Larkin, supra, and Appeal of William M. and Barbara R. Clover, supra.)

We think the evidence clearly establishes that there were strings attached to the payments appellant received. The principal factors which demonstrate that, these payments were really compensation for present services are the following: appellant performed medical services under the supervision and control of U.C.L.A.'s senior medical staff; the payors treated appellant as an employee by withholding income taxes from the payments and providing a number of fringe benefits (vacation, sick leave, insurance coverage) customarily received by an employee (Parr v. United States, 469 F.2d 1156 (5th Cir. 1972); the payments were unrelated to appellant's financial needs (Meek v. United States, 608 F.2d 368

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(9th Cir. 1979); Richard A. Lannon, ¶ 76,346 I?H Memo. T.C. (1976)); and appellant, along with other residents, performed substantial medical services which would have to be performed by others, if the residents had not been required to do them (Hembree v. United States, 464 F.2d 1262 (4th Cir. 1972): Appeal of Charles B. and Irene L. Larkin, supra). Our conclusion that the payments were compensation rather than disinterested educational grants is not changed by the letter appellant submitted from the director of her residency program. This letter contains mere conclusionary language taken from the applicable regulations, and amounts to little more than the director's opinion that the payments should be treated as a fellowship for tax purposes. In light of the facts in this case, the director's opinion is unpersuasive.

Appellant places considerable reliance on the Internal Revenue Service's failure to disallow her claimed fellowship exclusion for federal income tax purposes. She also notes that the Service granted a refund to one of the other residents in her program who also claimed the exclusion for federal tax purposes. It is unclear whether the Service audited either return on this issue. While it is a truism that the interpretation placed on a federal statute by the federal courts and administrative bodies is relevant in determining the proper construction of a similar California statute (Andrews v. Franchise Tax Board, 275 Cal.App.2d 653 [80 Cal.Rptr. 403] (1969); Rihn v. Franchise Tax Board, 131 Cal.App.2d 356 (280 P.2d 893] (1955); see generally, Appeal of John Z. and Diane W. Mraz, Cal. St. Bd. of Equal., July 26, 1976), it does not follow that respondent and this board are bound to adopt the conclusion reached by the Internal Revenue Service in any particular case, even when that determination results from a detailed audit. (See Appeal of Der Wienerschnitzel International, Inc., Cal. St. Bd. of Equal., April 10, 1979.) In this case, we have no way of knowing the reason for the Service's failure to disallow the claimed exclusions, but in any event we are satisfied that respondent's determination comports with the law as enunciated in prior decisions of the federal courts and this board. (See Appeal of James A. Hotchkiss, Cal. St. Bd. of Equal., Oct. 18, 1978.)

Finally, appellant argues that respondent violated her right to due process of law by failing to act on her protest for some four years. As we stated previously, the delay was attributable to respondent's

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desire to have this board decide several similar cases before acting on a number of other taxpayers' protests, and appellant was informed of the reason for the delay. Since appellant always possessed the right to **pay** the disputed tax, file a claim for refund, and then pursue the matter before this board or in the courts, regardless of respondent's desire to delay a decision (Rev. & Tax. Code, **§§ 19058 & 19085**), it is difficult to see how 'appellant's right to due process has been violated, especially **since** she **apparently** never objected to the **delay** until after respondent acted on her protest. (Cf. Appeal of G. P. Williamson, Sr., and Josie M. Williamson, Cal. St. Bd. of Equal., **April 24, 1967.**)

For the reasons expressed above, respondent's action in this matter will be sustained.

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ORDER

Pursuant to the views expressed in the opinion of the board on file ~~in~~ this proceeding, and ~~good~~ cause appearing therefor,

IT 'IS HEHEBY'ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Donald A. and Beverly Feinstein against a proposed assessment of additional personal income tax in the amount of \$195.00 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day
of March , 1981, by the State Board of Equalization,
Dronenburg, **Reilly** and Nevins present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly, Member

Richard Nevins, Member

_____, Member

_____, Member

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