BEFORE THE STATE BOARD OF EQLJALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ALVIN AND IRENE GROUPE)

For Appellant-s: Alvin Groupe, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jean Harrison Ogrod
Counsel

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This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Alvin and Irene Groupe against a proposed assessment of additional personal income tax in the amount of $184.00 for the year 1969.

Irene Groupe is a party to this appeal solely because she filed a joint income tax return with her husband for 1969. Accordingly, only Alvin Groupe will hereafter be referred to as "appellant."

Two questions are presented for resolution: (1) whether certain payments received by appellant are excludable from gross income as a scholarship or fellowship grant, and (2) whether the proposed deficiency assessment by respondent is barred by the statute of limitations.

Alvin Groupe is a physician who accepted an appointment by the California State Department of Mental Hygiene to a three-year residency program at the Napa State Hospital from July 1967 through June 1970. As a prerequisite to receiving this appointment, appellant entered into a contract agreeing to work for the department for two years after completing the residency program. During the period of his residency, Dr. Groupe received a salary from the state which he reported on his state personal income tax returns. On the 1969 return, however, he claimed a $300 per month exclusion from that income on the theory that his state residency salary was an excludable fellowship. Respondent disagreed and sent appellant a notice of proposed assessment on October 30, 1972, in response to which Dr. Groupe filed a protest on December 19, 1972. On March 13, 1975, respondent notified appellant that further action on his protest would be deferred pending final determination by this board of two similar cases: Appeal of Charles B. and Irene L. Larkin, decided June 22, 1976, and Appeal of William M. and Barbara R. Clover, decided May 10, 1977. After decisions were rendered on these cases, appellant's protest was denied and this appeal followed.

The first issue to be resolved is whether Dr. Groupe's residency salary from the state constituted an excludable fellowship grant or scholarship.

An exclusion from income is allowed by section 17150 of the Revenue and Taxation Code for certain amounts received as a scholarship or fellowship grant. Where the recipient is not a candidate for a degree, this exclusion is limited to $300 times the number of months during the taxable year for which the recipient received a 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 statute, the regulations promulgated thereunder 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 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 as distinguished from grants made primarily to reward or induce the recipient's performance of services for the benefit of the grantor. (See generally, Appeal of William M. and Barbara R. Clover, supra, and Appeal of Charles B. and Irene L. Larkin, supra.)

This board held in Clover and Larkin that fellowship grants awarded for services to be perform-r the fellowship period are not excludable from gross income. These cases involved stipends to physicians for the Department of Mental Hygiene residency programs that required the recipients to work for the department following their residency training for an agreed upon period of time. Similarly, the residency payments made to appellant, which were like the payments made to Doctors Clover and L,arkin, did not flow from a disinterested desire to further the education of the recipient; rather, they were predicated upon an agreement to perform future services for the department. Such an agreement was a quid pro quo arrangement that precluded any part of appellant's residency salary from qualifying as a deductible scholarship or fellowship grant. (See also, Richard A. Lannon, § 76,346 P-H Memo. T. C. (1976).)

The remaining issue to be resolved is whether the statute of limitations precludes the Franchise Tax Board from assessing any tax deficiency due.

Appellant contends that the proposed assessment was barred by the statute of limitations in section 18586 of the Revenue and Taxation Code. That section provides in pertinent part that "every notice of a proposed deficiency assessment shall be mailed to the taxpayer within fouryears after the return was filed. ..."

We find no merit in appellant's contention. Appellant's 1969 return was filed on April 15, 1970, and respondent's proposed deficiency assessment was mailed on October 30, 1972, well within the four year statutory period. Thus, the statute of limitations in section 18586 had been complied with and does not bar respondent from assessing any tax deficiency due.

On the basis of the record before us, respondent's action in this matter must be sustained.

O R D E R .

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

IT IS HEREBY 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 Alvin and Irene Groupe against a proposed assessment of additional personal. income tax in the amount of $184.00 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November , 1979, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member