1968

J. Wendell Bayles v. Utah State Tax Commission : Appellant's Brief

Utah Supreme Court

IN THE SUPREME COURT
OF THE STATE OF UTAH

NDELL BAYLES,
tioner - Appellant,

vs.

TAX COMMISSION,
dant - Respondent.

Case
No. 11144

APPELLANT'S BRIEF

CERTIORARI
TO THE STATE TAX COMMISSION OF UT

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IN THE SUPREME COURT
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J. WENDELL BAYLES,

Petitioner - Appellant,

vs.

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No. 11144

STATE TAX COMMISSION,

Defendant - Respondent.

APPELLANT'S BRIEF

STATEMENT OF THE KIND OF CASE

This is a proceeding to review a decision of the State Tax Commission of Utah denying a refund and sustaining a deficiency assessment in individual income tax for the year ending December 31, 1965 against Petitioner.

DISPOSITION BELOW

After an informal hearing before the State Tax Commission of Utah, formal hearing having been waived by the parties, and based upon stipulated facts, the Commis sion entered its decision denying a refund of $14.20 claimed by Petitioner and sustaining a deficiency assessment of $62.24 plus interest in individual income tax for the year ending December 31, 1965 against Petitioner.

RELIEF SOUGHT IN THIS PROCEEDING

Petitioner seeks reversal of the decision below.

STATEMENT OF FACTS

Petitioner filed a timely return for the tax year ending December 31, 1965 wherein he requested a refund in the amount of $14.20. By a letter bearing date of May 16, 1966, the State Tax Commission of Utah proposed a

deficiency against Petitioner for that year in the amount of $62.24. (R.5) As a basis for the deficiency, the Commission proposed that amounts received by Petitioner as scholarships and fellowships in the amount of $2,761.00 be added to gross income in computing the net taxable income of the Taxpayer. The scholarships and fellowships in question were received from sources at two universities, the University of Utah and New York University (hereinafter referred to as "U. of U." and "N. Y. U." respectively), in connection with Petitioner's studies hereinbelow referred to.

During 1965 Petitioner attended the U.of U. College of Law, and in June, 1965, he received an LL.B. degree from that institution. Beginning in April and through the summer of 1965, Petitioner was continuously employed as a law clerk

in the firm of Ray, Rawlins, Jones & Henderson (now Jones, Waldo, Holbrook & Mc Donough) in Salt Lake City, Utah. During that time he was given the Utah State Bar examination which, when the results thereof were issued, qualified him to practice law in the State of Utah. (R.18)

In accordance with his employers' wishes Petitioner attended N.Y.U. School of Law, beginning in the Fall of 1965. The purpose of attending N.Y.U. School of Law was to maintain and improve the skills which the Taxpayer already possessed in his profession particularly relating to tax law. In June 1966 the Taxpayer was awarded an LL.M. degree upon completion of the studies at N.Y.U. Said studies at N.Y.U. did notqualify the Taxpayer for a new trade, business, or profession, and following the 1965-66 academic year he returned to Salt Lake City, Utah

and remained in the employment of Jones, Waldo, Holbrook & McDonough. (R.19)

During the year 1965 Petitioner received the sum of $781.00 from State revenues received by the University through the U. of U., "University Research Committee." (R.20) The stipend was given for the growth and education of the recipient. The intention of the University in making such grants was stated by the Secretary of the Research Committee as follows:

> Why does the Committee give these grants? To assist outstanding graduate students obtain a higher degree. There is no return to the University, except the satisfaction of helping worthy and outstanding students better prepare themselves to give service to society. (R.24)

During the time Petitioner was receiving the funds from the U.of U., he was

required to pursue an approved research project of his choice. Approval of the research topic by a member of the law school faculty had to be submitted to the Committee. The Committee required no services of the Petitioner in return for the stipend and asked only for evidence that tuition payment had been made and that Petitioner was working on his reasearch project before it would make payment. Taxpayer was required to register for at least ten hours each quarter, however, a requirement of the Committee that at least eight hours of the ten hours be research credit was waived. Although Taxpayer was expected to devote twenty clock hours each week to his project, there was no supervision of the Taxpayer in his project except by

way of suggestions from professors to whom Petitioner went for assistance. A progress report was required of Petitioner at the end of each quarter. (R.20)

The Petitioner received assistance from N.Y.U. in the total amount of $1,980.00 during the 1965 tax year. (R.21) In the first part of the academic year 1965-66 to which the N.Y.U. grant was applicable, some research activities were required in connection with the fellowship. To meet this requirement the Taxpayer served on the student staff of the Tax Law Review, a publication of N.Y.U. Professor Bert S. Prunty, Director of the Graduate Division, School of Law, stated that such post was "unconnected with any expectation of pecuniary benefit" to the University, and it was thought of as primarily benefiting the student in his capacity as a degree

seeking graduate student. (R.30) During the entire fall semester in 1965 the Taxpayer devoted approximately forty hours working in this capacity.

Included in the total amount received by the Taxpayer from N.Y.U., in the tax year 1965 was a tuition waiver of $830.00 applicable to his second semester of study at that institution. With respect to said second semester the Tax Law Review was inactive and the Taxpayer was engaged in no significient special activities with respect to the fellowship.

The primary source of the N.Y.U. assistance was a private fund designated as the "Thaddeus Davis Kenneson Foundation". One-half of the Taxpayer's tuition was derived from the Kenneson Foundation Fund and the remainder was waived by the University, a private institution. The remainder

of the Taxpayer's fellowship was paid from the Kenneson Foundation subsequent to registration by the Taxpayer for a given semester and was paid in a lump sum. No tax was withheld for New York State or Federal Income Tax Purposes. (R.22)

The Thaddeus Davis Kenneson Foundation was established in 1927 when Mrs. Kenneson donated $40,000 to the University in her husband's name. This gift was supplemented by additional funds which passed under the Last Will and Testament of Mrs. Kenneson. Paragraph THIRD of the agreement signed by Mrs. Kenneson and N.Y.U. on June 30, 1927, establishing the $40,000 Thaddeus Davis Kenneson Foundation for Legal Education and Research states:

> After my death, the income thereof shall be applied, in the discretion of the Council of New York University, for

scholarships to worthy and promising students in the Law School of said University, or to or for the publication of the results of such research, or to defray the costs of any lectures or courses of lectures in said Law School, or for any or either of said purposes. (R.33)

The Last Will and Testament of Mrs. Kenneson supplementing the original grant states:

All the remainder of the residue of my estate I give, devise and bequeath to said New York University Law School, to be added to the "Thaddeus D. Kenneson Foundation for Legal Training and Research," which I have already established with said School. (R.33)

ARGUMENT

I. EXCLUSION OF SCHOLARSHIPS AND FELLOWSHIPS.

ALTHOUGH SOME SCHOLARSHIP OR FELLOWSHIP GRANTS MAY BE INCLUDABLE IN INDIVIDUAL INCOME UNDER THE APPLICABLE UTAH STATE INDIVIDUAL INCOME

TAX STATUTES, THE SCHOLARSHIP AND FELLOWSHIP FUNDS RECEIVED BY THE APPELLANT TAXPAYER ARE EXEMPT PROPERTY ACQUIRED BY GIFT, BEQUEST, DEVISE OR INHERITANCE.

The Utah Individual Income Tax Act, U.C.A., 1953, Section 59-14-4(1), provides: "Gross income includes . . .income derived from any source whatever." Certain classes of income are, however, expressly excluded from income by Section 59-14-4(2)(c) which provides:

> (2) The following items shall not be included in gross income and shall be exempt from taxation under this chapter: . . . . (c) The value of property acquired by gift, bequest, devise or inheritance . . . .

In view of the fact that the legislature has not passed a statute which applies expressly to scholarships the question of whether or not such items are taxable depends upon whether they are acquired by gift. The State Tax Commission has taken

the position that all scholarships and fellowships are taxable. (See Instructions on Form TC 40 and the decision below, (R.35,38). It is Petitioner's contention that the determination of the issue whether or not each particular scholarship or fellowship grant he has received is taxable income or a gift depends upon all the circumstances of the individual stipend. Petitioner maintains that the Commission has erred in applying an absolute rule of inclusion to all such grants. In support of Petitioner's contentions it will be shown: first, that the federal rulings, which were rendered at a time when the Internal Revenue Code was comparable to the present Utah statute, would apply to exclude all of the stipends received by Petitioner; and, second, that the absolute rule of inclusion adopted by the Commission

has erroneously evolved from three opinions of counsel representing the Commission, which are either based upon questionable authority or upon facts distinguishable from the present case.

Parallel Federal Rulings

Prior to the enactment of the Internal Revenue Code of 1954, the federal government, like Utah, had no explicit legislation governing the taxation of scholarships. The federal statute defining "income" and "gifts" was almost identical with the Utah provisions. (Compare Sections 59-14-4(1), (2)(C), with Int. Rev. Code of 1939, §§22(a), (b)(3).) Since under similar law the federal government was faced with the identical question that is before the Court in this case--whether to tax scholarships as income to the recipient or to treat them as gifts--a discussion of the federal law prior to the

enactment of the 1954 Code 1/ should be of assistance. As this Court stated in Bennett Association v. Utah State Tax Commission, 19 Utah 2d 108, 111, 426 P.2d 812, 814 (1967):

> Section 59-13-23, U.C.A. 1953, and Regulation Article 34 implementing it, giving affiliated corporations the privilege of making a consolidated return, date from 1932. They were taken almost verbatim from the 1928 U.S. Internal Revenue Code and Regulations. Therefore, reference to cases interpreting the Federal Statute and regulations is helpful. (Emphasis added; footnotes omitted.)

The Tax Court of the United States has held that scholarships can be classified as

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1/ In 1954, §117 was added to the Int. Rev. Code. Generally speaking, it excludes from gross income amounts received as scholarships or fellowships when the recipient is a candidate for a degree and the amount received does not represent payment for teaching or other services required as a condition of the scholarship or fellowship.

income or gifts depending on the facts of the particular case. In Ephriam Banks, 17 T.C. 1386 (1952), and Ti Li Loo, 22 T.C. 220 (1954), the Tax Court held that the amounts received by graduate students in the form of research fellowships should be included in their gross income. In each of these cases the Tax Court held that the relationship of employee and employer existed between the Taxpayer and the institution granting the research fellowship. In both cases, the work was performed pursuant to a contract between the employing institution and the government, and the work was assigned and done under orders of supervisors. In the Banks case the Taxpayer was expected to work 35 hours each week on the research project and the Taxpayer was granted three weeks of vacation. Also, Federal Income Tax

was withheld from the Taxpayer's monthly stipends. In the Ti Li Loo case the United States was granted the exclusive right for any patentable discovery that the Taxpayer may have discovered during his research. Although these two opinions held against the Taxpayer, the Tax Court conceded that the question of whether the sums received from these fellowships were taxable as income or were gifts was a question of fact and would turn on the considerations of each case.

A fact situation more similar to the one before this Court was presented to the Tax Court in George Winchester Stone, Jr., 23 T.C. 254 (1954). In that case, the Taxpayer received a grant of $1,000 from the John Simon Guggenheim Foundation in order to continue work on a series of

books dealing with 18th Century drama. The Guggenheim Foundation was a charitable institution created for the purpose of advancing and diffusing knowledge by aiding scholars and scientists in the prosecution of their labors. The Tax Court held that the amount given the Taxpayer by the Foundation was a gift and was not includable in the Taxpayer's gross income. The court distinguished the Banks and Ti Li Loo cases, supra, by noting that the grant was in the nature of a scholarship to facilitate the further education or training of the recipient. The court indicated that the Taxpayer's research was in a field of his own selection, that the Taxpayer was under no obligation to perform services for the foundation or any other person and that the relationship

between the Foundation and the Taxpayer was not an employment contract. The Court stated:

> The Foundation does not assume or stipulate for authority to direct and control the fellow as to the details and means by which the project is carried out, to require conformity with a schedule of working hours, to supervise the work to see that it is satisfactorily done, or to require reports on the progress of or completion of the task. The payments are not for services.

23 T.C. at 263.

The court also felt that a determinative element in the case was the intent of the payor. The court found that the Foundation did not accomplish its purposes by employing scholars or scientists to carry out its projects. "Its method is to make gifts to persons whose past achievements and present abilities, as shown by the Foundation's

investigation, merit financial assistance to enable them to carry out their own projects of creative work or self improvement." 23 T.C. at 261.

The court in the Stone case considered the following factors to determine whether a gift was made: the purpose and organization of the donor; the donor's methods for choosing its donees; the educational status of the donee; the method of applying for the donation; the conditions attached to the granting of the donation; the degree of control or supervision exercised by the donor; the intent of the donor in giving the money; whether or not the gifts are made to enable persons to carry out their own projects of creative work or self improvement, or whether the money is

used to carry out projects of the donor; what was expected to be done with the results of the donee's labors.

As a result of the Stone case, supra, the Internal Revenue Service issued Revenue Ruling 57-286, 1957-1 Cum. Bull. 497, which indicated that the issue of whether or not fellowship grants other than those from the John Simon Guggenheim Memorial Foundation constituted gross income or gifts would depend on the consideration of all the facts in each case.

Applied to the present Utah statutes, it would appear that the development of the federal law as outlined above is more in harmony with logic and legal principles than is the inflexible rule espoused by the State Tax Commission which would declare all scholarships taxable as income.

It is apparent that, judged on the facts of each situation, some scholarship grants might be characterized more as gifts rather than as income received for services or acts resembling employment. Indeed since the State Tax Commission has indicated that it follows the federal tax law except when the Utah statutes are definitely different and inconflict (See Letter, Director, Division of Corporation and Income Taxes, to Prentice-Hall, Inc., 2-21-55, 3-11-55, 2 P-H State & Local Taxes (Utah) para. 55200.10 (1957).) it would appear that the Commission has created an unnecessary inconsistency between it and the Federal authority in the matter.

Evolution of Absolute Rule

The blanket rule applied by the State Tax Commission can be traced to three opinions of counsel for the Commission, copies of which

are attached inside the back cover of this brief. The first opinion, dated May 21, 1956, though very brief, seems to adopt the federal rule of deciding the taxability of each stipend based upon the circumstances. The opinion states:

> Although there seems to be considerable leeway afforded you /the Taxpayer/ in deciding what phase of arthritis and rheumatism you may research, nevertheless said grant would not be forthcoming to you if you did not perform some kind of research in this field. For this reason we do not believe that the grant could legally be classified as a gift.

The opinion thus rendered appears consistant with the Banks and Ti Li Loo cases, supra, in concluding that based upon the facts of the case the recipient had not received, a gift

because he was required to perform particular research services benefiting the donor. It is distinguishable from the present case because the grants received by Petitioner were given either without any requirement of research of any kind ($830.00 tuition and fees waived at N.Y.U. in a semester when the Tax Law Review was inactive (R.22, , 23)) or with research requirements but without any motive other than educating the student recipient. (R.24,30)

The second opinion, dated June 29, 1959, refers to a 1951 Internal Revenue Ruling but ignores the development of the federal law subsequent thereto even though the Stone case and Revenue Ruling 57-286, supra, both had been published prior to the date of the opinion. This opinion

contains a statement which can be construed, as the Commission evidently has done, as supporting a blanket inclusion of all stipends in income. The opinion states that one is lead "to the conclusion that scholarships, fellowships and research grants and awards should not be construed to be gifts under the Individual Income Tax Law of the State of Utah." This statement is not in harmony with the prior opinion of May 21, 1956 because it does not recognize or follow the requirement of looking to the particular circumstances of each case as applied in the prior opinion. Furthermore, it should be discredited for its lack of consideration of the developed federal law.

In the final opinion rendered August

16, 1966, only cursory consideration is given to the issue. The opinion carries forward the erroneous conclusion of the opinion rendered on June 29, 1959, stating only that there has been no intervening change in the law.

It appears to us that the three opinions above referred to speak for themselves. The first is a valid statement of the law; the others hastily adopt a broad, absolute construction not warrented by the statute. The decision below based on the later opinions is equally erroneous.

Summary

In the present case a gift was extended to petitioner by the U. of U. The school did not desire or intend to profit by the grant; it did not

control the Petitioner with respect to hours, progress or subject matter. As stated by the secretary of the University Research Committee, the gift was made with the same detached generosity that applies to all of the State's public education programs:

> Why does the Committee give these grants? To assist outstanding graduate students obtain a higher degree. There is no return to the University, except the satisfaction of helping worthy and outstanding students better prepare themselves to give service to society. Many of the research fellows go into academic work and help to carry on the educational process. (R.24)

If the Commission were sustained in this case it would be just as consistent to say that the value of all education received at all the public schools in the State is taxable income to each and every child receiving an

education! Furthermore, conceptually there is nothing in error in holding that a state agency may make a payment which for tax purposes constitutes a gift. (See Revenue Ruling 56-610, 1956-2 Cum. Bull. 25, on States' gifts to vetrans of various wars.)

At N.Y.U., a private institution, the gifts received by Petitioner were given with similar generosity. For one full semester with respect to which Petitioner received $830.00 no research of any kind was required. (R.22) For the remainder of the N.Y.U. grants research activity was required on the Tax Law Review student staff; however, that service was deemed by the faculty to be primarily for the benefit of the Petitioner's education as "scholarship

assistance" and was totally "unconnected with any expectation of pecuniary benefit" to the institution. (R.35) In fact the funds given Petitioner at N.Y.U. were largely drawn from the gift and bequest of a Mrs. Thaddeus D. Kenneson who established a fund "for scholarships to worthy and promising students in the Law School . . . or to graduate students doing legal research in the Law School . . . ." (R.33) Doubtless Mrs. Kenneson would be suprised indeed if she could discover that some of the funds she so generously gave were passing into the Utah Treasury on the ground that the recipants of her gratuites actually earned the proceeds.

II. PROFESSIONAL EXPENSES. REGARDLESS OF WHETHER OR NOT THE SCHOLARSHIPS AND FELLOWSHIPS ARE INCLUDED IN THE INCOME

OF PETITIONER FOR INDIVIDUAL INCOME TAX PURPOSES, PETITIONER IS ENTITLED TO DEDUCT EXPENSES OF EDUCATION AT N.Y.U. (BUT NOT AT THE U. OF U.) BECAUSE SUCH EDUCATION WAS UNDERTAKEN PRIMARILY FOR THE PURPOSE OF MAINTAINING OR IMPROVING SKILLS REQUIRED BY THE PETITIONER IN HIS TRADE OR BUSINESS.

The record shows that Petitioner paid educational expenses in the amount of $1,660.00 in 1965 while in attendance at N.Y.U. (R.23) Prior to attending N.Y.U., Petitioner had taken the Utah State Bar examination which when the results thereof were issued, qualified him to practice law in Utah. Petitioner was employed by the law firm of Jones, Waldo, Holbrook & McDonough and in accordance with said employer's wishes he studied tax law at New York. It has been stipulated that Petitioner's studies at N.Y.U. did not qualify him for a new trade, business, or profession. (R.19)

In the Appellant's petition below he claimed a deduction for tuition payments and other expenses incurred at N.Y.U. on the ground that he was there engaged in the active conduct of his profession and that such expenses were therefore ordinary and necessary expenses paid in connection therewith. (R.16) In its decision the State Tax Commission, while noting that by its regulations Petitioner is entitled to the deduction, nevertheless sustained the deficiency. (R.37 & 38)

Regulation 14-5, Para. 19, above referred to, states:

> Expenditures made by a Taxpayer for his education are deductible if such education is undertaken primarily for the purpose of maintaining or improving skills required by the Taxpayer in his employment or other trade or business or meeting the express requirements of a Taxpayer's

> employer, or the requirements of applicable law or regulations, imposed as a condition to the rentention by the Taxpayer or his salary, status or employment. Educational expenses are not deductible if the primary purpose for which they are incurred is to obtain a new position or to fulfill the general educational aspirations of the Taxpayer. Likewise such expenses are not deductible if the education is needed to meet the minimum requirements to qualify for, or become established in a position, business or specialty.

Since by stipulation the purpose of the education at New York was only to maintain or improve the skills required by the Taxpayer in his employment, Petitioner is clearly entitled to a deduction for 1965 in the amount of $1,660.00 regardless of whether or not Petitioner's scholarships and fellowships are includible in income. Regulations under similar Federal Internal Revenue provisions as with Utah are of the

same import in this regard. (Income Tax Regulation 1.162-5, T.D. 6918 (1967))

III. CONCLUSION

Petitioner is entitled to exclude the amount of $2,761.00 as scholarships and fellowships in 1965 from his income in computing the Individual Income Tax. In determining that said amount should be excluded, this Court should determine for each separate stipend, based on the circumstances, whether it is a gift or whether it is taxable income. The stipends received by Petitioner may be placed into three categories for this purpose: (1) fellowship granted by the U.of U. to permit Petitioner to pursue a research project of his choice; (2) fellowship granted by N.Y.U. by which Petitioner

performed research services on the student staff of the Tax Law Review, and (3) scholarship grant at N.Y.U. unconnected with activity other than regular graduate school attendance.

In addition, and regardless of the judgment of this Court in the above issues, Petitioner is entitled to deduct his educational expenses in 1965 in the amount of $1,660.00 which were paid to maintain and improve skills within the Taxpayer's profession and not to qualify him for a new trade or business.

For the foregoing reasons, the decision of the Tax Commission should be reversed and this Court should rule in favor of Petitioner.

Respectfully submitted

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Pro se

Thomas A. Good, M.D.
Department of Pediatrics
Salt Lake County Hospital
1940 South 2nd East
Salt Lake City, Utah

Dear Mr. Good:

Re: Taxability of Fellowship for Arthritis and Rheumatism Foundation.

This is to inform you that the Division of Law of this commission has considered the above matter in view of the facts known to us, and that in our opinion there is no legal basis for exempting said grant from taxation under the Utah Individual Income Tax Act. The Utah law does not provide for an exemption as does the Federal law. Therefore, the question of non-taxability would turn upon whether or not the grant was includable as gross income under the Utah act and, if so, whether or not it could be classified as a gift.

Sec. 59-14-4(1), Utah Code Annotated 1953, as amended, provides:

> "Gross income includes gains, profits and income derived from salaries, wages or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, trade, businesses, commerce or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property, also from interest, rents, royalties, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits, periodic payments received as alimony only, and income derived from any source whatever."

Subsection 59-14-4(2) provides that the following items shall not be included as gross income and shall be exempt from taxation under this chapter:

> "The value of property acquired by gift, bequest, devise or inheritance (but the income from such property shall be included in gross income.)"

Although there seems to be considerable leeway afforded you in deciding what phase of arthritis and rheumatism you may research, nevertheless said grant would not be forthcoming to you if you did not perform some kind of research in this field. For this reason we do not believe that the grant could legally be classified as a gift,

Unless you desire to pursue your remedies further, it is requested that you file your individual income tax return and pay the tax that may be due thereon.

I am returning herewith the information submitted by you for examination as you requested.

Very truly yours,

STATE TAX COMMISSION

Ben Rawlings, Attorney
Division of Law

BR:fa
encls.

STATE TAX COMMISSION

June 22, 1959

Memorandum To: Paul Holt, Director
Auditing Division

Auditing Division

Re: Taxability of Scholarships and Fellowships

Numerous inquiries have been made to this office with respect to the taxability of scholarships, fellowships and research awards under the provisions of the Utah State Individual Income Tax Law. For federal tax purposes, the Internal Revenue Code contains specific provisions dealing with the taxability of such grants; however, our State Income Tax Law is silent with respect to this subject.

It has been contended by several taxpayers that scholarship and fellowship grants are gifts and are excludable under Section 59-14-4 (2)(c), Utah Code Annotated, 1953, which section excludes from gross income "the value of property acquired by gift, bequest, device or inheritance."

In determining whether such scholarships or fellowships can qualify as gifts, we have found it helpful to review the Internal Revenue rulings which were issued prior to the enactment of the 1954 Internal Revenue Code. Under the old 1939 Code, there were no specific provisions dealing with scholarships or fellowships and, thus, the question of whether or not these items could qualify under the gift sections occasionally came before the Internal Revenue Service. Particularly applicable is IT 4056, which is published at 1951-2 CB 8. In that ruling, four hypothetical fact situations are set out in detail; however, all have the following facts in common:

> "All fellowship programs are originated by the prospective grantees. The foundation does not require the grantees to submit reports of their progress. The awards are in no way contingent upon a completion of the fellowship programs, and the stipends are disbursed at such times and in such installments as may suit the grantees' convenience."

After quoting the applicable sections of the law, the opinion states:

> "When the recipient of grant or fellowship applies his skill and training to advance research, creative work, or some other project or activity, the essential elements of a gift are not present, and the amount of the grant or fellowship is includable in the gross income of the recipient."

The above considerations, together with the consistent pronouncements of the Utah Supreme Court to the effect that statutes exempting taxpayers from a general taxing statute are to be strictly construed against those seeking to

escape the tax burden (See Norville v. State Tax Commission, 93 Ut. 170, 97 P.2d 937), leads us to the conclusion that scholarships, fellowships and research grants and awards should not be construed to be gifts under the Individual Income Tax Law of the State of Utah.

The above is also in harmony with prior opinions which have been issued from this office.

DEW:bla

David E. West, Attorney

STATE OF UTAH
STATE TAX COMMISSION

Refer to .....

Date August 26, 1966

[illegible] Director
Auditing Division

RE: Deductibility of the Cost of Tuition, Books and Related Expenses by Recipients of Scholarship and Fellowship Grants

This refers to your memorandum of August 2, 1966 in which you avert to prior legal opinions issued by this office in which it has been held that scholarship and fellowship grants are normally includable in gross income for purpose of the Utah Individual Income Tax Act and that such grants would be excludable from income only if received as a gift under Section 59-14-2(2), Utah Code Annotated, 1953. Since those opinions were issued, there has been no intervening change in the law and, thus, the conclusions reached therein are equally applicable at the present time.

You have noted that a taxpayer has raised the further question of whether the cost of tuition, books and related expenses incurred by recipients of these grants are wholly or partially allowable as deductions from gross income as business expenses " . . . paid or incurred during the taxable year in carrying on any profession, trade, or business, or in the production of income required to be included in gross income. . . ." Section 59-14-4(1)(a), Utah Code Annotated, 1953.

It is the opinion of this office that expenses of tuition, books and such related items [illegible] not business expenses which are deductible under the above mentioned section.

"Business" has been defined as that branch of activities wherein an individual expends his usual every day efforts in order to gain a livelihood. Webster's New Intercollegiate Dictionary defines business as one's particular and regular work, occupation or employment.

The obtaining of an education is not normally one's work, occupation, method or means of obtaining a livelihood; rather, it is the preparation necessary for one to engage in such pursuits. In obtaining the education necessary to enable one to embark upon his chosen life's work, it has been found that the granting of assistance through the means of fellowships and scholarships is necessary to defray the current expenses of the student who has no means of earning the income necessary to enable him to pursue his course of education. The school attendance, however, does not become a business, but remains a personal expense for which no deduction is allowable. The expenses of tuition, books and related items are incurred whether the individual is the recipient of a scholarship or

fellowship grant or whether the individual attends school using funds furnished through some other source. The expenses of tuition, books and related matters do not generate income and cannot properly be considered business expenses incurred in the production of income required to be included in gross income under our statutes.

Accordingly, then, these are not allowable deductions for the purpose of computing income under the Utah individual income tax statutes.

Henry L. Adams
Assistant Attorney General

HLA:jh