

KYOKO LEANN YODA
930 22nd Street #306
Bellingham, Washington 98225,
DIVISION

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW

§

Taxpayer,

§

DOCKET NO. INC. 02-129

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

PRELIMINARY ORDER

The Revenue Department assessed 1999 and 2000 income tax against Kyoko Leann Yoda ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on April 19, 2002 in Birmingham, Alabama. The Taxpayer notified the Administrative Law Division that she would not attend the hearing because she now resides and works in the State of Washington. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer was a student and received \$16,445 and \$33,965 from the University of Alabama at Birmingham ("UAB") in 1999 and 2000, respectively. She excluded those amounts from income on her 1999 and 2000 Alabama income tax returns as an exempt fellowship pursuant to Dept. Reg. 810-3-14-.02.

The Department initially accepted the Taxpayer's returns as filed, and issued her refunds in both years. It later determined that the payments had been taxable wages because the amounts were included as "State wages" on her W2 statements in both years. The Department assessed the Taxpayer accordingly. The Taxpayer appealed.

The non-taxability of a scholarship or fellowship is governed for federal purposes at 26 U.S.C. §117. Alabama has no provision similar to federal §117, but nonetheless treats a "no strings" fellowship or scholarship as an exempt gift.

See, Dept. Reg. 810-3-14-.02(3)(a)1. To be excluded from income as a fellowship, the amount must be an outright gift, and not received as compensation for services performed other than those services performed by other students similarly situated. The payment is exempt if the primary purpose was to further the education of the student, rather than as compensation for services rendered. See generally, *State of Alabama v. Jianyun Dong & Danher Wang, Inc.* 92-289 (Admin. Law Div. OPO 2/19/93).

In this case, the Taxpayer's CPA stated in an October 30, 2001 letter to the Department that the Taxpayer was not required to perform services in order to receive the payments. However, no admissible evidence verifying that claim is in the record.

Dr. Marjorie Jeffcoat of the UAB School of Dentistry also submitted a statement that the Taxpayer would receive the fellowship for five years "contingent on satisfactory completion of requirements." It is unclear what Dr. Jeffcoat meant by "requirements." If the Taxpayer was only required to complete normal course work or training to obtain the payments, the payments would be exempt. If the payments were received for extraordinary services not required of any other student, the payments would not be exempt.

It appears that the amounts received by the Taxpayer were probably exempt fellowship payments. But there is insufficient admissible evidence in the record from which I can make that finding.

If the Taxpayer was not required to perform any extraordinary services for UAB in return for the payments, she should provide a sworn statement from Dr. Jeffcoat or another UAB administrator verifying that fact. I understand that the Taxpayer presently resides and works in the State of Washington and is no longer at UAB. However, the above sworn statement is necessary to the Taxpayer's case.

The Taxpayer or an individual at UAB should submit the above statement to the Administrative Law Division by May 24, 2002. The Administrative Law Division's address is P.O. Box 320001, Montgomery, AL 36132-0001. The Taxpayer should telephone the Administrative Law Division at 334-242-1075 if she has any questions.

Appropriate action will be taken upon receipt of the above documentation.
Entered April 25, 2002.

BILL THOMPSON
Chief Administrative Law Judge

bt:ks

cc: Mark Griffin, Esq.
Kyoko Leann Yoda
Kim Herman