

Committee on Income Tax,
1948-1952

Income Tax. Basic

MAASS, DAVIDSON, LEVY & FRIEDMAN

HERBERT H. MAASS
WILBUR C. DAVIDSON
MONROE L. FRIEDMAN
DAVID J. LEVY
DAVID C. WESTON

20 EXCHANGE PLACE
NEW YORK 5, N.Y.

CABLE ADDRESS
"MAASHERB"
TELEPHONE
DIGBY 4-6151

February 15, 1952.

Dr. J. Robert Oppenheimer,
The Institute for Advanced Study,
Princeton, New Jersey.

Dear Dr. Oppenheimer:-

On December 31, 1951 I wrote you to confirm advices relative to the filing of returns by members. Since then additional, related questions have been raised by S. D. Leidesdorf & Co., pertaining to the filing of information returns by the Institute, the form of riders which may be used for disclosure purposes by members filing returns, and the responsibility for withholding in the cases of grants to non-resident aliens.

I have considered these subjects with Messrs. Beeton and Drexler of S. D. Leidesdorf & Co. in the light of our entire tax history and prior discussions, including your recent conference in Washington, and am of opinion as follows:

1. The Institute need not and should not file the information return Form 1099 for the grants paid but not acknowledged to be taxable income, and of course there should be consistency as between the Institute and recipient on this point.

2. Members who do file returns, because of other income sources, and who desire to make the disclosure of the Institute grant, need only add a notation at any open space in the form, for example at the very bottom of page 2, "Also received fellowship of \$ _____ from The Institute for Advanced Study, Princeton, New Jersey, not returned above, as non-taxable." This advice should be especially directed to Miss Trinterud, who has inquired regarding this matter.

3. The 30% withholding need not be applied to the grants to non-resident aliens, this upon the basis that their grants are a gift and not taxable income, or that if indeed they are income then the payments are made for services, and thus the individuals "are engaged in trade or business" within the country and consequently are not subject to the withholding taxes, though required like all other taxpayers to file full returns.

MAASS, DAVIDSON, LEVY & FRIEDMAN

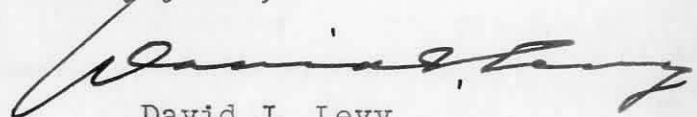
Dr. J. Robert Oppenheimer

-2-

February 15, 1952.

These conclusions have been arrived at after thorough and careful consideration. It is important that you carefully retain this opinion letter as a record of the basis for your action.

Faithfully yours,

A handwritten signature in dark ink, appearing to read "David J. Levy", written in a cursive style.

David J. Levy

DJL:JR

Copy to S. D. Leidesdorf & Co.

Mr. Fleming
Please return for Dr. O.

MAASS, DAVIDSON, LEVY & FRIEDMAN

HERBERT H. MAASS
WILBUR C. DAVIDSON
MONROE L. FRIEDMAN
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DAVID C. WESTON

20 EXCHANGE PLACE
NEW YORK 5, N.Y.

CABLE ADDRESS
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DIGBY 4-6151

December 31, 1951.

Dr. J. Robert Oppenheimer,
The Institute for Advanced Study,
Princeton, New Jersey.

Dear Dr. Oppenheimer:-

I regret that due to year-end pressures I have delayed sending off this letter, in response to your recent request and in confirmation of our discussion.

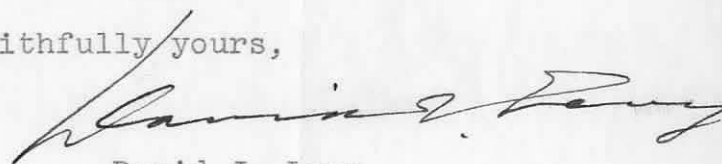
Confirming that discussion, I am of opinion as follows:

(1) The concept and tests as to whether payments by the Institute to members represent taxable income or non-taxable grant, are substantially as set forth in my original opinion letter of May 5, 1948, notwithstanding anything which may be to the contrary in the ruling letter of the Bureau of Internal Revenue dated September 20, 1951.

(2) Members receiving sums which would represent taxable income within these criteria, should of course file returns and return their income accordingly.

(3) Members receiving sums which would not represent taxable income within these criteria, should not file returns of these sums if they do not derive income from other sources in an amount necessitating return; but if they do have such other income and accordingly do file returns, they should attach appropriate rider disclosing the amounts received from the Institute but disclaiming that these represent taxable income.

Faithfully yours,



David J. Levy

DJL:JR

THE INSTITUTE FOR ADVANCED STUDY
PRINCETON, NEW JERSEY

OFFICE OF THE DIRECTOR

November 13, 1951

Memorandum to: Mr. John Beaton
Mr. E. S. Greenbaum
Mr. S. D. Leidesdorf
Mr. David Levy
Mr. I. A. Schur
Mr. Lewis L. Strauss

This note will confirm the arrangements for the meeting on income tax, which is scheduled for Tuesday, November 27th. We plan to meet in the foyer of the Uptown Club, 60 E. 42nd St., between 12:30 and 12:45 p.m.; and we will then proceed to lunch. The meeting may extend well beyond lunch.

Robert Oppenheimer

ONE TWENTY FIVE PARK AVENUE
NEW YORK

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OFFICE OF
SAMUEL D. LEIDESDORF

October 11, 1951

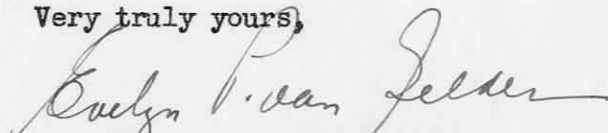
Dr. Robert Oppenheimer
Institute for Advanced Study
Princeton, N. J.

Dear Dr. Oppenheimer:

The Tax Meeting of the Institute is
being called at our office, at 11:30 on
October 25th.

Kind regards,

Very truly yours,


Secretary to Mr. Leidesdorf

INCOME TAX.—PART I

INTERNAL REVENUE CODE

SECTION 22(a).—GROSS INCOME: GENERAL DEFINITION

SECTION 29.22(a)–2: Compensation for personal services. 1951–17–13643
I. T. 4056
(Also Section 22(b), Section 29.22(b) (3)–1.)

INTERNAL REVENUE CODE

Stipends received under fellowship awards granted by the M Foundation are not exempt from Federal income tax as gifts under section 22(b) (3) of the Internal Revenue Code but are includible in gross income as compensation for personal services under section 22(a) of the Code.

Advice is requested as to the treatment for Federal income tax purposes of stipends received under fellowship awards granted by the M Foundation.

Numerous fellowship awards have been granted by the M Foundation, and information relative to four representative awards has been submitted for consideration. The facts with respect to such representative awards are as follows:

An award was granted by the foundation to A, an assistant professor of physical chemistry in a university, for a period of 9 months with a stipend of \$3,000 to be paid in the manner designated by him, for investigation in the field of structural chemistry. A had obtained a master's degree in June 1944, and he had completed his doctorate in May 1947. Thereafter he engaged in research, and he applied for a fellowship from September 1950 to June 1951. He is engaged in a long-term project which was not completed within the term of the fellowship. He plans to continue the project with the financial aid of his university's alumni research foundation when he returns to the university, as he believes that the subject matter of his investigation will become an increasingly fruitful field of research. During the years 1945 to 1948, inclusive, numerous articles on the subjects covered by his research were published.

A fellowship for creative writing was awarded by the foundation to B, a writer, with a stipend of \$3,500 for a 12-month period beginning in the spring of 1950. The purpose of the fellowship is to enable the recipient to finish a novel, or at least advance it to a point at which he could seriously discuss plans for its publication. B has previously written several books, and it is contended that this fellowship will enable the recipient to discontinue "short-range nonfiction projects" and to proceed with a work which he hopes will be of major importance in his development as a writer.

A fellowship award was granted by the foundation to C, an assistant professor of botany and microbiology at one of the universities, for the study of the physiology and biochemistry of aquatic fungi. This award was for 12 months commencing August 1, 1950, with a stipend of \$3,500 which was paid in full in advance. The information submitted indicates that C received an A. B. degree in 1943 and a Ph. D. degree in 1948. C states that his ultimate aim is to become sufficiently well grounded in the biological services to be able to teach botanical subjects from a dynamic and biological point of view and more specifically to devote his research to an investigation of the little-understood activities of the water fungi. Prior to the awarding of his fellowship, C had made several contributions to science which were published.

D received an A. B. degree from one university in the year 1936 and a Ph. D. degree from another university in 1940. He was awarded a fellowship jointly with another grantee for purposes of research into the relations between government and economic processes, with a stipend of \$3,500 for a period of 12 months beginning February 1, 1951. He was previously engaged in research, and he has completed the manuscript of a book which will be or has been published. Articles on subjects related to the proposed research have been published by him. D and his coworker plan to go to Europe for a year to make a systematic analysis of the subject of their research. It was for this particular research in Europe that D applied for an M Foundation fellowship. Neither grantee has a contract guaranteeing publication of a book of reports or articles resulting from their research, but several commercial publishers have expressed interest in publishing such a book. However, before publication of such a book, it is expected that portions of their reports will be published in professional journals in the field of economics and political science. One of the ultimate purposes of D's research is stated to be that at the completion of the present project in 1952, he expects to engage in research and writing on particular problems raised during the course of the joint research but not adequately treated in the present project.

All fellowship programs are originated by the prospective grantees and not by the foundation, and it has never received any rights in research or creative work produced by the grantees. The foundation does not require the grantees to submit reports of their progress. The awards are in no way contingent upon completion of the fellowship programs, and the stipends are disbursed at such times and in such installments as may suit the grantees' convenience.

Section 22(a) of the Internal Revenue Code provides in part as follows:

(a) GENERAL DEFINITION.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal services * * * of whatever kind and in whatever form paid * * * and income derived from any source whatever. * * *

Section 22(b) (3) of the Code provides in part as follows:

(b) EXCLUSIONS FROM GROSS INCOME.—The following items shall not be included in gross income and shall be exempt from taxation under this chapter [chapter 1 of the Code]:

* * * * *
(3) GIFTS, REQUESTS, DEVISES, AND INHERITANCES.—The value of property acquired by gift * * *

The amount of a grant or fellowship is includible in gross income unless it can be established that such amount is a gift. If a grant or fellowship is made for the training and education of an individual, either as a part of his program in acquiring a degree or in otherwise furthering his educational development, no services being rendered as consideration therefor, the amount of the grant is a gift which is excludable from gross income. However, when the recipient of a 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 as contemplated by section 22(b) (3) of the Internal Revenue Code are not present, and the amount of the grant or fellowship is includible in the recipient's gross income.

It seems apparent that the awards herein considered were granted on the basis of the qualifications of the recipients to do the work required by their projects, which projects were approved by the M Foundation with the expectation of results consistent with the recipients' qualifications. To the extent there is any donative intent present in the making of an award, it appears that the beneficiary is society at large and not the recipient of the award whose services are expected in return for the grant.

It is evident that in the four cases with respect to which the facts are set forth above, the fellowships granted by the M Foundation are not for the training or education of the recipients. In the cases of A, C, and D, the fellowships were granted in furtherance of research, and in the case of B, the writer, the fellowship was granted for the creation of a novel. The recipients apply their respective skills and training to advance research or creative work. (*Cf. LeRoy J. Robertson v. United States*, decided by the United States Court of Appeals for the Tenth Circuit on July 10, 1951.)

Accordingly, it is held that stipends received under fellowship awards granted by the M Foundation are not exempt from Federal income tax as gifts under section 22(b) (3) of the Internal Revenue Code but are includible in gross income as compensation for personal services under section 22(a) of the Code.

SECTION 22(b).—GROSS INCOME: EXCLUSIONS FROM GROSS INCOME

SECTION 29.22(b) (3)—1: Gifts and bequests.

INTERNAL REVENUE CODE

Stipends received under fellowship awards involving only education or training of the recipient. (See I. T. 4056, page 2.)

MAASS, DAVIDSON, LEVY & FRIEDMAN

20 EXCHANGE PLACE

NEW YORK 5, N.Y.

CABLE ADDRESS

"MAASHERB"

TELEPHONE

DIGBY 4-6151

September 14, 1951.

to Oppenheimer,
Institute for Advanced Study,
Princeton, New Jersey.

Oppenheimer:

I have sent Mr. Strauss, as you suggested,
I. T. 4056, and with it copy of memoran-
dum, which I thought you too ought to

Faithfully yours,

A handwritten signature in dark ink, appearing to read "David J. Levy". The signature is fluid and cursive, with a large initial "D" and "L".

David J. Levy

DJL:JR
9/14/51
3

RE INSTITUTE FOR ADVANCED STUDY -- TAX MATTER

(1) Review I.T. 4056 at general meeting with Messrs. Oppenheimer, Strauss and any others whom they may wish present, plus Mr. Beeton or other suitable representative of Leidesdorf's.

(2) Consider withdrawal of ruling application.

(3) Confer with Magill, who obtained this ruling for Guggenheim Foundation, as to his further plans in its behalf.

(4) Consider possible legislative definition in current Revenue Bill.

(5) When and how shall Institute withhold.

(6) What, if any, restitution by way of increases to Members.

(7) Retroactive application by Commissioner (a) as to Institute, on withholding; and (b) as to recipients.

(8) To what extent can Institute cases be differentiated from ruling?

(9) To what extent is ruling undermined by reason of its reliance on LeRoy J. Robertson v. United States, C.C.A. 10, July 10, 1951?

(10) What about pending Alexander case in Trenton Revenue Agent's Office?

D.J.L.

ANTICIPATED INCREASE IN BUDGET DUE TO TAXATION OF GRANTS
 1951 - 1952

<u>Members with 1 exemption</u>	<u>Grant</u>	<u>Anticipated Tax</u>	<u>Proposed Gross Salary</u>
Gottmann, Jean	\$2,500 term	\$480.00	\$3,000
Jeffery, Lilian H.	3,500 year	655.00	4,155
Long, Herbert S.	3,500 "	655.00	4,155
Philippaki, Barbara	3,500 "	655.00	4,155
Stamires, George	3,000 "	526.00	3,525
Gal, Istvan	3,250 year	585.00	3,835
Iwasawa, Kenkichi	4,000 "	773.00	4,775
Segal, Irving	3,000 "	526.00	3,525
Tits, Jacques	2,500 "	405.00	2,900
Fukuda, Hiroshi	4,800 year	895.00	5,700
Gell-Mann, Murray	1,500 term	265.00	1,765
Lloyd, S. P.	3,200 year	575.00	3,775
Peierls, R. E.	5,000 term	996.00	6,000
Stern, Adolph	1,600 year	206.00	1,805
Van Kampen, N. G.	2,000 term	386.00	2,385
Ward, John C.	3,000 year	526.00	3,525
Kramers, H. A. (3 mos.)	3,000 term ?	510.00	3,510
		<u>\$9,619.00</u>	
deMenasce, P. J.	3,000 term	577.00	3,575
		<u>\$10,196.00</u>	
<u>Members with 2 exemptions</u>			
Hammer, Jacob	\$4,000 year	\$584.00	\$4,585
Pasztory, Catherine	3,500 "	476.00	4,000
Postan, Michael	1,000 term	73.00	1,075
Hu, Sze-Tsen	3,500 year	476.00	4,000
Lee, T. D.	3,500 year	476.00	4,000
Low, Francis	3,500 "	476.00	4,000
		<u>\$2,561.00</u>	
Levy, David	4,000 "	584.00	4,585
		<u>\$3,145.00</u>	

ANTICIPATED INCREASE IN BUDGET DUE TO TAXATION OF GRANTS- Page 2-
 1951 - 1952

<u>Members with 3 exemptions</u>	<u>Grant</u>	<u>Anticipated Tax</u>	<u>Proposed Gross Salary</u>
Graham, Gerald S.	\$2,500 term	\$327.00	\$2,825
Roberts, Colin	5,000 year	650.00	5,650
Wycherley, R. E.	4,000 "	425.00	4,425
Foures, M. & Mme.	6,000 "	870.00	6,870
Schmidt, Olaf	2,500 term	325.00	2,825
Jost, Res	5,500 year	785.00	6,285
Levy, M. M.	3,500 "	357.00	3,855
Van Hove, L. C.	3,000 term	435.00	3,435
Placzek, George	9,000 year	1,058.00	10,050
Yang, Chen Ning	5,500 "	785.00	6,285
		<u>\$6,017.00</u>	

Members with 4 exemptions

Frankl, Paul	\$3,500 year	\$185.00	\$3,685
Heckscher, William	4,500 "	405.00	4,900
Eckmann, Beno	3,000 term	355.00	3,355
Green, John W.	2,000 year	---	2,000
Kac, Mark	3,000 "	85.00	3,085
Kodaira, K.	4,000 "	290.00	4,290
Protter, Murray H.	4,000 "	290.00	4,290
Shiffman, Max	2,500 "	---	2,500
Bruner, Jerome S.	4,000 "	290.00	4,290
Palfrey, John	1,750 "	---	1,750
		<u>\$1,900.00</u>	

Members with 5 exemptions

Alexander, Paul J.	\$4,000 year	\$150.00	\$4,150
Martin, W. T.	4,000 "	150.00	4,150
Sario, Leo R.	4,000 "	150.00	4,150
		<u>\$450.00</u>	

Total Increase in Budget \$21,688.00

Increase by Schools:

School of Historical Studies	\$6,246.00
School of Mathematics & Physics	14,011.00
Director's Fund	1,431.00
	<u>\$21,688.00</u>

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Chap 6. They are not under the white $\frac{1}{2}$, etc. -

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you my love,

Returned to yr files - HK7

8/31/51

MAASS, DAVIDSON, LEVY & FRIEDMAN

HERBERT H. MAASS
WILBUR C. DAVIDSON
MONROE L. FRIEDMAN
DAVID J. LEVY
DAVID C. WESTON

20 EXCHANGE PLACE
NEW YORK 5, N.Y.

CABLE ADDRESS
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TELEPHONE
DIGBY 4-6151

August 28, 1951.

S.F.
Income tax

Dr. J. Robert Oppenheimer,
The Institute for Advanced Study,
Princeton, New Jersey.

Dear Dr. Oppenheimer:-

While we are as yet without word from Washington in the matter of the tax rulings sought from the Bureau of Internal Revenue, I notice from the current issue of the Internal Revenue Bulletin, received today, a ruling issued upon a different application, as per copy enclosed. I have not as yet had opportunity to do more than scan this, but plainly it is unfavorable to our point of view and bodes ill as to the ruling in the Institute case whenever it should be issued, for the instances now ruled upon seem parallel.

I shall be away until September 10th, and will review the present ruling at that time. For the present I see nothing to do, at your end or mine, but await developments.

Faithfully yours,



David J. Levy

Encl.
DJL:JR

9.71
Income Tax

MAASS, DAVIDSON, LEVY & FRIEDMAN

20 EXCHANGE PLACE

NEW YORK 5, N.Y.

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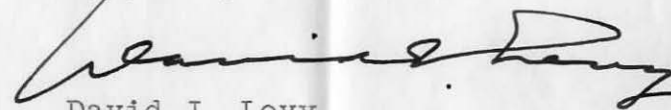
June 29, 1951.

Dr. J. Robert Oppenheimer,
The Institute for Advanced Study,
Princeton, New Jersey.

Dear Dr. Oppenheimer:-

I am enclosing copy of letter to the Internal Revenue
Agent in Trenton, which will be self-explanatory.

Sincerely yours,



David J. Levy

Encl.
DJL:JR

MAASS. DAVIDSON. LEVY & FRIEDMAN
20 EXCHANGE PLACE, NEW YORK 5, N. Y.

June 29, 1951.

Re: The Institute for Advanced Study,
Princeton, New Jersey.

Internal Revenue Agent,
420 Post Office,
Trenton, New Jersey.

Dear Sir:-

I am in receipt of your letter of June 28th inquiring as to the status of the application pending before the Bureau for a ruling on the taxability of fellowships in connection with the above.

This request was originally presented formally on March 6, 1950. The material originally filed was afterwards supplemented and conferences held, and then further supplemented by additional data and briefs on or about October 9, 1950.

I have inquired upon various occasions since then as to the status of the matter in the Bureau, and was last informed by the Commissioner's letter of April 23rd, 1951, as follows:

"The general question of the taxable status of fellowships, scholarships, grants for research and similar awards is now under review in the office of the Chief Counsel of the Bureau. It is expected that a decision will be reached in the case in which you are interested in the near future, at which time you will be advised promptly of the ruling."

I trust that this answers your inquiry, and will be glad to be of any further assistance.

Yours very truly,

(SIGNED) DAVID J. LEVY

David J. Levy

DJL:JR

~~W. E. Lamey~~

E. I. McLamp

Dep. Comm

J. M.
Miss George

\$78400

Ex 500

B. I. R.

Bee ton

Harrison
MacArthur
Turner

RE THE INSTITUTE FOR ADVANCED STUDY, PRINCETON, N. J.

MEMORANDUM

MAASS, DAVIDSON, LEVY & FRIEDMAN
20 EXCHANGE PLACE, NEW YORK 5, N.Y.

10/9/50
5

RE THE INSTITUTE FOR ADVANCED STUDY, PRINCETON, N. J.

This memorandum is submitted in relation to the request of the above-named taxpayer for an advisory ruling with respect to certain matters of withholding and income taxes.

The request and pertinent facts are embodied in the taxpayer's letter dated March 6, 1950, and are amplified by counsel's letter dated April 6, 1950 and its enclosures.

We shall not indulge here in unnecessary repetition of those facts and pertinent observations. However, in view of the lines and tenor of the oral conference held with the Bureau representatives and counsel in this matter on September 26, 1950, it seems useful to embody and present in this memorandum some of the highlights then touched upon and to add further reference to the precedents.

A resume of these highlights is as follows:

1. Organization and source of funds. The Institute was founded in 1930 by the late Louis Bamberger and Mrs. Felix Fuld, and was then liberally endowed by them and thereafter by their estates. It does not solicit funds or contributions. But few have been received, only one of substance. However, the Institute is often allowed or urged to administer funds which are made available by other institutions, of which the Rockefeller Foundation and the Carnegie Corporation are but two outstanding examples, others being indicated under the heading "Source and Amount" in the schedule "Exhibit A" attached to

the letter of March 6, 1950.

2. Purposes. The certificate of incorporation, section 2, states the purposes to be

*** the establishment *** of an institute for advanced study, and for the promotion of knowledge in all fields, and for the training of advanced students and workers for and beyond the degree of Doctor of Philosophy and other professional degrees of equal standing."

The by-laws refer to the Institute as an "institution for higher learning", and contain provisions regarding the admission of candidates and the conferring of degrees and awarding of diplomas; but no degrees or diplomas have ever been awarded or conferred, and none are contemplated.

The founders, in their June 6, 1930 invitation letter to the Trustees, referred to the need for an institution --

*** where scientists and scholars devote themselves at the same time to serious research and to the training of competent post-graduate students entirely independently *** from an institution, the major interest of which is the teaching of undergraduates." (Bulletin No. 1, page 2)

The desire is there stated that there be no undergraduate department, and that only the Ph.D. or equal degree be conferred; that quality of work, rather than number, is to be the ideal in regard to "students"; that the staff of the institution is expected to consist exclusively of men and women of the highest standing in their fields, who will be attracted there *** through its appeal as an opportunity for the serious

pursuit of advanced study and because of the detachment it is hoped to secure from outside distractions."

It is further stated that "appointments to the staff and faculty as well as in the admission of workers and students" is to be without regard to race, religion, or sex, and that:

"In endowing this institution we recognize that many worthy and capable persons are unable for financial reasons to pursue study or research to the extent justified by their capacities. It is expected, therefore, that the Institute will supply means whereby through scholarships or fellowships such workers may be supported during the course of their work or research, to the end that the facilities of the institution may be available to any man or woman otherwise acceptable possessing the necessary mental and moral equipment.

"While the institution will devote itself to the teaching of qualified advanced students, it is our desire that those who are assembled in the faculty or staff of the institution may enjoy the most favorable opportunities for continuing research or investigations in their particular field or specialty, and that the utmost liberty of action shall be afforded the said faculty or staff to that end.***

"The primary purpose is the pursuit of advanced learning and exploration in fields of pure science and high scholarship to the utmost degree that the facilities of the institution and the ability of the faculty and students will permit." (Bulletin No. 1, pages 3-4)

The remarks of Dr. Abraham Flexner, the first Director, at the organization meeting, also contain highly pertinent matter. Said he:

"The Institute is pledged to assemble a group of scientists and scholars who with their pupils and assistants may devote themselves to the task of pushing beyond the present limits of human knowledge and to training those who may 'carry on' in this sense." (Bulletin No. 1, page 8)

He further stated that the Institute was to be a graduate university in the highest sense; that its faculty would be composed of distinguished scholars; that its students would be of an advanced status; and that the first task would be to explore the field in this country and in the cultural countries of Western Europe "in order to discover the talent likely to carry the Institute to success".

It was stated that the sacrifices required of an American professor and his family were "to a high degree deterrent"; that "poor salaries frighten off the abler and more vigorous" and compel the university instructor to seek outside sources of income; and that it was therefore important to set a new standard and to attract a small number of scholars and scientists "who will be free from financial worry and concern, who will live and work amidst conditions favorable to intellectual activity".

3. Selection of members. Men and women who are outstanding in accomplishment or promise in various academic areas such as mathematics, economics and the humanistic studies are generally known to their colleagues in those fields. Those who come to the Institute include both those who are older or more luminous, who may be invited by the Institute upon its initiative, and others, who may themselves take the invitation in applying to the Institute. The invitation emanates from the Director, on recommendation, after consultation with others at the

Institute, and in some instances by and with the express approval of the Board of Trustees.

4. The work of the members. It is of the utmost importance to observe that the present inquiry does not relate to those individuals at the Institute who have any duties or responsibilities, such as those of the permanent members who are of the faculty, or the assistants who work in conjunction with various professors in carrying out work of specific interest; nor does it relate to the administrative staff or other non-academic personnel. These all have varying degrees of obligation or duty, and are acknowledged to be employees receiving compensation within the contemplation of the tax laws.

The inquiry relates solely to those members who have no such duties or responsibilities, and who are at the Institute for the sole purpose of pursuing their own studies or research in any manner that they may choose, but with the advantages of the Institute's atmosphere, facilities and assistance, and contact with other outstanding scholars engaged in the field, and who may be at the Institute.

These members are not required to keep hours of any sort; to carry out any specific work or project; to produce any tangible or intangible result; to inform or communicate any such result to their associates or even to the Institute itself; or to turn over to it or to anyone else the ownership or exploitation thereof. Thus, for example, the writings or inventions of the

members resulting from their studies or research at the Institute belong to them exclusively, and such writings have not even been published by the Institute, though they have been by others. In this vital respect the status of the Institute members is believed to differ materially from that of individuals having research fellowships, granted by various universities and societies and devoted to particular work, for in these instances the individuals who receive the fellowships are required to devote themselves to specific fields or projects, and to communicate and transfer to their sponsor the resulting product, whatever form it may take.

5. Awarding and amounts of grants. It should primarily be noted that not all, but only some, of the members invited to the Institute receive grants of any kind. Where a grant is provided, the amount is determined by the Director, or by the Board of Trustees upon his recommendation. The determination or recommendation of the Director is made in each case after inquiry and consideration by him of the particular facts.

The magnitude of the grant will depend upon many considerations, including among others the family and other circumstances of the individual, the contemplated duration of his stay, and any necessary travelling expenses. Older men are more apt to have families; younger ones may not. Members coming from the far corners of this country and of the world must be

provided with appropriate sums to include the expense of transportation. Members coming upon long-term invitations will tend to make the Institute their headquarters, and will need to maintain a standard of living characteristic of the academic community; whereas those here for shorter periods will be apt to maintain more modest households, will have less need, if any, to entertain, and may be willing to draw on savings while here. In sum, therefore, maintenance standards will vary with the particular member, and there will in any case be room for difference of opinion as to the amount of grant appropriate to the individual case. The Director and Board of Trustees endeavor to fit the determination to each individual case, the object always being to adhere to the principles expounded by the founders and the first Director as hereinabove described.

The intent of the Institute is not to compensate the members for work or services, or for conducting studies or research, or for producing any result in its behalf, but to furnish facilities, and the means for a sustenance consistent with the members' position in life, in order to leave them free to pursue their work for the ultimate and general benefit of mankind. In this sense, therefore, the non-taxable treatment of the grant does not result in the unjust enrichment of the individual recipient, but redounds to the benefit of the Institute itself, since it would otherwise be required to furnish to the members larger grants, in order that the net sums remaining after income

taxes, if such taxes were payable, would continue to suffice to meet the purposes of the grant.

6. Distinction from sabbaticals. The question arose as to how the present instances differ from sabbaticals customary in the academic world. Such sabbaticals are nothing more nor less than vacations or leaves of absence, on full -- or more usually part -- pay. They are given in recognition of past services and the expectation of future services upon the termination of the sabbatical leave. Thus the compensation paid during such sabbatical period is in essence for past and future services, and cannot be compared with the status of members at the Institute, who at no time give or render any service, are not pledged to remain, and are not even permitted to do so except for the duration of the membership or any renewal.

ARGUMENT

It is submitted that, broad as is the concept of "income" for the purposes of the tax laws, the instances under consideration are without its scope. The teachings of the authorities establish this.

In Bogardus v. Commissioner of Internal Revenue, 302 U. S. 34, 58 Sup. Ct. 61, it was held, though by a bare majority of the Court, that where all former stockholders of a company became stockholders of a new corporation organized to take over certain assets of the company, distributions of

moneys by the new corporation, pursuant to resolutions adopted by its directors and stockholders, to present and former employees of the company, who had no connection with the new corporation, in recognition of past services to the company, and although no obligation was owed to them either by the company or by the new corporation, were non-taxable "gifts" and not "compensation for personal services". It was said that there was "entirely lacking the constraining force of any moral or legal duty, as well as the incentive of anticipated benefit of any kind beyond the satisfaction which flows from the performance of a generous act", and that "intention must govern". Even the minority of the Court, who felt that the case was being incorrectly decided, accepted the principle that --

"What controls is the intention with which payment, however voluntary, has been made. Has it been made with the intention that services rendered in the past shall be requited more completely, though full acquittance has been given? If so, it bears a tax. Has it been made to show good will, esteem, or kindness towards persons who happen to have served, but who are paid without thought to make requital for the service? If so, it is exempt."

The dissent, then, was based solely upon the belief of the minority that either conclusion as to the intention motivating the payments had a fair basis in the evidence, and that the determination of the fact trier should control.

In Bass v. Hawley, 62 F. 2d 721, a bonus paid to a railroad employee by a holding corporation was held taxable as

compensation for personal service and not a gift. Here again the decision pivoted upon the motive or intent surrounding the payment, rather than upon whether the payment was voluntary. The Court there adopted the view of the Supreme Court minority in the Bogardus case that the categories of "gift" and "compensation" are not always mutually exclusive but at times can overlap, and that the controlling question was the intention with which the payment, however voluntary, was made. Said the Court:

"That only is a gift which is purely such, not intended as a return of value or made because of any intent to repay another what is his due, but bestowed only because of personal affection or regard or pity, or from general motives of philanthropy or charity."

This determination and its rationale were accepted, too, in Schall v. Commissioner of Internal Revenue, 177 F. 2d 893; and the principle was given effect also, though on divergent facts, in Warrick v. Commissioner, 44 B.T.A. 1068, Ginn v. Commissioner, 47 B.T.A. 41, and Schairer v. Commissioner, 9 T. C. 549. It was recognized also in McDermott v. Commissioner of Internal Revenue, 150 F. 2d 585, and Stein v. Commissioner, 14 T.C. 494, even though in the latter case the item in question was held taxable.

Furthermore, the Bureau itself, in G.C.M. 5881 VIII-1CB 68, ruled that an award made to a taxpayer by a charitable foundation in recognition of his achievements in science and his services in promoting the public welfare, was a gift and not income; and in IT 3756, 1945 C. B. 64 it ruled that tuition

and maintenance stipends paid to non-salaried nurses taking post-graduate training in public work, medical-social work, etc. represented gratuities in aid of the accomplishment of the public benefit involved, and not wages, there being no employment agreement nor any commitment by the individuals except a pledge to continue in the field of public health work on completion of the course.

The members' cases here involve no employment, no duty and no obligation. They are neither required nor expected to engage upon any specific work or produce any particular result. They are in effect given contributions toward their maintenance, in order that they may with free minds continue their studies or research, in suitable surroundings and atmosphere, and with the hope that their studies and researches may advance generally the world's knowledge in their various fields. Such contributions as are made by the Institute for these purposes stand upon the same footing as if they were made directly by one individual to another, the former desiring merely to subsidize for philanthropic reasons the studies or researches of the latter. Though the complexion may appear to be somewhat different, the case is in reality no different from that of the patient who receives valuable free treatment and services at a privately endowed hospital, or the student who may receive free tuition with or without full or partial maintenance.

It is submitted that if the grants here involved were

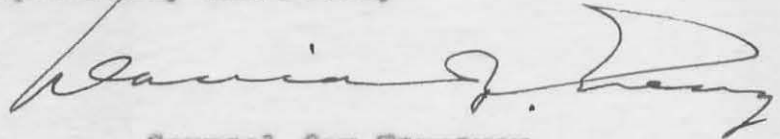
limited to the instances of the \$250, \$400 or other similar, relatively smaller annual sums, the result here would be clear. The ruling cannot be different merely because the grants vary, and are in some instances considerably larger, for the facts as to the motive, relationship, duties, and other matters, as between the member and the Institute are not different.

Nor should the grants be deemed taxable because in some loose or general sense it does not seem fair for the great majority of citizens to pay taxes upon their income, and others, such as the members here, not. The amounts of the grants are here geared to the maintenance necessities of the individual. The savings resulting from non-taxability consequently fall to the Institute, and not to the members, and accordingly tax exemption serves the public welfare, and not the individuals. This accords with the scheme of the tax laws and the intent of the Congress.

The favorable consideration of the pending application is, therefore, earnestly solicited.

Dated, New York, N. Y., October 9th, 1950.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Patricia J. Henry", written in a cursive style.

Counsel for Taxpayer.

(LETTERHEAD OF THE INSTITUTE FOR ADVANCED STUDY, PRINCETON, NEW JERSEY)

March 6, 1950

Re: IT:P:TR

Commissioner of Internal Revenue

Washington 25, D. C.

Dear Sir:-

The purpose of this letter is to request an advisory ruling with relation to certain matters of withholding and income taxes upon the amounts which are paid by this Institute to some of its members.

Preliminary to a proper consideration by you of the questions involved, it is necessary that you be apprised respecting the organization, purposes and work of the Institute.

✓ The Institute for Advanced Study is a corporation organized in 1930 under the laws of New Jersey. The founders were the late Mr. Louis Bamberger and his sister, the late Mrs. Felix Fuld. The founders' invitation letter to the first Board of Trustees, dated June 6, 1930, and the remarks of the first Director of the Institute at its organization meeting evidence the fact that the objective was to establish an institute for advanced study, the promotion of knowledge, and the training of students and workers; to create an institution where scientists and scholars might devote themselves to research and training of others; and to assemble a group of scientists and scholars who, with their pupils and assistants, might devote themselves to the task of pushing beyond existing limits of human knowledge.

✓ The founders, recognizing from the inception that in order to excite and inspire the attendance, research and study at the Institute of persons, otherwise qualified, who might be deterred by financial worry and concern for the future, stated that the Institute would expect to furnish financial assistance in order that the persons invited to participate in work or research might be free from financial problems.

✓ The tax-free status of the Institute as an educational corporation coming within the provisions of I.R.C. Section 101(6) was established by your ruling dated May 25, 1931, and confirmed by your further ruling dated March 28, 1938.

✓ In keeping with the original concept of the Institute, it has from time to time invited various scholars and scientists to come here and to pursue their own studies or research as they see fit, either alone or in concert with others who are here and who may be interested in similar activities. These men have been selected not in any sense upon a competitive basis or by award, but by individual determination, and upon the basis of their work, their prior achievements, and considerations touching the furtherance of human knowledge in certain of the sciences and humanitarian studies. art
27

The organization of the Institute includes so-called "permanent members", "members", assistants and staff. The permanent members include the faculty and all others having academic appointments covering the whole of their career. The members include all others who are here for shorter or less determinate periods, for the purposes of pursuing their own studies, either alone or in concert. The assistants work in conjunction with various professors

in carrying out work of specific interest, and the staff includes the non-academic personnel.

The present questions relate to the "members" and to certain of the "permanent members".

There is attached hereto, marked Exhibit A, a list of members who are here under invitations extending for a period of one year or less; and there is attached hereto, marked Exhibit B, a list of such members who are here under invitations for a period of more than one year. These lists set forth, in addition to the names of the members to whom the present questions relate, the amount of the grant, the duration of the present term, and the source from which payment is made. As to the duration, it should be noted that in the case of many members the present term represents a renewal or renewals of prior periods of invitation, at either the same or different amounts of grant. As to such source, it will be noted that although in the main grants are made by the Institute out of its own funds, many members are supported by fellowships or grants emanating from various other funds, foundations, governments and others. These include instances (a) where the grant is made directly to the individual, with the Institute supplying merely its hospitality and incidental services and facilities; (b) where the grant is made directly to the individual, and a supplementary allowance or contribution is made to the Institute itself toward the expenses involved; (c) where the grant is made to the Institute, but is specified as being for a particular individual, funds being received and disbursed by the Institute and accounted for by it; and (d) where the grant is made by the Institute to the member, but the funds are supplied for the purpose under contract with some branch of the federal government, such as the Atomic Energy Commission.

There is further attached hereto, marked Exhibit C, a list of those "permanent members" whose cases are pertinent to the present inquiry. The invitation in the case of these permanent members extends for life or until they shall attain the age of 65 years.

The arrangement with each member or permanent member is generally embodied in oral discussion, correspondence and minutes of Trustees' meetings. The detail of these varies, without, however, altering the essential facts above stated respecting the purposes of the invitation, the absence of obligation or duty on the part of the member, or his exclusive rights in the product of his work here. There are attached hereto, marked Exhibits D and E, specimens of typical invitation letters to candidates for membership.

✓ (All of the ^{then} "members" and the specific "permanent members" whose names appear upon Exhibit C, ^{then} are not under the control of the Institute in any way, either as to the time, scope or manner in which they do their work, but are free to pursue their studies or research completely at their will; they have no duties; and they are not responsible in any way for the policies or functioning of the Institute. They are not under obligation to return to the Institute for any purpose after the expiration of the period of their invitation; and the Institute may or may not renew the invitation from time to time. The product of the study or research conducted by them, e.g., writings or inventions, remains at all times the sole property of the member without any right, title or interest therein on the part of the Institute.

orig. X
The present questions are:

(1) Are the payments by the Institute to the members as herein described subject to withholding within the meaning of Internal Revenue Code Section 1622?

(2) Are such payments taxable income to the recipients?

✓ It is believed, and we have been so advised in connection with our past procedure and returns, that no employer or employee relationship exists, and that consequently the payments referred to are not subject to withholding; also that the recipients receiving the grants are not taxable thereon, since they are not received as compensation or income, or for services rendered, but only in furtherance of the humanitarian objects of the Institute.

✓ Internal Revenue Code Section 1622(a) requires that "every employer making payment of wages shall deduct and withhold upon such wages a tax ***", but Section 1621(d) defines an employer as "the person for whom an individual performs *** any services". Under these circumstances, there being no employer-employee relationship, and the members not rendering any services for the Institute, it is submitted that the withholding tax is inapplicable.

✓ As to taxability to the recipient, Section 22(a) defines gross income as "gains, profits and income derived from salaries, wages or compensation for personal service *** or from professions *** and income derived from any source whatever ***"; but Section 22(b)(3) specifically excludes gifts from income tax, and the question thus appears to be whether the payments under scrutiny are compensation or gifts. In determining whether the grants are compen-

sation or gift, it is our understanding that the determining factor is the intention of the parties as evidenced by their underlying aims, motives and incentives, and that if no services were contracted for or rendered by the recipient, then the payment would normally be a gift; and conversely the fact that the recipient was expected to or did render services would indicate that the payment was intended as compensation.

In G.C.M. 5881, VIII-1 C.B. 68, the Bureau of Internal Revenue ruled that an award, made to the taxpayer by a charitable foundation in recognition of his achievements in science and his services in promoting the public welfare, was a gift and not income.

In I.T. 3756, 1945 C.B. 64, the Bureau ruled that tuition and maintenance stipends paid to non-salaried nurses taking post-graduate training in public work, medical social work, crippled children's services, etc., there being no employment agreement nor any commitment by the individuals except a pledge to continue in the field of public health work upon completion of the course, represented gratuities in aid of the accomplishment of the public benefit involved, and were not wages subject to withholding of income tax.

There does not appear to be any published ruling with respect to the taxability of Nobel prizes, Guggenheim or Rockefeller fellowships, Rhodes scholarships or the like, which have long been awarded on a competitive basis to scientists, scholars and students, and it may be inferred that the Bureau's practice has been to the contrary.

Judicial decisions pertinent to the question, and which we believe indicate the exempt nature of the grants or payments by this Institute include Bogardus v. Commissioner, 302 U. S. 34, 58 S. Ct. 61; Warrick v. Commissioner, 44 B.T.A. 1068; Ginn v. Commissioner, 47 B.T.A. 41; McDermott v. Commissioner, 150 F. 2d 585; and Schall v. Commissioner, 174 F. 2d 893.

The reasons why we believe this to be a proper case for issuance of advisory ruling are:

(1) It is important that neither the Institute nor the recipients of its grants shall over a period of time accumulate possible contingent liability for taxes or penalties;

(2) It is the desire of the Institute to conduct all its affairs, and particularly those relating to its responsibilities to public and governmental authorities, in a manner which shall be above question.

(3) If the grants are taxable to the recipient, then it would be necessary for the Institute to increase the respective amounts thereof, in order that the net sums retained by recipients after tax may still suffice to fulfill the purposes of the grant.

Your prompt and favorable consideration of this request is earnestly solicited.

Yours very truly,

THE INSTITUTE FOR ADVANCED STUDY

By ROBERT OPPENHEIMER

Director

EXHIBIT A

RECORD OF GRANTS-IN-AID (ACADEMIC YEAR OR LESS) ---
INSTITUTE FOR ADVANCED STUDY --- 1949-1950

<u>RECIPIENT</u>	<u>SOURCE AND AMOUNT</u>	<u>PRESENT TERM</u>
Andrewes, Antony	Institute - \$6000.	Academic Year
Auerbach, Erich	Institute - \$4000.	Academic Year
Bers, Lipman	Institute - \$3200.	Academic Year
Bott, Raoul	Institute - \$3,500.	Academic Year
Butterfield, H.	Institute - \$2500.	First Term
Case, Kenneth M.	AEC contract administered by Institute	Academic Year
Chen, Y. W.	Institute - \$3600.	Academic Year
Clay, Sir Henry	Rockefeller Grant - administered by Institute - \$2000	First Term
Coale, Ansley J.	SSRC - NRC - Fellowship	Academic Year
Curtius, E. R.	Institute - \$4000.	First Term
de Rham, Georges	Institute - \$3000.	Second Term
Doss, Raouf	Institute - \$3500.	Academic Year
Dvoretzky, A.	Institute - \$3200.	Academic Year
Feldman, David	Institute - \$1800.	Second Term
Garding, Lars	Institute - \$3500.	Academic Year
Geyl, Pieter	Institute - \$2800.	First Term
Glauber, Roy J.	AEC Fellowship	Academic Year
Gottmann, Jean	Institute - \$450.	First Term
Green, H. S.	Institute - \$3500.	Academic Year
Grodecki, Louis	Institute - \$3000.	Academic Year
Hanner, Olaf	Royal Academy of Sciences, Sweden	Academic Year

<u>RECIPIENT</u>	<u>SOURCE AND AMOUNT</u>	<u>PRESENT TERM</u>
Jastrow, Robert	ABC contract administered by Institute	Academic Year
Jenkins, James	Jewett Fellowship	Academic Year
Jessen, Borge C.	Institute - \$2000.	First Term
Jost, Res	Institute - \$3000.	Academic Year
Karplus, Robert	Jewett Fellowship	Academic Year
Kaufman, Bruria	Institute - \$2500.	Academic Year
Kennedy, R. S.	Institute \$500. supplemented by Rockefeller grant	Second Term
Klein, Oskar	Institute - \$5000.	First Term
Kodaira, K.	Institute - \$4000.	Academic Year
Ladner, Gerhart	Institute - \$4000.	Academic Year
Leake, Chauncey D.	Institute - \$1750.	Second Term
Leipnik, Roy B.	Institute - \$4000.	Academic Year
Lepore, J. V.	ABC Fellowship	First Term
Linforth, Ivan M.	Institute - \$5000.	Academic Year
Lopes, J. Leite	Guggenheim Fellowship	First Term
Luttinger, Joaquin	Jewett Fellowship	Academic Year
Marx, Daniel	Institute - \$1500.	Second Term
Messiah, Albert	French Government Scholarship	Academic Year
Moise, E. E.	NRC Fellowship	Academic Year
Morette, Cecil	Institute --\$3500.	Academic Year
Neugebauer, Otto E.	Institute - \$5000.	Second Term
Neuman, Maurice	ABC contract administered by Institute	Academic Year
Nijboer, B. R. A.	Institute - \$4000.	Academic Year
Nordenfalk, Carl	Institute - \$4000.	Academic Year
Palmer, Hazel	Institute - \$3000	Academic Year
Pauli, Wolfgang	Institute - \$12,000.	Academic Year

<u>RECIPIENT</u>	<u>SOURCE AND AMOUNT</u>	<u>PRESENT TERM</u>
Placzek, George	AEC contract administered by Institute - \$6500	Academic Year
Radin, Max	Institute - \$5000.	Second Term
Ramanathan, K. G.	Institute - \$3000.	Academic Year
Rauch, H. E.	Institute - \$3000.	Academic Year
Reidemeister, Kurt	Institute - \$7000.	Academic Year
Robbins, Lionel	Institute - \$300 - Supplemented by Rockefeller Foundation	Second Term
Rogers, C. Ambrose	Commonwealth Fellowship	Academic Year
Seligman, Bryce	NRC Fellowship	Academic Year
Sherman, Seymour	Institute - \$4000.	Academic Year
Skyrue, T. H. R.	Institute - \$3500.	Academic Year
Slotnick, Murray	AEC Fellowship	Academic Year
Stamires, G. A.	Institute - \$3000.	Academic Year
Szent-Gyorgyi, A.	Institute - \$1000. for every month of his stay up to four months each academic year	Second Term
Tomonaga, Sin-itiro	Institute - \$6000.	Academic Year
Van Hove, L. C.	Institute - \$4000.	Academic Year
Villars, Felix	Institute - \$3200.	Academic Year

EXHIBIT B

RECORD OF GRANTS-IN-AID (LONGER THAN ACADEMIC YEAR) --
INSTITUTE FOR ADVANCED STUDY -- 1949-1950

<u>RECIPIENT</u>	<u>SOURCE AND AMOUNT</u>	<u>TERM</u>
Bohr, Niels	Institute - \$8000. each semester	Starting 7/1/49; any one semester for five years
Clay, Sir Henry	Rockefeller Grant, administered by Institute. \$25,000 over period of five years	Starting 7/1/50; over five year period
Cooper, John C.	Institute \$4000; Rockefeller grant \$2000. each year	Starting 2/1/46; over five year period.
Dyson, F. J.	Institute - \$9000. over five year period	Starting 7/1/49; \$3000. to be paid each semester for 3 semesters
Frankl, Paul	Institute - \$3500. each year	Starting 7/1/49; for three years
Heugebauer, Otto E.	Institute - \$5000. one term	Starting 7/1/50; for one semester of each academic year over five year period.
Placzek, George	Institute - \$9000. each year	Starting 7/1/50; over five year period
Yang, Chen Ning	Institute - \$5500. each year	Starting 7/1/50; over five year period

EXHIBIT C

RECORD OF GRANTS-IN-AID (PERMANENT MEMBERS) ---
INSTITUTE FOR ADVANCED STUDY --- 1949-1950

RECIPIENT

SOURCE AND AMOUNT

Alexander, James W.

Institute - \$7500.

Mitrany, David

Institute - \$4000. for
any one of the full semesters
before he is 65.

Montgomery, Deane

Institute - \$8000.

Selberg, Atle

Institute - \$8000.

EXHIBIT D

April 23, 1949

Dear Professor Sherman:

On the recommendation of the Faculty of the School of Mathematics, I am pleased to offer you an extension of your membership through the academic year 1949-50. We can make available to you a non-taxable grant-in-aid of \$4,000 to take care of your expenses and that of your family during your stay in Princeton.

With every good wish,

Robert Oppenheimer

Professor Seymour Sherman
School of Mathematics
Institute for Advanced Study

November 17, 1948

Dear Dr. Selberg:

It is with great pleasure and a great sense of honor that I write to you to tell you that on the unanimous recommendation of the Faculty, the Trustees of the Institute for Advanced Study have authorized me to extend to you an invitation to permanent membership in the School of Mathematics. This membership brings with it no obligations and no duties, but is an invitation to work at the Institute and an offer of a grant-in-aid of \$8000. until you shall have reached the age of 65. We shall be glad to make the customary contribution of 5 per cent of your grant-in-aid to the Teachers Insurance and Annuity Association in order to provide you with a retirement allowance. We would hope that if you feel free to accept this invitation you would be with us during the next academic year, and that your membership could be counted from the beginning of the fiscal year July 1, 1949.

I am aware that you are considering returning to Oslo and that strong arguments will be advanced to persuade you to do that. We are offering you the opportunity to come to the Institute and to stay in this country in the belief that you yourself will be the best judge of what is wise for you and for mathematics, and in the confidence that if you do come, your presence here will be a great source of strength to us.

In reaching your decision, it may be of interest to you that this invitation comes to you with the unanimous support of the whole School of Mathematics, and the whole Faculty of the Institute for Advanced Study, and on the basis of the conviction that there is no young man in the entire field, the clarity of whose work can match yours.

Faithfully yours,

Robert Oppenheimer

Dr. Atle Selberg
Department of Mathematics
University of Syracuse
Syracuse 10, N. Y.

MAASS, DAVIDSON, LEVY & FRIEDMAN

HERBERT H. MAASS
WILBUR C. DAVIDSON
MONROE L. FRIEDMAN
DAVID J. LEVY
DAVID C. WESTON

20 EXCHANGE PLACE
NEW YORK 5, N.Y.

CABLE ADDRESS
"MAASHERB"
TELEPHONE
DIGBY 4-6151

May 5, 1948.

Dr. J. Robert Oppenheimer,
The Institute for Advanced Study,
Princeton, New Jersey.

Dear Dr. Oppenheimer:-

This refers to the request contained in your letter to Mr. Maass of November 18, 1947 for an opinion as to the income tax status of compensation and stipends paid to various personnel and members of the Institute.

The Institute itself is, of course, as an educational corporation, exempt from the payment of income taxes or the filing of returns upon its income, this by virtue of Int. Rev. Code Sec. 101 (6) and by specific ruling by the Commissioner of Internal Revenue dated May 25, 1931, confirmed by further ruling dated March 28, 1938.

However, the withholding provisions of the tax law make no exception in favor of organizations exempt from income tax, but on the contrary require that "every employer making payment of wages shall deduct and withhold upon such wages a tax ****" (Int. Rev. Code Sec. 1622); and these sections define an "employer" as "the person for whom an individual performs *** any services" (Int. Rev. Code Sec. 1621). But since as a matter of fact and according to our understanding the Institute has complied at all times with the withholding sections, by filing returns and effecting withholding, error or default on its part

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-2-

May 5, 1948.

can at the most consist only of erroneous decision, in good faith, to treat payments to given individuals as non-taxable gifts or grants, and consequent failure in such instances to withhold and turn over to the Treasury the amounts withheld. For such defaults there is no penalty under existing law, and the sole liability of the Institute would be the amount of tax in question plus interest (Int. Rev. Code Sec. 1623).

As to the personnel of the Institute, it is possible to be unequivocal only with respect to the salaries and compensation paid to the staff, the faculty and the assistants, all of whom are clearly taxable as receiving their compensation for services rendered.

As to the remaining category, that of "members", we understand this group to include both so-called "permanent members" who have academic appointments for their whole career and those whose appointments are for shorter periods, for the purpose of pursuing their own studies either alone or in concert. It is said that members, including permanent members, who are not also on the faculty neither perform, nor are expected to perform, any services for the Institute, nor are they under any obligation in that respect.

We have carefully examined the tax law and regulations, the rulings of the Bureau of Internal Revenue, and numerous court decisions which relate to the two questions of whether the sums paid to such members constitute taxable income to them, and whether such payments are subject to a withholding obligation on the part of the Institute. The only conclusion which may be arrived at is that each case must stand

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-3-

May 5, 1948.

upon its own facts, and that it is impossible to be dogmatic about the determination to be expected in any instance.

The law itself, Int. Rev. Code Sec. 22 (a), defines gross income as "gains, profits and income derived from salaries, wages or compensation for personal services **** or from professions, vocations, trades **** and income derived from any source whatever *****". Gifts are by Int. Rev. Code Sec. 22 (b) (3) specifically exempted from income tax. The question thus is always whether the payment under scrutiny is compensation or gift. In the solution of this question the determining factor is stated in many cases to be the intention of the parties, i.e., the payor and the recipient. This requires consideration of underlying aims, motives and incentives, including what may be disclosed by the testimony of the parties, the basis and reason for the payment, the payor's characterization and treatment of the item in its returns and books, the terminology of authorizing resolutions, and the surrounding circumstances. If no services were contracted for or rendered by the recipient, then the payment would normally be a gift; conversely the fact that the recipient was expected to or did render services would indicate that the payment was intended as compensation.

In G.C.M. 5881, VIII-1 C. B. 68, the Bureau of Internal Revenue ruled that an award, made to the taxpayer by a charitable foundation in recognition of his achievements in science and his services in promoting the public welfare, was a gift and not income.

In I.T. 3756, 1945 C.B. 64, the Bureau ruled that tuition and maintenance stipends paid to non-salaried nurses taking post-graduate

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-4-

May 5, 1948.

training in public work, medical social work, crippled children's services, etc., there being no employment agreement nor any commitment by the individuals except a pledge to continue in the field of public health work upon completion of the course, represented gratuities in aid of the accomplishment of the public benefit involved, and were not wages subject to withholding of income tax.

There does not appear to be any published ruling with respect to the taxability of Nobel prizes, Guggenheim or Rockefeller fellowships, Rhodes scholarships or the like, which have long been awarded on a competitive basis to scientists, scholars and students, and it may be inferred that the Bureau's practice has been to the contrary.

The most important precedent which has reached the United States Supreme Court on this subject is Bogardus v. Commissioner of Internal Revenue, 302 U. S. 34, 58 S. Ct. 61, decided in 1937, with four of the nine justices dissenting. There additional payments made by a corporation to employees upon authority of stockholders in gratitude for services rendered in the past was held to be a gift and not compensation, the Court placing its decision upon the basis that "intention must govern", and that gratitude for a job well done and not a desire to pay additional compensation motivated the payments. The minority of the Court, though not accepting the decision of the majority, did accept the test that "what controls is the intention with which payment, however voluntary, has been made", but felt that "the categories of 'gift' and 'compensation' are not always mutually exclusive" but can at times overlap; that what controls is not the presence or absence of considera-

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-5-

May 5, 1948.

tion, but the intention with which payment has been made.

Many other decisions which we have examined serve only to emphasize what we have said above, i.e., that each case must be decided upon the particular facts pertaining to it. (Lougee v. Commissioner, 26 B.T.A. 23, aff'd 63 F. 2d 112; Levey v. Commissioner, 26 B.T.A. 889, aff'd 68 F. 2d 401; Roerich v. Commissioner, 38 B.T.A. 567, aff'd 115 F.2d 39, cert. den. 312 U. S. 700, 61 S. Ct. 739; Warrick v. Commissioner, 44 B.T.A. 1068; Ginn v. Commissioner, 47 B.T.A. 41; Wood v. Commissioner, 6 T. C. 930; Schairer v. Commissioner, 9 T. C. 549; Thomas v. Commissioner, 135 F. 2d 378; and McDermott v. Commissioner, 150 F. 2d 585.

The evidence on the intention with which payments are made by the Institute to members is bottomed in all cases by the provisions of the Institute charter and by-laws, the founders' invitation letter to trustees dated June 6, 1930, and the remarks of the Director at the organization meeting. In all of these it is stated either expressly or by implication that the objective was to establish an institute for advanced study and for the promotion of knowledge and the training of students and workers; to create an institution where scientists and scholars may devote themselves to research and training of others; and to assemble a group of scientists and scholars who with their pupils and assistants may devote themselves to the task of pushing beyond the present limits of human knowledge and to training others to carry on in this sense. The founders' letter further states that:

"In endowing this institution we recognize that many worthy and capable persons are unable for financial

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-6-

May 5, 1948.

reasons to pursue study or research to the extent justified by their capacities. It is expected, therefore, that the Institute will supply means whereby through scholarships or fellowships such workers may be supported during the course of their work or research, to the end that the facilities of the institution may be available to any man or woman otherwise acceptable possessing the necessary mental and moral equipment.****

While the institution will devote itself to the teaching of qualified advanced students, it is our desire that those who are assembled in the faculty or staff of the institution may enjoy the most favorable opportunities for continuing research or investigations in their particular field or specialty, and that the utmost liberty of action shall be afforded the said faculty or staff to that end.****

The primary purpose is the pursuit of advanced learning and exploration in fields of pure science and high scholarship to the utmost degree that the facilities of the institution and the ability of the faculty and students will permit."

Thus it is clear that it was recognized from the inception that in order to excite the interest and inspire attendance, research and study at the Institute of persons otherwise qualified who might be deterred by financial worry and concern for the future, the Institute would expect to furnish grants or subventions, whether called this or scholarships or fellowships, in order that the persons invited to participate might be supported during the course of their work or research, and might be free from concern for their future.

Thus, as to members, the expectation would be that the payments to them would be gifts or grants to arouse and inspire their interest and application to their studies or research, and not to compensate for any services; to encourage scholarly work, not to requite for any value received. There would be and there is no commitment whereby the product

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-7-

May 5, 1948.

of study and research by members would belong to the Institute; on the contrary, such as it may be, e.g. writings or inventions, it remains the property of the member.

The basic intent therefore appears, in the case of members, to be uniformly that of gift or grant in order to make it possible for the member to continue his studies and research. On the other hand, many other facts occur in the individual instances which affect the question and cast doubt upon the attitude of the Bureau of Internal Revenue should the question arise; and of course the most forceful of these factors are the elements of amount and duration of the payments, and at times the contractual nature of the obligation assumed by the Institute.

With all of the foregoing in mind, we have endeavored to the best of our ability to assess the facts pertaining to the cases of each of the individuals about whom you have inquired, and have come to the conclusions set forth, namely:

(1) James Alexander: Prior to December 16, 1947 he was professor in the faculty of the School of Mathematics. Finding conflict between these duties and his own work, he requested and was granted a leave of absence of apparently indefinite duration, and simultaneously was appointed a member with a "stipend" of \$7,500.00 a year, the Institute agreeing to continue contributions to T.I.A.A. It is stated that he has been relieved of all administrative and other duties formerly his as a member of the faculty and now performs no services for the Institute. The case, particularly in view of the past status, is one in which it is proper for the taxpayer to take the benefit of the doubt, classify the

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-8-

May 5, 1948.

stipend as non-taxable grant rather than compensation, and allow the matter to be reviewed by the revenue authorities whenever and however the question should arise.

(2) John C. Cooper: Appointed to five-year membership in July, 1945; stipend \$4,000.00 per year, which is apparently augmented by \$2,000.00 per year supplied by Rockefeller Foundation. Works independently on study of international civil aviation law. Mr. Cooper appears to have reported his stipend in the past for information purposes but not as taxable income, and the question has apparently not as yet been raised by the revenue authorities. This stipend is in our opinion not taxable.

(3) Hans Swarzenski: Present appointment for five years from July, 1947, with a "salary" of \$4,000.00, plus T.I.A.A. contribution. Reported to do independent research, superseding prior status as an assistant to Professor Panofsky. The appointment resolution of February 18, 1947 refers to payment of "salary"; but the contemporaneous appointment letter of the Director refers to this as "stipend", and also states that under a ruling of the Bureau of Internal Revenue the stipend will be free of income tax. We are not informed of any such ruling, and probably this was an erroneous statement unless made in a general sense. Our opinion in this instance too is that the facts permit the taxpayer to resolve the doubt in his favor, allowing the question to arise as it may.

(4) Abraham Pais: Appointment for five-year term in December, 1945; stipend then \$1,800.00; increased in December, 1946 to \$2,500.00; increased in June, 1947 to \$6,000.00. Conducts independent research in physics. However, the letter from the Director to him dated August 22,

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-9-

May 5, 1948.

1947, and apparently furnished for visa purposes, refers to "the nature of your duties at the Institute"; also that he "will be expected **** to participate in the training of younger physicists **** and from time to time to give courses in instruction *****". If the facts set forth in the Director's letter are correct, then it is apparently a part of the obligation in this instance that services be rendered, in which event the payment would be taxable. If this letter, directed to immigration and not tax questions, was inaccurate, then the payment would in our opinion not be taxable, for the case would come within the general "stipend" category. We are informed that in this case you have in the past treated payments as non-taxable, and have not withheld. This treatment can be continued only upon the hypothesis stated; otherwise it must be changed.

(5) Kurt Weitzman: Present appointment June, 1945; resolution of Executive Committee refers to "permanent status with tenure", also to "salary" of \$5,000.00 per year, plus T.I.A.A., and payable partly by Princeton University. Dr. Weitzman is said to do independent research. He has in the past been treated as taxable upon all his income, both from the Institute and from Princeton University. What has been said about Drs. Alexander and Swarzenski appears to be applicable here too, and notwithstanding the "tenure" and the phraseology regarding "salary", we think a good case can be made for treating the contributions of the Institute as non-taxable. Nevertheless in this instance, besides the several unfavorable factors mentioned, the Institute, by withholding in the past, has placed an interpretation on its relations

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-10-

May 5, 1948.

with Dr. Weitzman as his employer and treated the payments to him as salary. Accordingly, and especially since in our view nothing is to be gained from the Institute's standpoint by expediting any test case, and in addition this would be a particularly unfavorable "guinea pig", we are of the opinion that no change be now effected in this instance but that the payments continue to be treated as taxable and that withholding likewise continue.

(6) Kurt Godel: Present appointment as permanent member February, 1947; stipend \$6,000.00, plus T.I.A.A. contributions. The resolution refers to the terms of the appointment being such that under certain circumstances and if he should at any time "be unable to perform his duties, he should be retired on a pension of \$1500". The appointment letter of December 19, 1945 carries this out. Work is entirely advanced research in field of mathematics, done independently. In this case there is a considerable correspondence record on the subject of taxation, and the determination to treat Dr. Godel's income as taxable was apparently made upon consideration of refugee and immigration status. Dr. Godel apparently entered the country under a visa granted on the basis of professorial status. Although the basic consideration remain the same therefore, it would be difficult to sustain this as a non-taxable case, especially since there is apparently some thought of increasing the stipend to \$9,000.00. We think that in view of the past record, the payments in this instance should be treated as taxable and withholding should continue; and independent decision may be made by Dr. Godel and his advisors upon the question of whether to test out his

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-11-

May 5, 1948.

status by filing claims for refund.

(7) Niels Bohr: The information supplied in this instance is most limited. There is apparently no formal appointment letter and no record in the minutes; and Dr. Bohr is apparently designated as a visiting professor invited for a temporary term to "work with members, give lectures, etc." In the absence of further evidence, we would confirm the decision to treat this income as taxable, and since Dr. Bohr is a Danish subject, withholding should be effected under the special provisions of the Internal Revenue Code relating to non-resident aliens. We understand that you have recently started to treat the payments to Dr. Bohr as non-taxable "stipend", but do not know the basis for this. If you wish us to reconsider his case, please furnish us with a more complete statement of the facts, and of the reasons for your treatment of the payments to Dr. Bohr as "stipend".

(8) P.A.M. Dirac: Appointment February, 1947 as visiting professor for the 1947-8 term; salary \$12,000.00. The provisions of the tax treaty between this country and the United Kingdom provide that residents of the United Kingdom teaching here at a university or college are exempt from taxation on the income from such services if they are temporarily in the United States for a period not in excess of two years. This case appears to come within the treaty, and for that reason alone the payments appear to be non-taxable. However, it would appear that Dr. Dirac's stay may be in excess of two years, interrupted only by annual absences of several months when he returns to England. Under these circumstances, we are doubtful as to whether each stay here

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-12-

May 5, 1948.

will be treated individually, as one for less than one year, or whether the several interrupted stays will be treated as a continuous period exceeding two years. This is a proper case in which, in our opinion, rulings should be obtained from the Bureau of Internal Revenue.

(9) H. T. Wade-Gery: Appointment December, 1945 as visiting professor for academic year 1947-8; salary \$6,000.00, plus additions to cover certain expenses. This case also appears to come within the British tax treaty, and the payments should for that reason be treated as non-taxable.

(10) David Mitrany: Appointment May, 1946 for one month's "consulting work" each year. The Director of the Institute wrote a letter on March 21, 1947 referring to Dr. Mitrany as a permanent member; to the payment to him of a "research stipend" of \$1,200.00; that this was to facilitate research and not in compensation for services. It is not quite clear that Dr. Mitrany's attendance at the Institute is for the purpose of "teaching", but giving the broadest interpretation to the phraseology of the treaty and bearing in mind its broad intent, we think it may be said that the income is in this instance not taxable either because it is not paid as compensation for services or because if it is the services are in the nature of "teaching" and come within the treaty.

(11) Walther Mayer: Originally appointed 1932; present appointment is apparently technically as Assistant to Dr. Einstein. Letters uniformly refer to payments to him as "salary". Amount now appears to be at the rate of \$5,300.00 per year. Work is stated as independent research in topology. The record already established

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-13-

May 5, 1948.

would make it extremely difficult to treat the payments in this instance as anything but what they have been called, and accordingly we would recommend continuing to treat this income as taxable.

(12) Nicolaas Hendrik Kuiper: This case is not covered by your memoranda to us, but is the subject of your letter of April 23, 1948, and our reply of April 29, 1948. The facts here are that Dr. Kuiper is Dutch; and on leave from a school in Holland to do research at higher mathematics at the Institute, his entry being effected under a student's visa expiring August 24th next. Stipend \$3,500.00. Dr. Kuiper has been invited to remain for another year. You have in the past carried him as an "assistant", and treated the payments as taxable salary, effecting withholding. As stated in our letter of April 29th, this appears to be clearly a stipend case; the payments appear to be non-taxable; and withholding should be discontinued; and any moneys withheld during 1948 should be paid over. The subject of filing claim for refund for 1947 has been treated fully in our earlier letter.

Accordingly our conclusion would be that there should be no withholding in the cases of Dr. Alexander, Mr. Cooper, and Drs. Swarzenski, Pais, Dirac, Wade-Gery, Mitrany and Kuiper; and that there should be withholding in the cases of Drs. Weitzman, Godel, Bohr and Mayer.

We would further recommend that the considerations which have been described in this letter be borne in mind in connection with all future appointments and arrangements, and that correspondence, minutes and resolutions, appointment letters and all other writings be phrased appropriately; that the words "salary" or "compensation" be used only

MAASS, DAVIDSON, LEVY & FRIEDMAN

Dr. J. Robert Oppenheimer

-14-

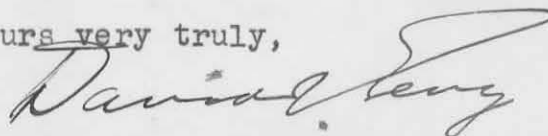
May 5, 1948.

where clearly appropriate; and that even the use of the term "stipend" be discontinued and replaced by a word more clearly reflecting the non-compensatory character of the payment, e.g., grant, grant-in-aid, subvention or scholarship.

We would further recommend that the Institute refrain in all doubtful cases from making any representation to the member as to whether the payment to him will be taxable or non-taxable; and that in all instances in which the Institute resolves doubtful cases by deciding against withholding, it advise the member of the tenuous character of the problem, and request from him a suitable letter of indemnity, whereby the member will affirm his responsibility for any withholding taxes which the revenue authorities may subsequently seek to establish against the Institute in respect of the payments to that member against which no withholding will be made.

Lastly, we recommend that the Institute do whatever may be necessary to insure that whenever any member whose case may affect those of others at the Institute should take any step, or have any communication from the revenue authorities, which may involve the problem to which this letter is directed, you be notified promptly, and are afforded the opportunity to consult and advise, and if deemed necessary participate, directly or indirectly, in the presentation of whatever question may be under consideration with the revenue authorities.

Yours very truly,



For MAASS, DAVIDSON, LEVY & FRIEDMAN.

DJL:JR