

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES A. AND VILIA Y. MICHAELSEN :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~1971 & 1972~~ :
1971 & 1972

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of October , 1978 , she served the within

Notice of Decision by (certified) mail upon James A and
Vilia Y. MichaelSEN

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: James A. & Vilia MichaelSEN
Calhoun Drive
Greenwich, Connecticut 06830

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~(of the)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

13 day of October , 1978

Walker

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES A. AND VILIA Y. MICHAELSEN :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (X) 22 of the :
Tax Law for the Year(s) ~~XXXXXXXXXX~~ :
1971 & 1972

State of New York
County of Albany

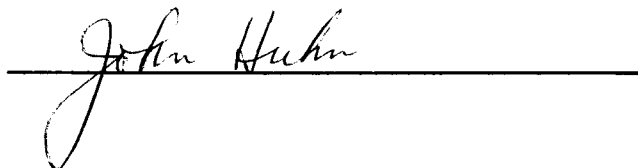
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of October , 1978 , he served the within
Notice of Decision by (certified) mail upon Jerome P.
Schaffer, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jerome P. Schaffer, CPA
666 Fifth Avenue
New York, NY 10019
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

13 day of October , 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

October 13, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**James A. & Vilia Michaelson:
Calhoun Drive
Greenwich, Connecticut 06830**

Dear Mr. & Mrs. Michaelson:

Please take notice of the **Decision**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrwaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES A. and VILIA Y. MICHAELSEN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	

Petitioners, James A. and Vilia MichaelSEN, Calhoun Drive, Greenwich, Connecticut 06830, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 00580).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 26, 1976 at 9:15 A.M. Petitioners appeared by Jerome P. Schaffer, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether stock options exercised by a nonresident taxpayer are items of tax preference subject to the New York State minimum income tax.

FINDINGS OF FACT

1. Petitioners, James A. and Vilia Y. Michaelson, were residents of the State of Connecticut during 1971 and 1972 and were never residents of New York State.

2. Petitioners filed New York State income tax nonresident returns for 1971 and 1972, together with minimum income tax computation schedules (Form IT-220). On said schedules, petitioners failed to include as items of tax preference from New York sources, any portion of the amounts of Federal items of tax preference from stock options of \$216,200.00 and \$120,000.00, which petitioner James A. Michaelson realized in 1971 and 1972, respectively.

3. On July 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1971 and 1972, which held that amounts of Federal items of tax preference realized by petitioner James A. Michaelson in 1971 and 1972 (when he exercised stock options which he had received from his New York employer) were allocable as New York items of tax preference on the same basis as his salary income for each of said years. Other adjustments were also made in this Statement which are not being contested and which, therefore, are not at issue. Accordingly, a Notice of Deficiency was issued against petitioners on November 25, 1974, which proposed that the recomputed overpayment of \$5,555.00 for 1972 be applied against the liability computed for 1971. Petitioners agreed to this proposal, subject to any adjustment made as a result of this hearing.

4. Petitioner James A. Michaelson was employed in England by Avon Cosmetics, Ltd. from 1958 to August of 1965. In 1965 petitioner was promoted to Corporate Group vice-president and was reassigned to the executive office of Avon Products, Inc. in New York State.

5. On August 4, 1966 and on July 11, 1968, petitioner James A. Michaelson was granted qualified stock options for 4,000 and 6,000 shares, respectively, of Avon Products, Inc. stock.

6. Petitioner contended that the first option for 4,000 shares of stock was granted primarily as compensation for services which he rendered to his employer during his period of service in Europe. However, in a letter dated February 15, 1974, Wilbur R. Shook, Vice-President and Treasurer of Avon Products, Inc., stated that it was the policy of the company that stock options would not be granted to those who were executives of Avon's foreign subsidiaries prior to 1965.

7. Petitioner contended that the second option for 6,000 shares of stock constituted an incentive for future services to be rendered by him and that in granting said option, the stock-option committee considered both his past services as an executive of Avon Products, Inc.'s overseas subsidiaries, as well as his service to the parent company after his return to the United States.

8. Petitioner did not introduce copies of the stock-option plans, under which the options for 4,000 and 6,000 shares of stock were granted by his employer.

CONCLUSIONS OF LAW

A. That petitioner James A. Michaelsen has failed to sustain the burden of proof required to show that the separate stock options for 4,000 and 6,000 shares of stock constituted awards other than incentives for future services to be rendered by him.

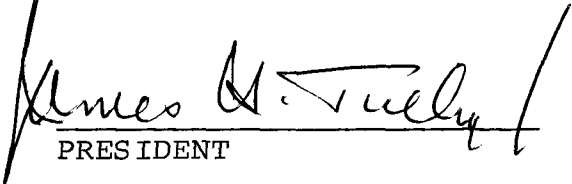
B. That petitioner James A. Michaelsen's Federal items of tax preference of \$216,200.00 and \$120,000.00 realized in 1971 and 1972, respectively, when he exercised stock options, constituted New York items of tax preference (within the meaning and intent of section 641(b) of the Tax Law) to the extent that the ratio which the percentage of his salary income allocable to New York for each of said years bore to the Federal items of tax preference from said stock options for 1971 and 1972, respectively.

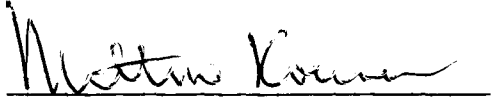
C. That the petition of James A. and Vilia Y. Michaelsen is denied and the Notice of Deficiency issued November 25, 1974 is sustained, together with such additional interest as may be legally owing. The Income Tax Bureau is directed to apply

petitioners' 1972 overpayment of tax of \$5,555.00 (plus such interest as may be owing) against the deficiency due for 1971, in accordance with petitioners' agreement thereto.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER