

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Paul P. Woolard	:	
& Elizabeth T. Woolard (Deceased)	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision	:	
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1973.	:	

State of New York
County of Albany

Jay Vredenburg, 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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Paul P. Woolard & Elizabeth T. Woolard (Deceased) the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul P. Woolard
& Elizabeth T. Woolard (Deceased)
116 E. 68th St.
New York, NY 10021

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of June, 1982.

Annie P. Haglund

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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Paul P. Woolard	:	
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1973.	:	

State of New York
County of Albany

Jay Vredenburg, 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 18th day of June, 1982, he served the within notice of Decision by certified mail upon James L. Garrity the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James L. Garrity
Garrity, Connolly, Lewis, Lowry & Grimes
605 3rd Ave.
New York, NY 10158

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
18th day of June, 1982.

Connie A. Haglund

J. Vredenburg

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

June 18, 1982

Paul P. Woolard
& Elizabeth T. Woolard (Deceased)
116 E. 68th St.
New York, NY 10021

Dear Mr. Wollard:

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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James L. Garrity
Garrity, Connolly, Lewis, Lowry & Grimes
605 3rd Ave.
New York, NY 10158
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
PAUL P. WOOLARD AND ELIZABETH T. WOOLARD
for Redetermination of a Deficiency or for
Refund of Personal Income Tax Under Article
22 of the Tax Law for the Year 1973.

DECISION

Petitioners, Paul P. Woolard, now residing at 116 East 68th Street, New York, New York 10021, and his wife, Elizabeth Woolard (now deceased), filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 18085).

Petitioner Paul P. Woolard has requested in writing that the State Tax Commission issue a decision in this matter without the necessity of a formal hearing.

The State Tax Commission hereby issues the following decision based upon the record as presently constituted.

ISSUES

I. Whether the notice of claim asserting a greater deficiency than that asserted in the original Notice of Deficiency is barred by the three year limitation on assessment.

II. Whether the notice of claim was timely issued.

III. Whether the gain realized by petitioners on the disqualifying disposition of stock acquired by the exercising of a qualified stock option, while petitioner Paul P. Woolard, a nonresident, was employed in the State of New York, is taxable as New York source income.

IV. Whether stock options received from a New York employer that are exercised by a nonresident and treated as federal items of tax preference are items of tax preference subject to New York minimum income tax.

V. Whether or not the provisions contained in Section 641 of the Tax Law are constitutional.

FINDINGS OF FACT

1. During the period 1967 through 1973, Paul P. Woolard and his wife Elizabeth T. Woolard were residents of the State of New Jersey.

2. Petitioners filed a New York State nonresident income tax return for the year 1973 in which Paul P. Woolard reported total federal income of \$238,606.17 and total New York income of \$127,795.00. He reported on said return on page 2, Schedule A under the federal amount column wages paid in the amount of \$153,346.05, and he reported wages of \$127,795.00 under the New York State amount column. The wages reported to New York State were determined from Schedule A-1, allocation of wage and salary income to New York State, and they were based on days worked in New York State (200) divided by total days worked in the year (240). Petitioners on line "9" (fully taxable pensions and annuities) indicated "Sale of option stock" in the amount of \$122,911.00 in the federal column but left blank the New York State column concerning same. Petitioners did not report any minimum tax on the aforementioned New York nonresident return for 1973.

3. On February 10, 1976, the Audit Division wrote petitioner Paul Woolard with respect to an audit of his 1973 New York State income tax return requesting a copy of federal Schedule D and all schedules submitted with the federal return relating to the sale of option stock, information regarding other income amounting to \$16,792.24 and a schedule of days worked within and without the

State of New York. A follow-up letter was sent to petitioners on May 6, 1976. Petitioners failed to submit the information requested.

4. On January 24, 1977, the Audit Division issued a Statement of Audit Changes against petitioners for the year 1973 which stated: "Since the information requested in our letters dated February 10, 1976 and May 6, 1976 has not been submitted, your New York income has been adjusted to the amount indicated on your withholding tax statement (\$153,346.05) and other income reported on Line 13, Schedule A, Page 1 of your return" The statement asserted additional tax of \$2,784.15 plus interest of \$580.08, for a total of \$3,364.23 and accordingly, on January 24, 1977 the Audit Division issued a Notice of Deficiency against petitioners for the year 1973 in the amount of \$3,364.23. Petitioners timely filed a petition with respect to said Notice of Deficiency.

5. On February 2, 1979, the Audit Division issued a notice of claim, to the representatives of the petitioners asserting a deficiency greater than that asserted against the petitioners in the 1973 Notice of Deficiency dated January 24, 1977, pursuant to Section 689(d)(1) of the Tax Law, in the amount of \$27,006.10. The greater deficiency is based on the stock option earned income (the gain realized on the disqualifying disposition of stock acquired by the exercising of a qualified stock option) of \$122,911.00 and the items of tax preference of \$229,120.00, on the exercise of stock options, as being derived from or connected with an occupation carried on in this State and subject to New York State tax. Allocation of personal service compensation was allowed on the basis of 226 days over 240 days times \$153,346.00, equal to \$144,401.00 New York State salary income and this adjustment is not at issue.

6. Petitioner Paul Woolard did not attach to his New York return a New York State Minimum Income Tax Computation Schedule reporting the sum of his items of tax preference and minimum income tax.

7. In 1968, two stock options were granted to petitioner Paul P. Woolard by his employer, Revlon, Inc., the first on April 29, 1968 of 7,500 shares of common stock @ \$82.00 per share, the second on August 29, 1968 of 7,500 shares of common stock @ \$84.50 per share.

8. On November 17, 1969, a 50 percent stock dividend was declared by Revlon, Inc. which had the effect of increasing the aforementioned stock option grants and reducing the purchase price per share as follows:

<u>Date of Grant</u>	<u>Shares</u>	<u>Price Per Share</u>
4/29/68	7,500	
11/17/69 - 50% Div.	<u>3,750</u>	
	11,250 Sh.	54.667
8/29/68	7,500	
11/17/69 50% Div.	<u>3,750</u>	
	11,250 Sh.	56.333

9. On January 2, 1973, petitioner Paul P. Woolard exercised the aforesaid options as follows:

<u>Date of Grant</u>	<u>Shares</u>	<u>Option Price</u>	<u>Fair Market Price (\$73.50)</u>
4/29/68	11,250 Sh.	\$54.66 (\$614,925.00)	\$826,875.00
8/29/68	9,000 Sh.	\$56.33 (\$506,970.00)	\$661,500.00

The closing price of Revlon, Inc. stock on the New York Stock Exchange was \$73.50 on the date the options were exercised.

10. In September and October, 1973, petitioner Paul P. Woolard, sold 8,000 shares of the stock obtained under the grant dated April 29, 1969, as follows:

<u>Settlement Date</u>	<u>No. of Shares</u>	<u>Price</u>	<u>Net Proceeds Received</u>
9/26/73	5,000	\$68½	\$340,579.00
10/15/73	1,000	73½	72,629.00
10/18/73	2,000	74	147,037.00
			<u>\$560,245.00</u>
Cost of 8,000 shares at \$54.667			= 437,336.00
Gain on sale			<u>\$122,909.00</u>

The sale of said stock resulted in a disqualifying disposition of stock acquired by the exercising of a qualified stock option, since the stock was not held for the three year period required by the Internal Revenue Code. Treatment of the sale of stock as a disqualifying disposition is not in issue.

11. On December 31, 1973 petitioner Paul P. Woolard held and had not disposed of the following shares of option stock:

<u>Date of Grant</u>	<u>Date Exercised</u>	<u>Number of Shares</u>
4/29/68	January 2, 1973	3250
8/29/68	January 2, 1973	9000

In accordance with section 57(a)(6) of the Internal Revenue Code, petitioner reported as an item of tax preference \$215,816.00 in stock options. Based on information submitted the Audit Division determined an item of tax preference of \$229,120.00.

12. Petitioner's proposed Findings of Fact 1 through 21 have been accepted, except Findings of Fact 5 and 12 which have been corrected to agree with the evidence in the file. (see Findings of Fact 9 and 11, supra).

13. During the year 1973 petitioner Paul P. Woolard was employed by Revlon, Inc. in the State of New York. He was employed as Corporate Executive Vice President of Marketing and President of Revlon Domestic.

14. The stock option plan maintained by Revlon, Inc. states that the purpose of the Executive Stock Option Plan was:

"The purpose of the Revlon, Inc. Executive Stock Option Plan (the "Plan") is to secure for Revlon, Inc. (the "Company") and its stockholders the benefits which flow from providing corporate officers and key employees with the incentive inherent in stock ownership. It is generally recognized that stock option plans aid in retaining and encouraging competent executives and also furnish a means of attracting executives of exceptional ability to the Company..."

15. In computing the investment interest expense deduction for Federal tax purposes petitioners attached the following statement to Federal form 4952:

"Taxpayers' total interest expenses amounted to \$97,742.67. See Schedule "A", line 20.

Of said amounts (a) \$22,921.36 was expended for business, namely, to generate \$122,921.00 earned income on the sale of option stock..." (emphasis added).

16. No formal hearing was held in this matter for the year 1973 prior to the issuance of the notice of claim more fully set forth in Finding of Fact "5", supra.

CONCLUSIONS OF LAW

A. That section 689(d) of the Tax Law provides that if a taxpayer files with the State Tax Commission a petition for redetermination of a deficiency, the Commission shall have power to determine a greater deficiency than asserted in the Notice of Deficiency and to determine if there should be assessed any addition to tax or penalty under section 685 if claim therefor is asserted at or before the hearing.

B. That section 683(d)(1) of the Tax Law provides, in part, that the tax may be assessed at any time within six years after the return was filed if an

individual omits from the sum of his items of tax preference an amount properly includible therein which is in excess of 25% of the sum of the items of tax preference stated in the return.

C. That the notice of claim asserting a greater deficiency than the Notice of Deficiency dated January 24, 1977, was not barred by the three year limitation under section 683(a) of the Tax Law but was timely issued, pursuant to the provisions of sections 683(d)(1) and 689(d) of the Tax Law.

D. That Treas. Reg. Sec. 1.421-6(d)(7) provides in part that notwithstanding the other provisions of said paragraph, if said section is applicable because of a disqualifying disposition of stock acquired by the exercise of a qualified stock option, the taxable year of the employee for which he is required to include in his gross income the compensation resulting from such option is determined under section 421(b) of the Internal Revenue Code and, in the case of a disqualifying disposition of a share of stock acquired by the exercise of a qualified stock option, the amount of such compensation shall be subject to the limitation provided by section 422(c)(4) of the Internal Revenue Code and paragraph (b) of Treas. Reg. Sec. 1.422.1.

E. That the New York adjusted gross income of a nonresident individual shall be the sum of the net amounts of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in laws of the United States for the taxable year, derived from or connected with New York sources. The income received from the disqualifying disposition of stock purchased as a stock option constitutes compensation and said item of income is to be included in the New York adjusted gross income in accordance with the meaning and intent of section 632(a) of the Tax Law.

F. That section 422(b) of the Internal Revenue Code states in part that the term "qualified stock options" means an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation, to purchase stock of such corporation.

G. That since the stock options were granted to petitioner Paul R. Woolard for reasons connected with his employment by Revlon, Inc. at its office in New York City, New York, the exercising of such stock options was connected with New York sources in accordance with the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.2, and 131.4 (Matter of Billy C. and Rosamond G. Christensen, State Tax Commission, August 26, 1977).

H. That section 641(b) of the Tax Law provides in part that the term "items of tax preference" shall mean the items of tax preference, as defined in section 622(b) of the Tax Law, derived from or connected with New York sources, as such term is defined in section 632(b) of the Tax law, of a nonresident individual for the taxable year.

I. That based on Finding of Fact #11, supra; petitioner Paul P. Woolard realized an item of tax preference of \$215,816.00 from New York State sources when he exercised the stock options and said item constituted a New York item of tax preference within the meaning and intent of section 641(b) of the Tax Law to the same extent that wage income earned from Revlon, Inc. was allocated to New York State. (Matter of James A. and Vilia Y. Michaelson, State Tax Commission, October 13, 1978.)

J. That based on Finding of Fact "#11" and Conclusions of Law "I", supra, petitioner Paul P. Woolard correctly reported \$215,816.00 in stock options and the Audit Division is directed to modify the notice of claim, dated February 2, 1979, accordingly.

K. That section 689(e)(3) of the Tax law imposes the burden of proof with respect to a notice of claim increasing the deficiency upon the Tax Commission. Said burden of proof has been satisfied.

L. That the constitutionality of any of the provisions of the Tax Law cannot be reviewed at the administrative level but must be determined by the courts.

M. That the petition of Paul P. Woolard and Elizabeth T. Woolard is granted to the extent shown in Conclusion of Law "J", supra and in all other respects denied and the Notice of Deficiency dated January 24, 1977 and the notice of claim dated February 2, 1979 is sustained as modified.

DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER