

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH G. and VIRGINIA C. REED :

For a Redetermination of a Deficiency or
a Refund of Personal Income :
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1970 and 1971..:

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

JANET MACK

, 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 20th day of May , 1975 , she served the within

Notice of Decision (~~xx-De-xx-xx-xx-xx~~) by (certified) mail upon Kenneth G. and

Virginia C. Reed (~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. & Mrs. Kenneth G. Reed

4728 South Atlanta

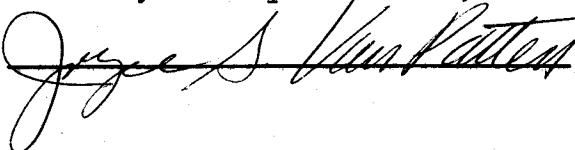
Tulsa, Oklahoma 74105

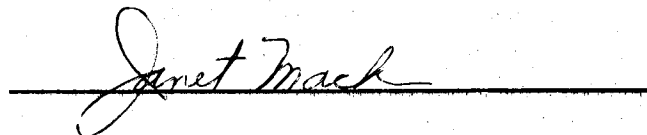
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

Sworn to before me this

20th day of May , 1975.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

~~James H. Tully, Jr.~~

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 20, 1975

Mr. & Mrs. Kenneth G. Reed
4728 South Atlanta
Tulsa, Oklahoma 74105

Dear Mr. & Mrs. Reed:

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

Please take further notice that pursuant to
Section ~~(8)~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KENNETH G. and VIRGINIA C. REED	:	DECISION
for a Redetermination of Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970 and 1971.	:	

Kenneth G. and Virginia C. Reed, 4728 South Atlanta, Tulsa, Oklahoma 74105, have filed a petition for redetermination of a deficiency of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971.

Said deficiency was asserted by notice issued February 26, 1973, under file number 1-79283813 in the amount of \$2,268.76 plus interest of \$140.98 for a total of \$2,409.74.

Petitioners have waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

The issue in this case is whether the petitioners, New York residents who had previously been nonresidents, must include as subject to the New York minimum income tax under section 601-A and 622 of the Tax Law, the total amount of a tax preference item arising out of the exercise of a restricted stock option; or whether a portion thereof can be accrued to the previous state of residence under section 654(c) as measured by the amount of tax preference accrued bargain element which would have been received if the option had been exercised on the day before petitioners became residents.

FINDINGS OF FACT

1. Petitioners, Kenneth G. and Virginia C. Reed, were residents of the State of Oklahoma prior to September 1, 1970, on which date they moved to the State of New York.

2. Mr. Reed was an employee of Amerada Hess Corporation. On April 1, 1961, petitioner, Kenneth G. Reed, had been granted an option to purchase 3,000 shares of the stock of Amerada Petroleum Corporation at a price of \$39.40 per share. This option is properly classified as a restricted stock option under section 424(b) of the Internal Revenue Code.

3. The option was freely exercisable by Mr. Reed on August 31, 1970, the day before he became a New York resident. On August 31, 1970, the fair market value of the underlying stock was \$81.875 a share or \$122,812.50 for 1,500 shares. If the option was exercised at that time, the profit and the item of tax preference would have been \$63,712.50.

4. On December 29, 1970, Mr. Reed exercised his stock option with respect to 1,500 shares. The price of the underlying stock at that time was \$101.63. His profit on each share was therefore \$62.23 and for the 1,500 shares amounted to \$93,345.00.

5. Mr. Reed reported as a 1970 Federal tax preference the \$93,345.00 profit on the stock option.

6. Mr. Reed reported on his New York resident return for the short period September 1 to December 31, 1970, the stock option profit of \$93,345.00 as a tax preference. He filed an amended return, however, on which he reports only the amount of \$29,632.50 as attributable to the stock option tax preference item.

7. The deficiency notice in issue makes certain adjustments not here in issue and includes the entire profit of \$93,345.00 as the stock option tax preference item.

CONCLUSIONS OF LAW

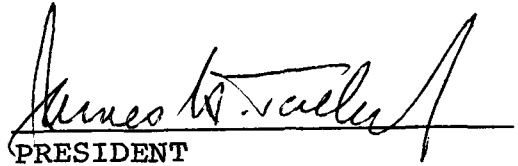
The exercise of a stock option is an item of tax preference under both Federal law (IRC 57(a)(b)) and New York law (Tax Law 622(b)). When a taxpayer has changed his residence, the full amount of the tax preference item must be accounted for under New York law at the same time it is accounted for under Federal law (see Tax Law section 654(b)), unless an accrual is permitted under Tax Law section 654(c). Even if a tax preference item is an item of "income" as referred to in section 654(c) an accrual under that section can not be permitted for a tax preference item arising from a stock option anymore than it would be for the underlying stock itself. In both cases any increase in value while the stock or stock option is merely held is of no importance for tax purposes. There is no authority for an "accrual" while stock or a stock option is held prior to its sale or exercise. It follows that in this case the entire amount of the tax preference item, without "accrual", must be included in New York minimum taxable income.

The deficiency is correct and is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York

May 20, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER