

N.Y. Comp. Codes R. & Regs. Tit. 20 § 132.24 - Stock options, stock appreciation rights and restricted stock

Tax Law, section 631(g)

(a) **General.**

A nonresident individual has New York source income from compensation received from stock options, stock appreciation rights or restricted stock if at any time during the allocation period the nonresident individual performed services in New York State for the corporation granting such options, rights or stock ("grantor"). A nonresident individual's New York source income from compensation received from stock options, stock appreciation rights or restricted stock is realized when the income is realized for Federal income tax purposes and is reportable to New York State in the taxable year that the income is included in the individual's Federal adjusted gross income.

(b) **Computation of New York source income.**

New York source income from stock options, stock appreciation rights or restricted stock is the amount

determined by multiplying the compensation by the New York workday fraction for the applicable allocation period.

(c) Definitions.

For purposes of this section:

(1) *Compensation* means the amount of compensation income attributable to stock options, stock appreciation rights or restricted stock that is required to be included in Federal gross income for the taxable year. In the case of statutory stock options (Internal Revenue Code, sections 422 and 423), the amount of income recognized for Federal income tax purposes may be reported as a capital gain, and in such case, the amount of the capital gain that is compensation is limited to the amount that is the lesser of:

(i) the difference between the option price and the fair market value of the stock at the time the option is exercised; or the gain (but not the loss) actually recognized for Federal income tax purposes at the time the stock is sold.

(2) *New York workday fraction* is a fraction the numerator of which is the number of days worked within New York State for the grantor during the allocation period and the denominator of which is the number of days worked both within and without New York State for the grantor during the allocation period. See section [132.18](#) of this Part for more information about what constitutes a working day within New York.

(3) *Allocation period* is:

(i) in the case of statutory stock options (Internal Revenue Code, sections 422 and 423), nonstatutory stock options that do not have a readily ascertainable fair

market value at the time of grant, and stock appreciation rights;

(a) the period of time from the date of grant to the date on which all service-related conditions for exercise of the option or right have been satisfied (the date that the option or right is vested) or, if the option or right is vested at the time of grant, the same period of time that applies to regular, non-stock-based remuneration from the grantor during the taxable year of the grant; or

(b) for a taxable year beginning in 2006, if elected by the individual, the period of time from the date of grant to the earliest of the date that the option or right is exercised, the date that the individual's services terminate, or the date that the compensation is recognized for Federal income tax purposes;

(ii) in the case of nonstatutory stock options that have a readily ascertainable fair market value at the time of grant (Internal Revenue Code, section 83[a]) and restricted stock where an election under section 83(b) of the Internal Revenue Code is made, the same period of time that applies to regular, non-stock-based remuneration from the grantor during the taxable year the option was granted or the restricted stock was received; or

(iii) in the case of restricted stock where an election under section 83(b) of the Internal Revenue Code is not made, the period of time from the date that the stock was received to the earliest of the date that the stock is substantially vested (transferable or not subject to substantial risk of forfeiture), the date that the individual's services terminate, or the date that the stock is sold, except that, with respect to the portion of the compensation related to the stock that is attributable to dividends paid on the stock, the same period of time that

applies to regular, non-stock-based remuneration from the grantor during the taxable year that such dividends were received.

In all cases, the allocation period may span multiple years and may include New York State resident periods.

(d) Examples.

Example 1:

On April 1, 2007, Company B compensates employee S with a grant of nonstatutory stock options that do not have a readily ascertainable fair market value when granted. The stock options permit S to purchase 10,000 shares of Company B stock for \$5 per share. The stock options do not become exercisable unless and until S performs services for Company B (or a related company) for the next 5 years. S continues to work for Company B for the next 15 years. From April 1, 2007 through March 31, 2011, S is a New York State nonresident who works within and without New York State. S's workdays within New York State during this time period total 720 days, and S's workdays both within and without New York State for this time period total 960 days. From April 1, 2011 to August 15, 2013, S continues to be a nonresident of New York State, but during this time period, only performs services for Company B outside New York State. From April 1, 2011 to March 31, 2012 (the date that the options become exercisable), S has a total of 240 working days, all of which were services performed outside New York State. On August 15, 2013, S exercises the options when the stock is worth \$12 per share. S recognizes \$70,000 in compensation for Federal income tax purposes ($[\$12 - \$5] \times 10,000$) in 2013. S's allocation period for computing New York source income is the 5-

year period between the date of grant (April 1, 2007) and the date that the stock options become exercisable (March 31, 2012) because, as of that date, S has performed all services necessary for exercise of the options. The services performed after the date that the stock options became exercisable are not taken into account in allocating the compensation from the stock options. Therefore, S's New York workday fraction for the 5-year allocation period is $720/1200$, and \$42,000 of the \$70,000 compensation recognized in 2013 is New York source income in 2013 ($720/1200 \times \$70,000 = \$42,000$).

Example 2:

Same facts as in *Example 1* except that the options granted were statutory stock options and the stock is sold on September 17, 2014, for \$11 per share. From August 16, 2013 to September 17, 2014, S continues to be a New York State nonresident who performs no services in New York State. In this situation, S recognizes a capital gain for Federal income tax purposes of \$60,000 ($[\$11 - \$5] \times 10,000$) when the stock is sold in 2014. S's compensation is limited to \$60,000 since the \$60,000 gain is less than the \$70,000 difference between the option price and the fair market value at the time of exercise ($[\$12 - \$5] \times 10,000$). S's allocation period for computing New York source income is the 5-year period between the date of grant (April 1, 2007) and the date that the stock options became exercisable (March 31, 2012) because, as of that date, S has performed all services necessary for exercise of the options. Therefore, S's New York workday fraction is $720/1200$, and \$36,000 of the \$60,000 compensation recognized in 2014 is New

York source income in 2014 ($720/1200 \times \$60,000 = \$36,000$).

Example 3:

Same facts as in *Example 2* except that the stock sells for \$14 per share. In this situation, S recognizes a capital gain for Federal income tax purposes of \$90,000 ($[\$14 - \$5] \times 10,000$) when the stock is sold in 2014. S's compensation is limited to \$70,000, the difference between the option price and the fair market value at the time of exercise ($[\$12 - \$5] \times 10,000$), and \$42,000 of the \$70,000 compensation recognized in 2014 is New York source income in 2014 ($720/1200 \times \$70,000 = \$42,000$). The \$20,000 increase in the value of stock after the exercise date is considered investment income, and is not New York source income for S.

Notes

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