

LEGAL VIEW Q&A

Applying out-of-state taxes to retirement stock options

Q: I worked for a New York company for many years, but moved to Florida two years ago and retired. My old New York employer had issued stock options to me when I worked in New York, and I plan to exercise them this year. Since I live in Florida, will I have New York taxes on the stock option income?



Paul R. Comeau

A: Unfortunately, New York allocates stock option income received by nonresidents. In your case, New York uses a formula that compares New York work days prior to your retirement with total work days for the same period. That percentage is then multiplied against the total option income and New York taxes its share. There is case law in New York challenging this approach, and new regulations are expected this year setting forth a new allocation method. At this time, we do not know what the new method will be. However, the new rules are **RETROACTIVE** and apply to any options

exercised after January 1, 2006. Therefore, your exercise in 2006 will be subject to the new, as yet unwritten, rules. It is safe to assume that the new rules, like the old, **WILL** require an allocation to New York State. There is some good news. If you worked in New York City but permanently reside in Florida when the exercise occurs, there will be no New York City income tax.

Paul R. Comeau is Chair of the law firm of Hodgson Russ LLP. He serves as co-editor of "New York Tax Service" and "New York Tax Cases," and is co-chair of the Multistate Tax Committee of the New York State Bar Association Tax Section. He lectures frequently throughout the U.S. He is co-author of "The New York Residency Audit Handbook," "Contesting New York State Assessments" and the New York Chapter of the "Sales and Use Tax Handbook" published by the American Bar Association. The above Question & Answer is provided for general informational purposes only and should not be considered as legal advice as to any specific matter. You should not act solely upon this information without consulting legal or other professional advisors.

Fish out of water



JON WAY/STAFF PHOTO

Daniela Echeverria has some fun with Billy the Marlin at the 2005 Sports Fans & Family Night. This year's event will be held Thursday, Aug. 17 from 5:30-9 p.m. at Wilt Chamberlain's restaurant, 8903 Glades Road, Boca Raton.

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