

1989 Conn. Op. Atty. Gen. 5 (Conn.A.G.), 1989 WL 505885

Office of the Attorney General

State of Connecticut

Opinion No. 89-2

February 1, 1989

\*1 The Honorable Timothy F. Bannon  
Commissioner of Revenue Services  
92 Farmington Avenue  
Hartford, Connecticut 06106

Dear Commissioner Bannon:

In your letter to us of October 24, 1988, you ask whether, in calculating corporate business tax, your agency should consider, as “other compensation” under [Conn. Gen. Stat. § 12-218](#), the exercise of a stock option of a corporate employee. Your staff has indicated that the type of stock option in question under the Internal Revenue Code is one which at the time of exercise results in income to the employee and a deduction for the corporate employer. You wish to know whether this income should be considered compensation. We conclude that the income is compensation.

[Conn. Gen. Stat. § 12-218](#) sets forth the three factor apportionment formula to be applied to the net income of multistate corporations and provides in pertinent part, “[t]he second fraction, the payroll factor, shall represent the part of the total wages, salaries and other compensation to employees paid by the taxpayer” (emphasis added).

Following the mandate of [Conn. Gen. Stat. § 1-1\(a\)](#) which provides in pertinent part that words “such as have acquired a peculiar and appropriate meaning in the law shall be construed and understood accordingly,” the Connecticut Supreme Court in [Anderson v. Pension & Retirement Board](#), 167 Conn. 352, 355, 355 A.2d 283 (1974), recognized that “compensation” was whatever an employer provided in return for services, namely, “[c]ompensation” is a generic term when used with reference to services and has been defined as “salary, fees, pay, remuneration for official services performed, in whatever form or manner or at whatsoever periods the same may be paid.” (emphasis added).

With respect to stock options as compensation, the United States Supreme Court in [Commissioner v. LoBue](#), 351 U.S. 243, 247 (1956), rejected a narrow definition of compensation and stated:

But there is not a word in § 22(a) [of the Internal Revenue code of 1939] which indicates that its broad coverage should be narrowed because of an employer's intention to enlist more efficient service from his employees by making them part proprietors of his business. In our view there is no statutory basis for the test established by the courts below. When assets are transferred by an employer to an employee to secure better services they are plainly compensation. It makes no difference that the compensation is paid in stock rather than in money. Section 22(a) taxes income derived from compensation “in whatever form paid.” And in another stock option case we said that § 22(a) “is broad enough to include in taxable income any economic or financial benefit conferred on the employee as compensation, whatever the form or mode by which it is effected.” [Commissioner v. Smith](#), 324 U.S. 177, 181. LoBue received a very substantial economic and financial benefit from his employer prompted by the employer's desire to get better work from him. This is “compensation for personal service” within the meaning of § 22(a).

\*2 Moreover, Jerome R. Hellerstein in [State Taxation: Corporate Income and Franchise Taxes](#) (1983), pp. 578-579, states: “Compensation” the usual statutory term used, is defined by UDITPA as “wages, salaries, commissions and any other form of remuneration paid to employees of personal services,” and other State laws adopt essentially the same language. These provisions are modeled after the definition of wages in the Federal Unemployment Tax Act, and are generally construed in

accordance with the interpretation of that act by the Internal Revenue Service, as embracing all compensation for services as an employee, whether paid in cash or in kind, which is treated as gross income for Federal income tax purposes.

(Emphasis added).

Concerning the Federal Unemployment Tax Act, Hellerstein observes:

The Federal statute defines “wages” as “all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash,” excluding employer contributions to pension plans, payments (to plans or otherwise) on account of medical expenses, sickness, accident or disability, and death benefits. 23 U.S.C.A. §§ 3301-3311, 3306(b). It is to be observed that the exclusions are all items that do not constitute taxable income under the Internal Revenue Code. The State payroll factors are generally derived from the Model Unemployment Compensation Act, which is integrated with the Federal Unemployment Tax Act.

Id. at 579 n. 347. (emphasis added).

There is no indication of a limitation on the term compensation in [Conn. Gen. Stat. § 12-218](#), and in accordance with the above authorities, it is our opinion that the term “compensation” as used in the payroll factor in [Conn. Gen. Stat. § 12-218](#) includes the income resulting from the exercise of employee stock options.

Very truly yours,

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