

## Ninth Circuit Remands Stock Option Case

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The United States Court of Appeals for the Ninth Circuit found that a taxpayer cannot invoke Internal Revenue Code Section 83(c)(3) to defer the taxation of stock options exercised, but the court remanded the case for a determination of whether a deferral of taxes results from company restrictions barring the sale of the stock at the time of exercise. The taxpayer sought a refund of \$3.7 million in Medicare taxes paid on income earned when she exercised her stock options. Company policy prevented the sale of stock until January 2001, at which time the price of the company stock had fallen dramatically. Code Section 83(c)(3) allows taxpayers to defer recognition and valuation of income so long as a profitable sale of the stock acquired through the exercise of options could subject a person to suit under section 16(b) of the Securities Exchange Act of 1934. Section 16(b) forbids a corporate insider from profiting on a purchase made within six months of a sale of the corporation's stock. The taxpayer argued that (i) the vesting of her options constituted a purchase for Section 16(b) purposes, and (ii) the company policy restricting sale of stock could subject her to a suit under Section 16(b). The court disagreed holding that the grant of the options, rather than their vesting, was a purchase for Section 16(b) purposes, and Code Section 83(c)(3) does not apply to a company policy restricting the sale of stock. *Strom v. United States*, 9th Cir., No. 09-35175.