

New York State revises regulations on residency rules for personal income tax

In Brief

New York State Expands the Scope of its Residency Rule and Who Must File a Return with the Elimination of the "Temporary Stay" Safe Harbor

In a controversial move blamed on the recent economic downturn, the New York State Department of Taxation and Finance has become more stringent in the distinction between a permanent resident and a temporary resident of New York State.

The definition of the term "resident" has been changed by eliminating an exception for "temporary stays" in the state. Individuals not living in New York are considered residents of the state if "a permanent place of abode" is maintained and they spend more than 183 days of the tax year in New York. The previous regulation contained an exception that did not consider a place of abode as being permanent if it was maintained only during a "temporary stay," or for a "fixed and limited" period for the accomplishment of a "particular purpose."

Law firm partners, associates and management personnel sometimes used the temporary stay exception to avoid being taxed as New York residents. It was always questionable as to whether a stay was temporary and for a particular purpose or was permanent. There were often contested audits and even a few court cases that looked at what constituted a "fixed and limited" period of time.

Under the new regulation, a New York State tax return must now be filed by all individuals that have resided in the state for more than 183 days and maintained a permanent residence regardless of whether the stay was for a permanent or temporary purpose.

The regulations—found in 20 New York Codes, Rules and Regulations Section 105.20(e)(1), were published December 24, 2008 and will apply to tax years ending on or after December 31, 2008. Thus, any planning for the 2008 tax year has been virtually eliminated.

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Law Firm Services

Conclusion

Because of this amendment to the regulations we advise our clients that have spent more than 183 days in New York during the 2008 calendar tax year, and going forward, regardless of the purposes of that stay, to examine whether they may fall within the purview of this new regulation and be obliged to file a New York State tax return.

Our professionals at PwC have been dealing with residency issues and have been successful in helping clients comply with filing requirements. If we can assist your firm with any aspect of New York State filing requirements, please contact Stanley Kolodziejczak at (646) 471-3160, Gregg Sincoff at (646) 471-1335, or Nancy Regan at (646) 471-6104.

Solicitation

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