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- NY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND
REGULATIONS OF THE STATE OF NEW YORK
TITLE 20. DEPARTMENT OF TAXATION AND FINANCE
CHAPTER II. INCOME TAXES AND ESTATE TAXES
SUBCHAPTER A. NEW YORK STATE PERSONAL INCOME TAX
UNDER ARTICLE 22 OF THE TAX LAW
ARTICLE 1. GENERAL
PART 105. ACCOUNTING PERIODS AND METHODS AND
RESIDENT DEFINED
RESIDENT DEFINED

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105.20 Resident individual.

Tax Law, § 605(b)(1)

(a) General.

An individual may be a resident of New York State for personal income tax purposes, and taxable as a resident, even though such individual would not be deemed a resident for other purposes. As used in this Subchapter, the term *resident individual* includes:

- (1) all persons domiciled in New York State, subject to the exceptions set forth in subdivision (b) of this section; and
- (2) any individual (other than an individual in active service in the Armed Forces of the United States) who is not domiciled in New York State, but who maintains a permanent place of abode for substantially all of the taxable year (generally, the entire taxable year disregarding small portions of such year) in New York State and spends in the aggregate more than 183 days of the taxable year in New York State.

(b) Certain persons not deemed residents although domiciled in New York State. Any person domiciled in New York State is a

resident for personal income tax purposes for a specific taxable year, unless for that year such person satisfies all three of the requirements in paragraph (1) or all three requirements in paragraph (2) of this subdivision:

(1)

(i) such person maintains no permanent place of abode in New York State during such year;

(ii) such person maintains a permanent place of abode outside New York State during such entire year; and

(iii) such person spends in the aggregate not more than 30 days of the taxable year in New York State; or

(2)

(i) within any period of 548 consecutive days such person is present in a foreign country or countries for at least 450 days;

(ii) during such period of 548 consecutive days such person is not present in New York State for more than 90 days and does not maintain a permanent place of abode in New York State at which such person's spouse (unless such spouse is legally separated) or minor children are present for more than 90 days; and

(iii) during the nonresident portion of the taxable year with or within which such period of 548 consecutive days begins and the nonresident portion of the taxable year with or within which such period of 548 consecutive days ends, such person is present in New York State for a number of days which does not exceed an amount which bears the same ratio to 90 as the number of days contained in such portion of the taxable year bears to 548.

As long as an individual who is domiciled in New York State continues to meet the requirements of either paragraph (1) or paragraph (2) of this subdivision, such individual will be considered a nonresident of New York State for personal income tax purposes. However, where such individual fails to meet those conditions, such individual will be subject to New York State personal income tax as a resident. Where an individual domiciled in New York State claims to be a nonresident for any taxable year (or portion thereof), the burden is upon such individual to show

that such individual satisfied the requirements set forth in paragraph (1) or paragraph (2) of this subdivision.

Example:

B, a single individual, is domiciled in New York State. During the period July 2, 1988 through December 31, 1989 (a period of 548 consecutive days), B was present in a foreign country 463 days. During the above period, B was present in New York State a total of 50 days, 15 days during the period July 2, 1988 through December 31, 1988, and 35 days during 1989. Since B was present in a foreign country 463 days, B meets the requirements of subparagraph (i) of paragraph (2) of this subdivision.

B also meets the requirements of subparagraph (ii) of paragraph (2) of this subdivision, because the total of 50 days B was present in this State during this 548 consecutive day period is less than the maximum of 90 days allowed.

To ascertain whether B meets the requirements of subparagraph (iii) of paragraph (2) of this subdivision, B must determine if the number of days present in New York State during the period July 2, 1988 through December 31, 1988 exceeds the maximum allowed for the nonresident portion of the taxable year within which the 548 consecutive day period began. The maximum number of days B may be present in New York State during the period July 2, 1988 through December 31, 1988 is 30, determined by making the following computation:

183 (number of days in the nonresident portion of	/	548 ×	=	30 (maximum number of days B may spend in New
		90		

Since B was present in New York State 15 days during the period July 2, 1988 through December 31, 1988, B did not exceed the maximum of 30 days allowed for this period. Therefore, B meets the requirements of subparagraph (iii) of paragraph (2) of this subdivision.

Based on the information contained in this example, B meets all the requirements of paragraph (2) of this subdivision and would be considered a nonresident of New York State for income tax purposes during the period July 2, 1988 through December 31,

1989. Therefore, B would be required to file as a part-year resident of New York State for the taxable year 1988 and as a nonresident of New York State for the taxable year 1989.

(c) *Rules for days within and without New York State.* In counting the number of days spent within and without New York State, presence within New York State for any part of a calendar day constitutes a day spent within New York State, except that such presence within New York State may be disregarded if such presence is solely for the purpose of boarding a plane, ship, train or bus for travel to a destination outside New York State, or while traveling through New York State to a destination outside New York State. Any person domiciled outside New York State who maintains a permanent place of abode within New York State during any taxable year, and claims to be a nonresident, must keep and have available for examination by the Department of Taxation and Finance adequate records to substantiate the fact that such person did not spend more than 183 days of such taxable year within New York State.

(d) *Domicile.* (1) Domicile, in general, is the place which an individual intends to be such individual's permanent home - the place to which such individual intends to return whenever such individual may be absent.

(2) A domicile once established continues until the individual in question moves to a new location with the bona fide intention of making such individual's fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of such individual's former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, such individual's declarations will be given due weight, but they will not be conclusive if they are contradicted by such individual's conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if

the facts indicate that such individual did this merely to escape taxation.

(3) Domicile is not dependent on citizenship; that is, an immigrant who has permanently established such immigrant's home in New York State is domiciled here regardless of whether such immigrant has become a United States citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed such citizen's domicile by going to a foreign country unless it is clearly shown that such citizen intends to remain there permanently. For example, a United States citizen domiciled in New York State who goes abroad because of an assignment by such citizen's employer or for study, research or recreation, does not lose such citizen's New York State domicile unless it is clearly shown that such citizen intends to remain abroad permanently and not to return. (See subdivision (b) of this section for certain persons not deemed residents of New York State for a specific taxable year although domiciled in New York State.)

(4) A person can have only one domicile. If a person has two or more homes, such person's domicile is the one which such person regards and uses as such person's permanent home. In determining such person's intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive. It should be noted however, as provided by paragraph (2) of subdivision (a) of this section, a person who maintains a permanent place of abode for substantially all of the taxable year in New York State and spends more than 183 days of the taxable year in New York State is taxable as a resident even though such person may be domiciled elsewhere.

(5)

(i) Husband and wife. Generally, the domicile of a husband and wife are the same. However, if they are separated in fact, they may each, under some circumstances, acquire their own separate domiciles even though there is no judgment or decree of separation. Where there is a judgment or decree of separation, a husband and wife may acquire their own separate domicile.

(ii) Children. A child's domicile ordinarily follows that of such child's parents, until such child reaches the age of self-support and actually establishes his or her own separate domicile. Where the mother and father have separate domiciles, the domicile of the child is generally the domicile of the parent with whom such child lives for the major portion of the year. The domicile of a child for whom a guardian has been appointed is determined by the facts and circumstances of the situation and is not necessarily determined by the domicile of the guardian.

(6) Members of the Armed Forces. Section 514 of the Federal Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. Appx. § 574) provides that for purposes of taxation, an individual in the Armed Forces of the United States is not deemed to have lost such individual's domicile in any state solely by reason of being absent therefrom in compliance with military orders. Thus, such Federal law insures that an individual in the Armed Forces of the United States domiciled in New York State would not be deemed a domiciliary for income tax purposes in another state in which such individual is stationed. On the other hand, an individual in the Armed Forces of the United States domiciled in another state who is stationed in New York State would not be deemed a domiciliary, for personal income tax purposes, of New York State. The rule is, generally speaking, that the domicile of a person is in no way affected by service in the Armed Forces of the United States. A change of domicile has to be shown by facts which objectively manifest a voluntary intention to make the new location a domicile. It is possible for an individual in the Armed Forces of the United States to change such individual's domicile; however, the requisite intent is difficult to prove.

(e) Permanent place of abode.

(1) A *permanent place of abode* means a dwelling place of a permanent nature maintained by the taxpayer, whether or not owned by such taxpayer, and will generally include a dwelling place owned or leased by such taxpayer's spouse. However, a mere camp or cottage, which is suitable and used only for

vacations, is not a permanent place of abode. Furthermore, a barracks or any construction which does not contain facilities ordinarily found in a dwelling, such as facilities for cooking, bathing, etc., will generally not be deemed a permanent place of abode. A dwelling place maintained by a full-time student enrolled at an institution of higher education, as defined in section 606(t) (3) of the Tax Law, in an undergraduate degree program leading to a baccalaureate degree, and occupied by the student while attending the institution is not a permanent place of abode with respect to that student. A *full-time student* is an individual who is carrying a minimum courseload in such program of 12 credit hours per semester for at least two semesters, or the equivalent, during the individual's taxable year.

(2) The determination of whether an individual in the Armed Forces of the United States maintains a permanent place of abode outside New York State is not dependent merely upon whether such individual lives on or off a military base. This is only one of many factors to be considered in determining whether a permanent place of abode is being maintained outside New York State. Some of the other factors include the type and location of quarters occupied by such individual and members of such individual's immediate family and how and by whom such quarters are maintained. Barracks, bachelor officers' quarters, quarters assigned on vessels, etc., generally do not qualify as permanent places of abode maintained by an individual in the Armed Forces of the United States. Further, the maintenance of a place of abode by an individual in the Armed Forces of the United States outside New York State will not be considered permanent if it is maintained only during a duty assignment of a limited or temporary nature.

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