

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-15(8)I
Income Tax
November 17, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I150212A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether he and his wife are residents of Yonkers, as opposed to New York City, for purposes of paying personal income taxes, when the entire physical house in which they reside is located in Yonkers and the front yard is located in the Bronx.

We conclude that Petitioner and his wife are residents of Yonkers and are subject to the Yonkers resident income tax surcharge.

Facts

Petitioner and his wife own a property that straddles the Bronx/Yonkers border. Petitioner and his wife maintain their residence on the property, which has an address in Bronx, New York. The front yard of the property is vacant residential land in Bronx County, but the residential structure is located entirely on land in Yonkers, Westchester County. Petitioner and his wife pay property taxes to both New York City and Westchester County for the respective portions of the property in each jurisdiction. They do not maintain any residence in New York City nor do they work New York City.

Analysis

Petitioner asks whether he and his wife are residents of Yonkers and should pay personal income taxes to Yonkers rather than to New York City.

An individual who is domiciled in New York State and maintains a permanent place of abode in this state is a New York State resident. *See* Tax Law § 605(b). The definition of a resident of New York City or Yonkers is the same as the definition of a New York State resident, substituting New York City or Yonkers in place of New York State. *See* New York City Administrative Code § 11-1705(b)(1)(A), and (B); Yonkers Income Tax surcharge § 15-99. Thus, for example, an individual who is domiciled in Yonkers and maintains a permanent place of abode in Yonkers would be considered a resident of Yonkers.

Section 105.20(d)(1) of the Personal Income Tax regulations defines “domicile” in relevant part as follows: “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.” Paragraph (e) of the same regulation in relevant part defines a permanent place of abode as “...a dwelling place of a permanent nature maintained by the taxpayer....” (20 NYCRR § 105.20(e)(1))

The property was purchased by Petitioner in July 2014. The house, which is a dwelling place of a permanent nature maintained by the taxpayer, qualifies as a permanent place of abode. A survey of Petitioner's property, provided with the Petition, indicates that the residence is located entirely within the boundaries of Yonkers. The portion of the property that is located in the Bronx consists entirely of vacant land. Insofar as Petitioner does not work in New York City or maintain another residence in New York City, we will assume for purposes of this opinion that Petitioner has established the intent to be domiciled in the residence in Yonkers. Thus, Petitioner, who is domiciled in Yonkers and maintains a permanent place of abode wholly within the boundaries of Yonkers, meets the definition of a Yonkers resident for purposes of the Yonkers personal income tax. He and his wife are subject to the Yonkers resident income tax surcharge on and after the date they purchased the property in Yonkers.

DATED: November 17, 2015

/S/

DEBORAH R. LIEBMAN
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.