

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-89 (7) I
Income Tax
September 15, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I890512A

On May 12, 1989, a Petition for Advisory Opinion was received from Norbert F. Abend, Jr. 205 S. Townsend Street, Syracuse, New York 13202.

The issue raised is whether Petitioner, Robert F. Abend, Jr.'s, living aboard a boat outside New York State constitutes a permanent place of abode for determining domicile for personal income tax purposes under Article 22 of the Tax Law.

Petitioner is in the process of purchasing a sailboat upon which he and his family will live. The boat will be used on the southern east coast of the United States, the Bahamas, the Caribbean, etc. The boat will never be present in New York State. Petitioner will not maintain a permanent place of abode in New York State nor will he spend more than 30 days in New York State. Petitioner contends that the boat will be the permanent living place.

Section 102.2(d) of the Income Tax Regulations defines domicile, in pertinent part, as follows:

(1) Domicile, in general, is the place which an individual intends to be his permanent home—the place to which he intends to return whenever he may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his 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 his 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, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicate that he did this merely to escape taxation in some other place.

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(4) A person can have only one domicile

Section 102.2 (e) of the Income Tax Regulations defines permanent place of abode, in pertinent part, as follows:

(1) A "permanent place of abode" means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her 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 only contains bachelor-type quarters but 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. Also, a place of abode, whether in New York State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. For example, an individual domiciled in another state may be assigned to his employer's New York State office for a fixed and limited period, after which he is to return to his permanent location. If such an individual takes an apartment in New York State during this period, he is not deemed a resident, even though he spends more than 183 days of the taxable year in New York State, because his place of abode is not permanent. He will, of course, be taxable as a nonresident on his income from New York State sources, including his salary or other compensation for services performed in New York State. However, if his assignment to his employer's New York State office is not for a fixed and limited period, his New York State apartment will be deemed a permanent place of abode and he will be a resident for New York State personal income tax purposes if he spends more than 183 days of the year in New York State. The 183-day rule applies only to taxpayers who are not domiciled in New York State.

In Starer v. Gallman et al., 50 AD2d 28, the court held that where a merchant seaman lives in a stateroom on a ship, such stateroom can hardly, either in law or logic, be considered a residence in the home port city.

In Matter of Robert G. Allan, Sr. and Cecelia Allan, St Tax Commn, August 6, 1980, TSB-H-80-(304)-I, the Commission found that there was no change of domicile where among other things the petitioners "moved" into their yacht berthed in a leased "slip" located in Florida.

To change one's domicile requires an intent to give up the old and to take up the new, coupled with an actual acquisition of a new residence in the new locality. Babbin v. State Tax Commission, 67 AD2d 762. Absent such intent, the existing domicile will continue until a new one is established.

The burden of proof is on the Petitioner to prove that he had the required intention to effect a change in domicile. Such intent is measured by "whether the place of habitation is the

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permanent home of a person, with the range of sentiment, feeling and permanent association with it." Bodfish v. Gallman, 50 AD2d 457, 458. Even if it were to be conceded that Petitioner evidenced an intent to abandon his New York domicile, by living aboard his sailboat, whether at sea or docked at port, Petitioner will not have evidenced an intent to take up a new residence to which he has attached the full range of sentiment, feeling and permanent association required to establish a new domicile. Accordingly, Petitioner and his family will continue to be domiciliaries of New York State.

Furthermore, section 605(b)(1) of the Tax Law provides that a resident individual means an individual who is domiciled in New York State, unless the individual maintains no permanent place of abode in New York State, does maintain a permanent place of abode elsewhere, and spends in the aggregate not more than 30 days of the taxable year in New York State. Based on the facts presented, Petitioner's living aboard his sailboat will not constitute the maintenance of a permanent place of abode. Therefore, Petitioner will not have met the requirements of section 605(b)(1) of the Tax Law so as to be treated as a nonresident. Accordingly, Petitioner and his family will continue to be residents of New York State for the taxable years they continue to live aboard the sailboat.

DATED: September 15, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.