

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

TSB-A-94 (14) I
Income Tax
January 4, 1995

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I940810C

On August 10, 1994, a Petition for Advisory Opinion was received from Freundlich & Company, 425 Park Avenue, New York, New York 10022.

The issue raised by Petitioner, Freundlich & Company, is whether, based on the facts stated below, an individual would be subject to New York State personal income tax for taxable year 1994 and subsequent sequential tax years.

The individual lives in, is a resident of and is domiciled in the State of Florida. The individual has continuously lived in, has been a resident of and has been domiciled in Florida for the last 15 years. All of the indicia of domicile, including but not limited to, voter registration, driver's license, ownership of condominium apartment in Florida, bank and brokerage accounts, etc. have been in or from Florida.

The individual usually comes to New York State, or other northern states, for the period mid-May through September. At present, the individual is considering the purchase of a cooperative apartment in the County of Queens, City of New York. The individual would personally stay in such apartment from June through September. Other than an occasional gratuitous use by friends or family, the apartment would be vacant the remainder of the year. Moreover, the individual would not be physically present in New York State at any other time during the year.

Section 605(b) of the Tax Law defines a resident and nonresident individual as follows:

(1) Resident individual. A resident individual means an individual:

(A) who is domiciled in this state, unless (i) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state ... or

(B) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state ...

(2) Nonresident individual. A nonresident individual means an individual who is not a resident or a part-year resident.

Section 105.20(a) of the Personal Income Tax Regulations provides that an individual who is not domiciled in New York State is taxable as a resident when such individual maintains a permanent place of abode for substantially all of the taxable year (generally, the entire taxable year disregarding small portions of

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such year) in New York State and spends in the aggregate more than 183 days of the taxable year in New York State.

Section 105.20(e) of the Personal Income Tax Regulations defines a permanent place of abode as a dwelling place permanently 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.

Herein, the individual is not domiciled in New York State, but when the individual purchases a cooperative apartment in Queens, such cooperative apartment will be a permanent place of abode pursuant to section 105.20(e) of the Personal Income Tax Regulations. (It is immaterial that it will be vacant a portion of the taxable year.) Therefore, the individual will be considered a resident of New York State, pursuant to section 605(b) of the Tax Law and section 105.20(a) of the Personal Income Tax Regulations, for any taxable year the individual maintains the permanent place of abode for substantially all of the taxable year, and spends in the aggregate more than 183 days of the taxable year in New York State. For any such taxable year the individual will be subject to personal income tax under Article 22 of the Tax Law.

Where the individual does not spend in the aggregate more than 183 days of the taxable year in New York State or does not maintain the permanent place of abode for substantially all of such taxable year, the individual will be considered a nonresident of New York State for such taxable year. As a nonresident of New York State, the individual will be subject to personal income tax for each taxable year that the individual has taxable income derived from sources in New York State (New York source income). For determining the New York source income of a nonresident individual, see section 631 of the Tax Law. Such New York source income is the numerator of the tax allocation fraction contained in section 601(e) of the Tax Law.

DATED: January 4, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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