

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

TSB-A-94 (15) I
Income Tax
January 5, 1995

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I940923A

On September 23, 1994, a Petition for Advisory Opinion was received from Roger Cukras as attorney for taxpayer, Mr. A., Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti, 250 Park Avenue, New York, New York 10177.

The issue raised by Petitioner, Roger Cukras as attorney for taxpayer, Mr. A., is whether Mr. A. will be a nonresident under section 605(b)(2) of the Tax Law and section 105.20(e) of the Personal Income Tax Regulations (Regulations) for the duration of his four year agreement to work in New York State.

Mr. A. is a partner in a law firm which is headquartered in State X and has offices in other states, including New York, and abroad. Mr. A. is domiciled in State X and will maintain his domicile there. Mr. A. has entered into an agreement with the law firm pursuant to which he will be the managing partner of the firm's New York office for a period of four years and will have an office in New York during that time. In this capacity, Mr. A. will be in charge of all day-to-day operations of the New York office. However, Mr. A. will continue during this four year period to have in State X substantial management and client relationship responsibilities for his firm and Mr. A. will continue to have an office in State X. Upon the expiration of the four year period, Mr. A. will return to State X and be exclusively engaged in the practice of law there.

During the term of his agreement, Mr. A. will split working days between his New York office and his office in State X. For some portion of the time Mr. A. spends in New York, his wife will accompany him. Mr. A.'s agreement with his firm also provides that when in New York he will have the use of a furnished apartment located in New York City which is paid for by his firm. The apartment was leased in the name of Mr. A. but his firm has assumed all obligations under and in connection with the lease. (All payments, including real estate commission, security deposit and rent are paid directly by the firm. As a matter of convenience, Mr. A. pays the utilities for such apartment.) During each of the four years of the agreement period, Mr. A. may spend more than 183 days in New York.

With respect to his current domicile in State X, Mr. A. will: (1) keep and maintain for his sole use his house in State X where his wife will spend a portion of her time, (2) file his U.S. income tax returns with his address in State X, (3) vote in State X, (4) lease substantial recreational property in State X, (5) maintain his driver's license in State X, (6) keep motor vehicles garaged and registered in State X, (7) retain a resident membership in a country club in State X and continue in various social clubs in State X, (8) maintain estate documents reciting State X as his domicile, (9) retain his address in State X for all other significant personal items such as credit card billings and passport address.

TSB-A-94 (15) I
Income Tax
January 5, 1995

Mr. A.'s grown children have resided in State X, although one child is temporarily in State Y for a two year period in conjunction with her husband's educational program. That child is expected to return to State X. All of Mr. A.'s significant personal possessions (including art work, other collectibles, etc.) will be maintained in State X.

Section 605(b)(1) of the Tax Law provides that a "resident individual" means an individual who is domiciled in New York State or is not domiciled in New York State but maintains a permanent place of abode in New York State and spends in the aggregate more than 183 days of the taxable year in New York State.

Section 605(b)(2) of the Tax Law provides that a "nonresident individual" means an individual who is not a resident or a part-year resident.

Section 105.20(e)(1) of the Regulations provides as follows:

A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by such taxpayer ... [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 such individual's employer's New York State office for a fixed and limited period, after which such individual is to return to such individual's permanent location. If such an individual takes an apartment in New York State during this period, such individual is not deemed a resident, even though such individual spends more than 183 days of the taxable year in New York State, because such individual's place of abode is not permanent. Such individual will, of course, be taxable as a nonresident on such individual's income from New York State sources, including such individual's salary or other compensation for services performed in New York State. However, if such individual's assignment to such individual's employer's New York State office is not for a fixed or limited period, such individual's New York State apartment will be deemed a permanent place of abode and such individual will be a resident for New York State personal income tax purposes if such individual 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 Charles N. Harper, Adv Op Comm T & F, February 7, 1994, TSB-A-94-(3)I, the petitioner was domiciled in Nebraska and entered into a four year employment contract with a corporation with offices in New York City and Omaha, Nebraska. Petitioner would spend time in both locations and spend in the aggregate more than 183 days of each of the taxable years in New York State. While in New York petitioner would be given the use of a company apartment in New York City. Petitioner would maintain his domicile in Nebraska and at the end of the contract, petitioner would return to Nebraska. It was held that petitioner's place of abode in New York City would not be permanent because Petitioner's employment in New York City would be of a fixed and limited period of four years.

Therefore, the petitioner would not be considered a resident of New York even though the petitioner would spend more than 183 days of each of the taxable years in New York. See, Price Waterhouse, Adv Op Comm T & F, November 9, 1993, TSB-A-

TSB-A-94 (15) I
Income Tax
January 5, 1995

93 (12) I.

Herein, Mr. A. is domiciled in State X and will maintain his domicile there. When Mr. A. entered into an agreement with the law firm to be the managing partner of the firm's New York office for a period of four years, Mr. A. will have an office in New York State as well as his office in State X. Mr. A. may spend in the aggregate more than 183 days of each taxable year in New York. While in New York, Mr. A. will have the use of a furnished apartment located in New York City which is paid for by his firm. The apartment was leased in the name of Mr. A. but his firm has assumed all obligations under and in connection with the lease. (All payments including real estate commission, security deposit and rent are paid directly by the firm. As a matter of convenience, Mr. A. pays the utilities for such apartment.)

Since Mr. A.'s employment in New York City is of a fixed and limited period of four years, Mr. A.'s place of abode in New York City is not permanent. See, Charles M. Harper, supra and Price Waterhouse, supra. Pursuant to section 605(b)(2) of the Tax Law and section 105.20(e) of the Regulations, Mr. A. will be a nonresident individual of New York State for the duration of his four year employment contract.

DATED: January 5, 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.