

Amendment to the Definition of Permanent Place of Abode in the Personal Income Tax Regulations Relating to Certain Undergraduate Students

The Tax Department has adopted an amendment to section 105.20(e)(1) of the Personal Income Tax Regulations. This amendment relates to the definition of *permanent place of abode* as it applies to certain full-time undergraduate students. Permanent place of abode is a factor used in determining whether a taxpayer will be considered a resident or nonresident for personal income tax purposes. The amendment applies to New York State, New York City, and Yonkers personal income taxes for tax years that **end** on or after December 31, 2009 (for calendar year filers, that means tax years 2009 and after).

Background

Under section 605(b)(1)(A) of the Tax Law, an individual who is domiciled in New York State will be treated as a nonresident for personal income tax purposes if the individual meets all of the following conditions:

- The taxpayer did not maintain any permanent place of abode in New York State.
- The taxpayer did maintain a permanent place of abode elsewhere.
- The taxpayer spent 30 days or less in New York State during the tax year.

Under section 605(b)(1)(B) of the Tax Law, an individual who is not domiciled in New York State will be treated as a resident for personal income tax purposes if that individual maintains a permanent place of abode in the state and spends more than 183 days of the taxable year in the state.

Section 105.20(e)(1) of the Personal Income Tax Regulations provides the definition of permanent place of abode for purposes of determining whether an individual is a resident or nonresident for personal income tax purposes under sections 605(b)(1)(A) and 605(b)(1)(B) of the Tax Law. In 2008, the Tax Department adopted amendments to section 105.20(e).

The 2008 amendments to the regulations repealed the language and related example that provided that a dwelling place would not be considered a permanent place of abode if it was maintained only during a temporary stay for the accomplishment of a particular purpose. As a result of those amendments, for tax years ending on or after December 31, 2008, New York State no longer recognizes a temporary stay exception in determining whether or not a taxpayer maintains a permanent place of abode inside or outside New York State (see TSB-M-09(2)I, *Amendments to the Definition of Permanent Place of Abode in the Personal Income Tax Regulations*).

Removing the temporary stay concept from the regulations had the result of treating certain college students who were not domiciled in New York State as residents for personal income tax purposes based on subtle distinctions among student housing situations. To address

this issue for tax years 2009 and after, the Tax Department has recently adopted an additional amendment to section 105.20(e)(1) to exclude dwelling places maintained and occupied by full-time undergraduate students pursuing a baccalaureate degree while enrolled at an institution of higher education from the definition of permanent place of abode.

Description of the 2009 amendment

Under the 2009 amendment, a *permanent place of abode* means a dwelling place of a permanent nature maintained by the taxpayer, whether or not owned by the taxpayer, and will generally include a dwelling place owned or leased by the taxpayer's spouse. However, 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.

For purposes of this new rule, a *full-time student* means an individual who is carrying a minimum courseload in a baccalaureate program of 12 hours per semester for at least two semesters, or the equivalent, during the tax year. Accordingly, the amendment does not provide an exception for graduate students pursuing a post-baccalaureate degree.

New York City and Yonkers

Since both the New York City and the Yonkers income taxes conform to the rules and regulations applicable to New York State income taxes, the amendment to the regulation described previously also applies to those taxes. (Note: In applying the rules for residency, the words *New York State* should be replaced by either the words *New York City* or *Yonkers*.)

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