

1978 Legislation

Definition of Resident

Chapter 790 of the Laws of 1978, enacted December 7, 1978, amended the definition of a resident under section 605(a)(1) of Article 22 of the New York State Tax Law and sections T46-105.0(1)(a) and U46-1.0(h) of the Administrative Code of the City of New York.

Chapter 675 of the Laws of 1977 provides a special rule based on presence in a foreign country or countries in its definition of a resident under the New York State Income Tax Law. This rule is applicable to taxable years beginning after December 31, 1977. The special rule provides that a person, even though domiciled in New York State, (or New York City in the case of a domiciliary of that city), would be considered a nonresident for purposes of the New York State income tax and New York City income and earnings taxes, if he meets all three of the following conditions:

1. within any period of 548 consecutive days he is present in a foreign country or countries for at least 450 days, and
2. during this 548 day period he is not present in New York State and/or the City of New York for more than 90 days and does not maintain a permanent place of abode in New York State and/or the City of New York at which his spouse (unless legally separated) or minor children are present for more than 90 days, and
3. during any period of less than 12 months which is within the 548 day period and which would be treated as a separate taxable period, he is present in New York State and/or the City of New York for no more than the number of days which bears the same ratio to 90 as the number of days in the less than 12 month period bears to 548. This condition is illustrated by the following formula:

$$\frac{\text{Number of days (less than 12 month period)}}{548} \times 90 = \text{number of days not to be exceeded in New York State and/or the City of New York.}$$

Prior to the enactment of Chapter 790, this special rule was not applicable to domicilaries of New York State (and/or New York City) who are:

1. employees of the United States, including members of the armed forces, or any of its agencies or instrumentalities or,
2. employees of New York State or any of its agencies, instruments, public corporations (including those created by agreement with another state or Canada), or political subdivisions.

The amendments provided in Chapter 790 of the Laws of 1978 have deleted the reference to employees of the United States and employees of New York State described above. Therefore, employees of the United States (including members of the armed forces) and employees of New York State described above may qualify as nonresidents if they meet all three of the special rule conditions. These amendments take effect immediately and apply to taxable years beginning after December 31, 1977.

This information does not appear in any of the 1978 forms and instructions which were printed prior to the enactment of this amendment.