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

TSB-M-86 (3)I
Income Tax
August 22, 1986

Change of Resident Status - Special Accruals

This memorandum supercedes Technical Services Bureau Memorandum TSB-M-79-(7)-I dated September 12, 1979, which should be destroyed.

Where the resident status of an individual changes from a New York resident to nonresident, the individual must accrue and report on the final resident income tax return certain items of income, gain, loss or deduction unless a bond or other acceptable security is filed with the Tax Department. Section 148.11 of the New York State Personal Income Tax Regulations has been amended to expand the types of security acceptable as collateral so as to avoid the accrual requirement.

Section 654(c)(1) of the Tax Law provides that where the resident status of an individual changes from resident to nonresident, the individual is required to accrue items of income, gain, loss or deduction, including any unrealized income or gain from an installment sale, on the final return covering the period prior to such change of residence. These accruals are required even though the individual normally reports such items on another accounting basis. The special accruals also apply to the computation of the minimum income tax.

Section 654(c)(4), however, permits the taxpayer to file the final resident return without the special accruals if the taxpayer files a bond or other acceptable security with the Tax Department and agrees to report the accruable amounts on future New York State nonresident income tax returns as if a change of resident status had not occurred.

If a surety bond is filed, it must be:

1. Executed by a surety company which is registered with, and under the supervision of, the New York State Insurance Department;

2. Approved by the Department of Taxation and Finance;

3. In the amount of the deferred tax;

4. Filed with the New York State income tax return for the period prior to the change of residence; and

5. Accompanied by properly executed Form IT-260 in triplicate.

"Deferred tax" is the additional personal income tax which would have been due if the items of income, gain, loss or deduction had been accrued (including any New York State minimum income tax which would be due if the New York items of tax preference had been accrued) on the final resident return.

In lieu of a surety bond, there may be filed collateral security acceptable to the Department. Section 148.11 of the Personal Income Tax Regulations provides that the following kinds of security will be accepted:

1. Certificated United States Treasury Bonds.

2. Certificated bonds of New York State.

3. Certificated bonds of any political subdivision of New York State having general governmental powers in connection with which the credit of the political subdivision is pledged for the payment of the interest and principal due on such bonds.

4. Bank passbooks and certificates of deposit.

5. Irrevocable standby letters of credit made payable to the New York State Department of Taxation and Finance.

Bonds offered as collateral must be certificated, and may be in either bearer or registered form. They must have maturity dates at least five years subsequent to the date of filing with the Department. If such bonds are of the coupon type, the interest coupons must be attached (though any interest accruing on bonds offered as collateral shall belong to the taxpayer). The dollar amount of the bonds required to be filed will generally be based on fair market value, determined as of the date of filing with the Department, of at least 1 1/2 times the amount of the deferred tax. Fair market value greater than the face value on the bond will not be recognized for this purpose. If United States Treasury Bonds are offered as collateral, the taxpayer must submit to the Department a properly completed United States Treasury Department Form PD 1832.

Bank passbooks and certificates of deposit offered as collateral must be in an amount not less than the amount of the deferred tax, and must represent money on deposit with a financial institution approved by the Department. Certificates of deposit must have a maturity date at least one year subsequent to the date of filing with the Department. Additionally, bank passbooks and certificates of deposit offered must be:

1. Prepared in the name of the taxpayer;

2. Accompanied by a signed, undated withdrawal slip; and

3. Accompanied by a letter prepared on the letterhead of the financial institution and signed by an officer thereof, identifying the passbooks or certificates of deposit by account number and confirming that withdrawal of principal from the passbook or certificate of deposit offered as collateral will not be permitted without written consent from the Department, and stating that any right of setoff which the financial institution may possess against the taxpayer shall be subordinated to the interest of the Department in the passbook or certificate of deposit offered as collateral.

Note: Any interest accruing on such bonds, passbooks or certificates of deposit shall belong to the taxpayer.

Standby letters of credit offered as collateral must:

1. Be irrevocable for such period of time as the Department shall determine;

2. Be made payable to the New York State Department of Taxation and Finance;

3. Be written for the amount of deferred tax rounded up to the next higher thousand dollars;

4. Be issued or confirmed by a bank approved by the Department; and

5. Contain such other payment terms as are acceptable to the Department of Taxation and Finance.

If any form of collateral security is filed in lieu of a surety bond, it must be accompanied by a properly executed agreement, Form IT-260.1, in triplicate.

The bond or security, Forms IT-260 and IT-260.1 and subsequent nonresident returns must be sent to the following address:

Income Tax Audit Administrator
Central Office Audit Bureau
Building 9 - W. A. Harriman Campus
Albany, NY 12227

These amendments are effective March 21, 1986.