

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

TSB-M-92  
(3) Income Tax  
(1) Estate and Gift Tax  
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New York's Tax Policy Relating to the Taxation  
of Intangible Personal Property of Nonresidents

The New York State Tax Department periodically receives inquiries from nonresidents or their representatives and from financial institutions as to what, if any, New York tax consequences may result if a nonresident individual, estate or trust maintains bank accounts or keeps securities or other intangible property with financial institutions in New York State. An explanation of this issue follows.

**General**

New York State has long maintained a tax policy that encourages nonresidents to keep their money, securities and other intangible property in New York State. In 1938, the continuation of this policy was firmly established in section 3 of Article XVI of the New York State Constitution, which provides, in pertinent part, that:

"Moneys, credits, securities and other intangible personal property within the state not employed in carrying on any business therein by the owner shall be deemed to be located at the domicile of the owner for purposes of taxation, and, if held in trust, shall not be deemed to be located in this state for purposes of taxation because of the trustee being domiciled in this state... Intangible personal property shall not be taxed ad valorem nor shall any excise tax be levied solely because of the ownership or possession thereof, except that the income therefrom may be taken into consideration in computing any excise tax measured by income generally."

The application of this constitutional provision to the various taxes administered by the New York State Tax Department is described below.

**New York State Personal Income Tax**

The New York State Personal Income Tax is imposed upon the New York source income, as defined in section 631 of the Tax Law, of every nonresident individual, estate or trust. Section 631(b) (2) provides that income from intangible personal property, including annuities, dividends, interest and gains from the

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disposition of intangible personal property, shall constitute New York source income (the numerator of the tax allocation fraction) only to the extent it is income from property employed in a business, trade, profession or occupation carried on in New York.

Section 631(d) further provides that a nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to be carrying on a business, trade, profession or occupation in this state solely by reason of the purchase and sale of property or the purchase, sale or writing of stock option contracts, or both, for his own account. The legislative intent behind section 631(d) was to encourage active trading in the exchanges in New York without concern that such activities might constitute engaging in a business in this state and thus subject a nonresident to tax (New York State Legislative Annual, 1976, p. 339).

New York City and Yonkers each impose an earnings tax on nonresident individuals, estates and trusts. The earnings taxes are imposed on wages earned and net earnings from self-employment within the applicable city. To constitute net earnings from self-employment, income must be derived from a trade or business carried on in the city. Income from intangible property, such as interest on corporate or governmental obligations\* and dividends, constitutes net earnings from self-employment only if received in the course of carrying on a trade or business as a dealer in stocks and securities. In addition, net earnings from self-employment does not include gains from sales of capital assets or other property that is neither inventory nor property held for sale to customers in the ordinary course of business.

The preceding rules also apply to nonresident estates and trusts, nonresident partners of partnerships, and to nonresident beneficiaries of either resident or nonresident estates and trusts. Income from intangible personal property attributable to these estates, trusts, partners and beneficiaries will

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\*Other interest received in the course of any trade or business, such as interest on bank accounts or notes receivable, does constitute net earnings from self-employment.

constitute New York source income only to the extent it is attributable to property employed in a business, trade, profession or occupation carried on in New York by the estate, trust, or partnership.

### **Estate and Gift Taxes**

Section 960 of the Tax Law imposes an estate tax on the net estate of nonresident decedents only to the extent of real and tangible personal property having an actual situs in New York State. The Tax Commission ruled on June 15, 1939, that a nonresident may maintain a bank account and keep his or her bonds, shares of stock and other intangible personal property in a safe deposit box, or in safe-keeping custodial or trust accounts in New York, or establish a trust in New York with a New York trustee without fear that the state of New York will assert a death tax on the transfer of the intangibles even though the administrator, executor or trustee is a New York resident or corporation. In addition, on August 12, 1942, the Tax Commission ruled that neither under the New York State Estate Tax Law nor under the New York State Constitution may intangibles of nonresident decedents be subject to the New York estate tax.

Section 1003 of the Tax Law provides that the New York taxable gifts of a nonresident are limited to transfers of real and tangible personal property having an actual situs in this state and to transfers of moneys, credits, securities and other intangible personal property within the state employed in carrying on any business therein by the donor. Accordingly, unless the intangible property has a business situs in this state, no gift tax liability would be incurred by a donor who is not domiciled in this state, even if the transfer was effected by the creation of a trust.

### **Generation-Skipping Transfer Tax**

Section 1022 of Article 26-B of the Tax Law imposes a generation-skipping transfer tax upon every generation-skipping transfer that includes New York property. Section 1021 defines New York property as real and tangible personal property having an actual situs in this state, intangible property within this state that is employed in a business, trade, profession or occupation carried on in this state and intangible property where the original transferor was a resident of this state at the time of the original transfer.

### **What Constitutes Property Employed in a Business, Trade, Profession or Occupation Carried on in New York State**

As previously related, except in the case of the estate tax and the situation involving resident transferors under the generation-skipping transfer tax, the taxability of a nonresident's intangible personal property, including the income derived therefrom, is dependent upon whether the property is employed in a business, trade, profession or occupation carried on in New York State. The following example illustrates the concept of property employed in a business, etc.:

Example: John Jones, a resident of New Jersey, operates a dry cleaners in New York City as a sole proprietor. In order to pay his business expenses, he maintains a checking account in the business name with a New York bank. He also maintains a personal savings and checking account with the same bank. All the accounts generate interest income. In addition, he maintains a personal investment account with a New York stockbroker, comprised of corporate stocks and bonds, including stocks and bonds of New York corporations. This account generates dividends and capital gains and losses.

Since the checking account for the dry cleaners is used in the conduct of John's business, this intangible is "employed in a business" and therefore the interest income generated by this account would be subject to the New York State personal income tax and, since it constitutes net earnings from self-employment, the New York City nonresident earnings tax. In addition, the value of the checking account would be subject to the gift tax or generation-skipping transfer tax, if applicable. However, the personal bank accounts and the investment account are not "employed in John's business" and that property, together with the income attributable to that property, would not be subject to any New York State or New York City taxes.

### **Procedural Provisions**

In addition to the tax protection that New York law allows nonresidents who keep intangibles within New York, the state places no procedural burdens upon the withdrawal of intangible

assets upon the death of the owner. (Section 13-3.4 of the Estates, Powers and Trusts Law.) This section provides that a New York custodian of personal property might deliver it to a foreign fiduciary without ancillary proceedings in New York State.

### **Summary**

In summary, a nonresident may maintain a bank account, and keep bonds, shares of stock and other intangibles in a safe deposit box, or in safe-keeping, custodial or trustee accounts, or establish a trust (of intangibles) with a trustee in New York State, without the fear that New York State, New York City or Yonkers will assert:

- (1) a property tax;
- (2) a personal income tax on the interest, dividends, gains or other income therefrom, except to the extent the intangibles are employed in a business, trade, profession or occupation carried on in this state;
- (3) a death or estate tax upon death, even though the administrator, executor or trustee is a New York resident or corporation;
- (4) a personal income tax against a trust created by a nonresident or a nonresident beneficiary of any such trust, except to the extent the intangibles are employed in a business, trade, profession or occupation carried on in this state;
- (5) a gift tax other than on the transfer of intangibles employed in a business carried on in this state by the donor; or
- (6) a tax on generation-skipping transfers against a trust created by a nonresident, except to the extent that the transfer consists of intangibles within this state employed in a trade, business or occupation carried on in this state, or where the original transferor was a resident at the time of the original transfer.

Furthermore, the domicile of the trustee, beneficiary or donee is not a factor in determining the imposition of the estate tax, gift tax or generation-skipping transfer tax.