

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS
DEPARTMENT OF TAXATION AND FINANCE

1. Effect of rule: This rule amends section 105.20(e)(1) of the personal income tax regulations to except 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.

This rule will not impose any requirements on local governments or small businesses. It will have an effect on New York City personal income tax discussed in the Regulatory Impact Statement. The rule imposes no reporting requirements, forms, or other paperwork upon small businesses beyond those required by existing law and regulations. The impact of the rule is not on small businesses but on certain non-domiciliary full-time undergraduate students who maintain and occupy places of abode while enrolled at institutions of higher education in pursuit of a baccalaureate degree.

2. Compliance requirements: The promulgation of this rule will not require small businesses or local governments to submit any new information, forms, or other paperwork.

3. Professional services: No small business or local government will be required to employ professional services to comply with this rule.

4. Compliance costs: These changes will place no additional burdens on small businesses and local governments. The change in the definition of permanent place of abode will affect certain full-time undergraduate students who are not domiciled in the State. See the Regulatory Impact Statement for a discussion of the impact on these individuals.

5. Economic and Technological Feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: The rule does not adversely impact small businesses or local governments. It will result in a revenue loss of approximately \$500,000 to New York City in State fiscal year 2009-10 and \$2 million in subsequent fiscal years. This is a result of returning some students to the status quo regarding their resident status as it existed prior to the 2008 amendments, which were estimated to increase New York City revenue by \$30 million annually.

7. Small business and local government participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. The Division also notified the New York City Department of Finance.

The New York State Bar Association Tax Section submitted comments. The Bar Association reiterated the position expressed in its comments on the 2008 amendments, to the effect that the temporary stay rule should not have been eliminated. For the reasons articulated in the Department's Assessment of Public Comment at the time, the 2008 amendments were adopted over this objection. The Bar Association also noted that this rule seems to be a return to the temporary stay concept for certain taxpayers. Notwithstanding these concerns, the Bar Association stated that the exception to the definition of permanent place of abode should be available to all full-time students, including graduate students. A certified public accountant made a similar comment. In a similar vein, the Bar Association recommended that the definition of full-time students contained in the amendments be changed to reduce the number of semesters a student must be enrolled at an

institution of higher education during the taxable year from two semesters to one. The Department considered these alternatives and concluded that the exception should be limited.

The Bar Association also voiced concern that the amendments change the basic terminology of section 105.20(e)(1) by focusing on the nature of the place of abode in determining permanency. Section 105.20(e)(1) states that “a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode. Furthermore, a barracks or any construction which does not contain facilities ordinarily found in a dwelling, such as facilities for cooking, bathing, etc., will generally not be deemed a permanent place of abode.” The language of the current regulation clearly links permanency to the nature of the abode, rather than the period over which it is maintained. Section 105.20(a)(2) defines a resident individual as one who is not domiciled in New York State, but who maintains a permanent place of abode for substantially all of the taxable year and spends in the aggregate more than 183 days of the taxable year in New York State. The temporal requirements for residency are separate from the requirement that an individual must maintain a permanent place of abode in New York State to be considered a resident. Whether a dwelling is permanent or not hinges on its suitability for habitation on a permanent basis.

The Bar Association also suggested that the Department make clear that the amendments do not require that the student’s dwelling be provided by the institution of higher education to be considered non-permanent, and that a domiciliary would continue to be considered a resident whether or not enrolled at an institution of higher education in New York State. We do not believe these changes are necessary.