

SUMMARY OF REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, subdivision First; 697(a); and 605(b)(1). Section 171, Subdivision First authorizes the Commissioner to make reasonable rules and regulations that may be necessary for the exercise of the Commissioner's powers and performance of the Commissioner's duties. Section 697(a) authorizes the Commissioner to adopt regulations relating specifically to the personal income tax. Section 605(b)(1) provides that an individual who is not domiciled in New York is considered a resident if the individual maintains a permanent place of abode in the State and spends more than 183 days of the taxable year in the State.

2. Legislative objectives: This rule is being proposed pursuant to this authority 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 under 20 NYCRR 105.20(e)(1).

3. Needs and benefits: The purpose of these amendments is to exclude places of abode 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 for purposes of determining residency status for personal income tax purposes. A dwelling, such as a traditional dormitory room that does not contain basic facilities, such as those for cooking or bathing, is currently not deemed a permanent place of abode for residency purposes under 20 NYCRR 105.20(e)(1).

In 2008, the regulations were amended to eliminate the "temporary stay" concept from the definition of "permanent place of abode". Prior to the 2008 amendment, a place of abode was not considered permanent under section 105.20(e)(1) if it was maintained only during a temporary stay for the accomplishment of a

particular purpose. Both a “particular purpose” and “fixed and limited period” test had to be satisfied in order for a stay to be considered temporary. Removing the temporary stay concept from the regulations rendered many college students previously not taxed as residents subject to personal income tax as statutory residents. Students living in traditional dormitories have not been taxed as statutory residents because dormitories lack the facilities to be deemed permanent places of abode under the regulations. This creates artificial distinctions among students who may or may not have the option of choosing between living in a dormitory and living elsewhere.

The Department conducts regular taxpayer outreach programs to assist taxpayers in complying with the Tax Law, and works with New York State colleges and universities to present programs directed toward their students. In the course of these outreach efforts, it became apparent that students were being required to determine their residency status for personal income tax based on subtle distinctions among housing situations.

Undergraduate student housing has evolved so that fine distinctions would have to be made between traditional dormitory housing and other styles of student residence to determine residency for personal income tax purposes. Moreover, students do not always have the option of choosing to live in a dormitory, depending upon the housing situation at a particular institution. These amendments would resolve these issues.

4. Costs:

(a) Costs to regulated parties: The rule does not impose any new compliance costs on the regulated parties, who will continue to be required to file a New York State income tax return as either residents or nonresidents, or be relieved of the obligation to file altogether. The rule may have an impact on the personal income tax liability and reporting responsibilities of particular taxpayers. The impact will depend on the particular circumstances of the taxpayer. Some undergraduate students currently taxed as residents as a result of the 2008 amendments will now be considered nonresidents. Treatment as a nonresident could result in a reduction of tax liability, because unearned income would generally not be considered New York source

income. On the other hand, some who are currently eligible to claim the New York State college tuition credit as residents will not be able to do so because the credit is not available to nonresidents. Additionally, some students currently required to file a New York State income tax return will no longer need to do so.

(b) Costs to the agency and to the State and local governments: It is estimated that the implementation and continued administration of this rule will not impose any compliance costs upon this agency, New York State or its local governments. It is estimated that the implementation and continued administration of the proposed rule will result in a revenue gain to the State of \$375,000 in State fiscal year (SFY) 2009-10 and \$1.5 million annually in subsequent fiscal years and a \$500,000 revenue loss to New York City in SFY 2009-10 and \$2 million annually in subsequent fiscal years. In context, last year's amendments were estimated to result in an annual gain to New York City of \$30 million.

(c) Information and methodology: The methodology employed to estimate the impact of the proposed rule is set forth in detail in the discussion of costs in the Regulatory Impact Statement. This analysis is based on a review of the rule, on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis, and Office of Budget and Management Analysis, and on data obtained from the Department's records, the New York State Department of Education's Office of Higher Education, the State University of New York at Buffalo, and the United States Census.

5. Local government mandates: This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties. Certain students may have to file Form IT-203, New York State Nonresident and Part Year Resident income tax return, rather than Form IT-201, Resident Income Tax return. Others will no longer need to file a New York State income tax return.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The Department considered various alternatives, including extending the exclusion to graduate students, limiting the exclusion to places of abode provided by the educational institution, and taking no action. After assessing comments received from the New York State Bar Association Tax Section, a certified public accountant, and certain institutions of higher education, the Department concluded that the approach in the proposed rule was the most appropriate to achieving the objectives and declined to adopt such alternative approaches. For a detailed discussion of the Department's analysis, see the Regulatory Impact Statement.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: These amendments will take effect when the Notice of Adoption is published in the State Register, and apply to taxable years ending on or after December 31, 2009.