

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

TSB-A-88 (16) I
Income Tax
October 4, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I880428A

On April 28, 1988, a Petition for Advisory Opinion was received from Richard A. Eisner & Company, 575 Madison Avenue, New York, New York 10022.

The issue raised is whether an individual domiciled outside New York State is a New York State resident, pursuant to section 605(b)(1)(B) of Article 22 of the Tax Law, when the individual spends in the aggregate more than 183 days in New York State but maintains a permanent place of abode in New York State for only a portion of the year. If yes, does the individual become a resident from the beginning of the year or from the time the individual maintains a permanent place of abode in New York State.

Facts

An individual is not domiciled in New York State. During the first half of a taxable year, the individual does not have a permanent place of abode in New York State but does spend in the aggregate 100 days in New York State. During the second half of the taxable year, the individual maintains a permanent place of abode in New York State and spends another 100 days in New York State. In total, 200 days were spent in New York State during the taxable year.

Discussion

Section 605(b)(1)(B) of the Tax Law defines a "resident individual" as an individual "who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States."

It is the longstanding policy of the Department of Taxation and Finance that an individual not domiciled in New York State must maintain a permanent place of abode within the state for substantially all of the taxable year in order to become a resident individual pursuant to the provisions of section 605(b)(1)(B) of the Tax Law. This policy is intended to avoid disparate treatment for resident nondomiciliaries under section 605(b)(1)(B) and nonresident domiciliaries under section 605(b)(1)(A)(i) and regulation section 102.2(b)(1).

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Accordingly, where an individual is domiciled outside New York State for the entire taxable year, maintains a permanent place of abode in New York State for only a portion of the taxable year and spends in the aggregate more than 183 days in New York State during the taxable year, the individual is not considered a New York State resident individual, pursuant to section 605(b)(1)(B) of the Tax Law, for such taxable year.

DATED: October 4, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.