



## **New York State Tax Authority Eliminates Temporary Stay Exception for Purposes of Determining Residency**

The New York State Department of Taxation and Finance (the "New York Department") has amended its income tax regulations by eliminating the "temporary stay exception" for statutory residents. This change means that all non-New York domiciliaries (essentially, permanent residents), including Connecticut domiciliaries, who meet New York's definition of a statutory resident (the 183-day physical presence test) are subject to New York Personal Income Tax on all of their income, even if they are assigned to work in New York on a temporary basis.

Each state has the authority to impose a personal income tax on its residents. In most states, including New York and Connecticut, a resident taxpayer is defined as one who meets one of the following:

- Has his or her domicile in the state (a "domiciliary")
- If not domiciled in the state, maintains a permanent place of abode within the state and spends in the aggregate more than 183 days of the taxable year there (a "statutory resident"). A permanent place of abode is generally any dwelling where the taxpayer resides, regardless of ownership.

### **Prior Law**

Historically, both New York and Connecticut provided a regulatory exception to the definition of statutory residency for an individual who maintained a place of abode in the state only during a temporary stay for the accomplishment of a particular purpose. For example, an individual domiciled in Connecticut and assigned to her employer's New York office for a fixed and limited period would satisfy the requirements of the exception, even if the individual maintained a place of abode by renting an apartment and spent over 183 days in New York because the individual was in New York State temporarily for a particular purpose under the "temporary stay" regulation. The New York Department would therefore treat the individual as a nonresident taxpayer and only the individual's New York-sourced income would be subject to New York personal income tax.

### **Current Law**

While the temporary stay exception remains in force in Connecticut, the New York Department has eliminated that exception from its regulations. Under current New York law, the Connecticut domiciliary in the example above will now be considered a New York resident because she maintained a permanent place of abode within New York and spent over 183 days in the state. The fact that the individual was temporarily assigned to her company's New York office is no longer relevant. As a result, in the example above, both New York and Connecticut will now take the position that each state has the authority to tax the individual's total income, not just her New York-sourced income. New York will impose the tax because, without benefit of the "temporary stay exception," the individual will meet the definition of a statutory resident (permanent place of abode and more than 183 days in New York), and Connecticut will impose its income tax because the taxpayer is "domiciled" in Connecticut, even though residing in New York.

The New York Department has stated that the amendment omitting the temporary stay exception results in greater fairness by leveling "the playing field among non-domiciliary taxpayers" by eliminating subjective criteria such as purpose for being in the state. The statutory residence test does appear more objective without the "temporary stay exception": if the taxpayer maintained a permanent place of abode and if the taxpayer spent more than 183 days in New York, then the taxpayer is a statutory resident of New York.

### **Summary**

*The New York Department's amendment presents a risk of double taxation for non-domiciliaries of New York, including Connecticut residents, who maintain a place of abode in New York State and*

*spend more than 183 days of the year there on a temporary assignment. Practitioners who advise corporate employees from other states or countries on temporary assignment in New York will want to make these clients aware that the state in which they choose to reside during the temporary assignment may have significant state income tax implications.*

*If you have questions concerning the existence of a tax liability, the potential amount of a liability, or the New York Department's elimination of the temporary stay exception, please call (860) 275-8200 to speak with one of the following members of our State Tax Group:*

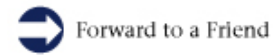
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