

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

TSB-A-94 (3) I  
Income Tax  
February 7, 1994

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I931213C

On December 13, 1993, a Petition for Advisory Opinion was received from Charles M. Harper, c/o Price Waterhouse, Attn: John J. Fielding, 1177 Avenue of the Americas, New York, New York 10036.

The issue raised by Petitioner, Charles M. Harper, is whether, under the following set of facts, a taxpayer is treated as a nonresident for personal income tax purposes under section 605(b)(2) of the Tax Law.

Petitioner is domiciled in the state of Nebraska and will maintain his domicile there. He has entered into an employment contract with a United States corporation which has its principal executive in New York City. The corporation also maintains an office in Omaha, Nebraska. Petitioner's employment contract is for a period of four years. Petitioner is currently 66 years old and when the contract period terminates, he will retire, resign his employment and return to Nebraska. In addition, if certain goals are achieved prior to the end of the contract Petitioner plans to retire, resign his employment and return to Nebraska at that time.

During the term of his contract, Petitioner will split working days between his New York office and his office in Nebraska. When in New York he will be given the use of a company apartment located in New York City. During each of the years Petitioner will spend more than 183 days in New York.

With respect to his current domicile in Nebraska, Petitioner will: (1) keep his Nebraska home where his wife will continue to live; (2) file his US income tax return with his Nebraska address; (3) vote in Nebraska; (4) maintain his Nebraska driver's license; (5) maintain Nebraska estate documents reciting Nebraska as domicile; (6) retain all significant bank accounts and his safety deposit box in Nebraska; (7) retain his Nebraska address for all other personal items such as credit card billings and his passport address.

Section 605(b)(1) of the Tax Law provides that a resident individual means an individual who is domiciled in New York State or is not domiciled in New York State but maintains a permanent place of abode in New York State and spends in the aggregate more than 183 days of the taxable year in New York State.

Section 605(b)(2) of the Tax Law provides that a nonresident individual means an individual who is not a resident or a part-year resident.

Section 105.20(e)(1) of the Personal Income Tax Regulations provides as follows:

A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by such taxpayer...

[A] place of abode, whether in New York State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. For example, an individual domiciled in another state may be assigned to such individual's employer's New York State office for a fixed and limited period, after which such individual is to return to such individual's permanent location. If such an individual takes an apartment in New York State during this period, such individual is not deemed a resident, even though such individual spends more than 183 days of the taxable year in New York State, because such individual's place of abode is not permanent. Such individual will, of course, be taxable as a nonresident on such individual's income from New York State sources, including such individual's employer's salary or other compensation for services performed in New York State. However, if such individual's assignment to such individual's employer's New York office is not for a fixed or limited period, such individual's New York State apartment will be deemed a permanent place of abode and such individual will be a resident for New York State personal income tax purposes if such individual spends more than 183 days of the year in New York State. The 183-day rule applies only to taxpayers who are not domiciled in New York State.

Herein, Petitioner is domiciled in Nebraska and has entered into a four year employment contract with a corporation with offices in New York City and Omaha, Nebraska. Petitioner will spend time in both locations and will spend in the aggregate more than 183 days of each of the taxable years in New York State. Petitioner will maintain his domicile in Nebraska and when in New York City he will be given the use of a company apartment located in New York City. When the employment contract expires in four years, or less, Petitioner will retire, resign his employment and return to Nebraska.

Pursuant to section 605(b)(2) of the Tax Law and section 105.20(e) of the Personal Income Tax Regulations, Petitioner will be a nonresident individual of New York State for the duration of his four year employment contract because Petitioner will not maintain a permanent place of abode in New York State during such period. Petitioner's place of abode in New York City is not permanent because Petitioner's employment in New York City is of a fixed and limited period of four years. See, Price Waterhouse, Adv Op Comm T & F, November 9, 1993.

DATED: February 7, 1994

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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