

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, subsection (a) of section 697, and subsection (b)(1) of section 605 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the New York State Personal Income Tax Regulations under Article 22 of the Tax Law, as published in Subchapter A of Chapter II of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. Paragraph (1) of subdivision (e) of section 105.20 of such regulations is amended to read as follows:

(1) A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by such taxpayer, and will generally include a dwelling place owned or leased by such taxpayer's spouse. However, 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. [Also, 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 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 State 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.]

Section 2. These amendments shall take effect on the date that the Notice of Adoption is published in the State Register, and shall apply to taxable years ending on or after December 31, 2008.

Dated: Albany, New York
September 30, 2008

Robert L. Megna
Commissioner of Taxation and Finance