

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

TSB-A-97(8) I  
Income Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I970707B

On July 7, 1997, a Petition for Advisory Opinion was received from Maria T. Jones, Esq., Kramer, Levin, Naftalis & Frankel, 919 Third Avenue, New York, New York 10022.

The issue raised by Petitioner, Maria T. Jones, Esq., is whether a taxpayer ("Taxpayer") who is present in New York solely to care for her minor son during the school year, will be considered to have a place of abode in New York State only for a temporary stay for the accomplishment of a particular purpose, and therefore will not be considered a resident of New York State for personal income tax purposes under Article 22 of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

The Taxpayer is domiciled in Tennessee where her family has lived since the early 1900's. Her husband is employed in the family business originally started by the Taxpayer's grandfather and father. Most of the members of the Taxpayer's immediate family live in the same area of Tennessee. The Taxpayer and her husband own a substantial home in Tennessee where they live with their two children, a daughter, age seventeen and a son, age fourteen. The Taxpayer's grandfather also lives with her. The Taxpayer and her husband are well-known and active members of their religious and secular local community.

The Taxpayer and her family are observant orthodox Jews. The observant orthodox community where the Taxpayer and her family live is not large enough to support a suitable religious high school. For this reason, the Taxpayer and her husband wish their son to be educated at Ramaz, a school located in New York City, where he can receive an appropriate religious and secular education. The Taxpayer's daughter attended this school and graduated in June. Ramaz is not a boarding school. The Taxpayer's daughter lived with another family while attending school; however, similar arrangements are not appropriate for the son.

Since the son is only fourteen and cannot live in New York City by himself, the Taxpayer proposes to rent or buy an apartment in New York City near the school and stay with him there when school is in session. She and her son will return to their home in Tennessee during school vacations and during any religious holidays when travel will be possible. Because of their religious beliefs, the Taxpayer and her son cannot travel on Fridays after sundown, on Saturdays, or on numerous other religious holidays, all of which begin at sundown on the day before. Therefore, they generally will be unable to return to Tennessee for the weekend and for other religious holidays. As a result, it is likely that the Taxpayer and her son will be in New York City more than 183 days in a taxable year.

The Taxpayer currently files a New York nonresident return with her husband to report the gains and losses from certain minority partnership interests in real estate located in New York. The Taxpayer has no other income from New York sources and will not be employed in New York or elsewhere, other than as a mother.

The Taxpayer's husband will not regularly accompany the Taxpayer to New York and will not be in New York more than 183 days in a taxable year as he is employed full time at the family's business in Tennessee.

Upon the son's graduation from high school in four years, or if a suitable religious high school were to become available within daily commuting distance of the Taxpayer's home in Tennessee, the Taxpayer intends to relinquish the apartment in New York as she will have no further use for it.

Section 605(b)(1)(B) of the Tax law provides that a "resident individual" includes an individual who 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, unless the individual is in active service in the armed forces of the United States.

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 ("Regulations") defines a "permanent place of abode" as a dwelling place permanently maintained by the taxpayer, whether or not owned by the taxpayer. However, 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 the individual's employer's New York State office for a fixed and limited period, after which the individual is to return to the individual's permanent location. If the individual takes an apartment in New York State during this period, the individual is not deemed a resident, even though the individual spends more than 183 days of the taxable year in New York State, because the individual's place of abode is not permanent. Such individual will, of course, be taxable as a nonresident on the individual's income from New York State sources. However, if the individual's assignment to the individual's employer's New York State office is not for a fixed or limited period, the individual's New York State apartment will be deemed a permanent place of abode and the individual will be a resident if the individual spends more than 183 days of the year in New York State. For a place of abode to be deemed not permanent, the stay in New York must be temporary (i.e., for a fixed and limited period) and the stay must be for the accomplishment of a particular purpose.

Section 105.20(e)(1) of the Regulations contemplates that the term "temporary" means a fixed and limited period as opposed to a stay of indefinite duration. An employee's stay in New York will be presumed to be temporary (i.e. the presence in New York is for a fixed and limited period) if the duration of the stay in New York is reasonably expected to last for three years or less, in

the absence of facts and circumstances that would indicate otherwise. In the alternative, a stay is of indefinite duration if the stay is realistically expected to last for more than three years, even if it does not actually exceed three years.

Section 105.20(e)(1) of the Regulations contemplates that the phrase "particular purpose" means that the individual is present in New York State to accomplish a specific assignment that has readily ascertainable and specific goals and conclusions, as opposed to a general assignment with general goals and conclusions. For example, an individual working in California is assigned to New York to install a piece of equipment. Once the equipment is installed, the individual returns to California. That assignment would be for a particular purpose.

In this case, Taxpayer is domiciled in Tennessee. Taxpayer and her family are observant orthodox Jews and the community where they live is not large enough to support a suitable religious high school for their 14 year old son. For this reason, Taxpayer and her husband wish their son to be educated at a school located in New York City. Since this is not a boarding school, Taxpayer proposes to live, with her son, in an apartment in New York City near the school when school is in session. Taxpayer and her son will return to their home in Tennessee during school vacations and during any religious holidays when travel will be possible. As a result, it is likely that Taxpayer and her son will be in New York City more than 183 days in a taxable year. When Taxpayer's son graduates from high school in four years, or if a suitable religious high school were to become available within daily commuting distance of Taxpayer's home in Tennessee, Taxpayer intends to relinquish the apartment in New York as she will have no further use for it.

Taxpayer will rent or buy an apartment in New York City for the four years that she and her son will stay in New York City while he attends high school in New York City. An apartment in New York City constitutes a place of abode. However, Taxpayer's and her son's stay in New York would be temporary for the accomplishment of a particular purpose. The stay in New York would be "temporary" because it is for a fixed and limited period, that is, for the four years Taxpayer's son will be in high school in New York City. The stay in New York would be for the accomplishment of a "particular purpose". That is, with respect to Taxpayer's son, to attain his high school education at an appropriate religious high school in New York City. With respect to Taxpayer, her sole purpose for being in New York City is to give parental care to her minor son while he attends the non-boarding high school in New York City. Taxpayer will not be employed while in New York City. When the son graduates, Taxpayer and her son will have accomplished their purposes for being in New York City and will relinquish the apartment in New York City and return to Tennessee.

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Pursuant to section 105.20(e)(1) of the Regulations, Taxpayer would not maintain a permanent place of abode in New York State for the four years that Taxpayer's son will attend high school in New York City. Accordingly, Taxpayer and her son would not be deemed to be statutory residents of New York State under section 605(b)(1)(B) of the Tax Law even though they would spend more than 183 days a year in New York State during the four years. Taxpayer would continue to be considered a nonresident of New York State and file a nonresident return with her husband.

DATED: November 4, 1997

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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