



NYS Training for Tax Preparers

# Residency and Allocation Rules for New York State and New York City

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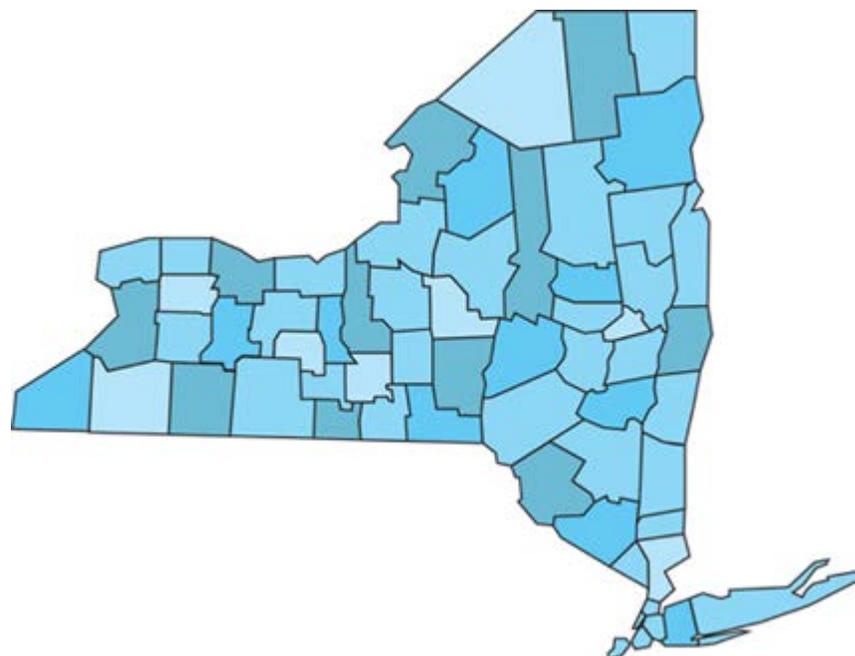


# Residency

## New York State Residency

When filing a personal income tax return, a taxpayer must choose one of three New York State residency statuses:

- Resident
- Nonresident
- Part-year resident





## Filing a New York State Income Tax Return

When preparing a New York State personal income tax return, you must first determine if the taxpayer is considered a New York State resident or nonresident for income tax purposes. New York State residency rules differ from those of the Internal Revenue Service. Once you know a taxpayer's residency status, you can then determine if the taxpayer is required to file a New York State income tax return.



## New York State Tax Forms

If the taxpayer is a **resident** for New York State income tax purposes and is required to file an income tax return, the taxpayer will need to file Form IT-201, *Resident Income Tax Return*.

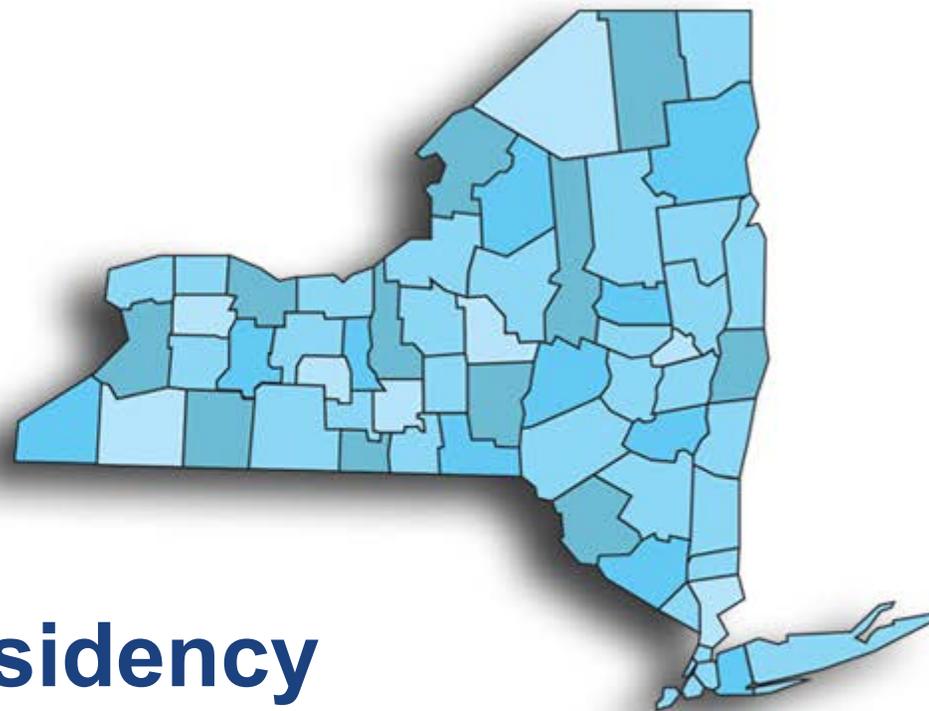
If the taxpayer is a **nonresident** for New York State income tax purposes and is required to file an income tax return, the taxpayer will need to file:

- Form IT-203, *Nonresident and Part-year Resident Income Tax Return*, and
- Form IT-203-B to report where in New York State the taxpayer lives.

The image shows a sample of Form IT-203, titled "Nonresident and Part-Year Resident Income Tax Return". The form is for the year January 1, 2012, through December 31, 2012, or fiscal year beginning and ending. It includes sections for taxpayer information, filing status, and New York State residency determination. The form is tilted and partially obscured by a shadow.



# Residency



Section 1

## New York State Residency



## New York State Residency

To be considered a **resident** of New York State for tax purposes, an individual must fall into one of two categories:

- **Domiciliary** - the taxpayer's *domicile* is New York State.
- **Statutory Resident** - the taxpayer's *domicile* is outside of New York State, but:
  - the taxpayer maintains a *permanent place of abode* in New York State, and
  - the taxpayer spends more than 183 days in New York State.



## Domicile

A domicile is the place where a taxpayer maintains a permanent home. This is the place the taxpayer returns to after being away on vacation, a business assignment, educational leave, military assignment, etc. A taxpayer can only have one domicile.

In most cases, persons whose domicile is New York State are classified as New York State residents for purposes of New York State tax. However, there are exceptions.



## Change of Domicile

A taxpayer's New York domicile does not change until he or she can demonstrate that it has been abandoned and that the taxpayer has established a new permanent domicile outside of New York State. A change of domicile must be clear and convincing.

A change of domicile is clear and convincing only when the taxpayer's primary ties are clearly greater in the new location. Some primary ties may weigh more heavily than others, depending on the taxpayer's overall lifestyle. It is the taxpayer's responsibility to produce documentation showing the necessary intention to effect a change of domicile (if requested by the Tax Department).



## Change of Domicile (cont.)

If a taxpayer moves to a new location in the U.S. or abroad but intends to stay there only for a limited amount of time (no matter how long), the taxpayer's domicile does not change.

Example: A taxpayer, who lives and works in Albany, New York was temporarily assigned to work in his company's Atlanta, Georgia branch office for two years. After his stay in Atlanta, he returned to his job in New York. His domicile did not change during his stay in Georgia; it remained New York State.



## Change of Domicile (cont.)

To determine whether the taxpayer has changed his or her domicile, the following five primary factors should be compared:

1. The size, value, and nature of use of the first residence to the size, value, and nature of use of the newly acquired residence
2. The taxpayer's employment or business connections in both locations
3. The amount of time spent in both locations
4. The physical location of items that have a significant sentimental value to the taxpayer in both locations
5. The taxpayer's close family ties in both locations



# Residency

## Knowledge Check

What is not considered to be a primary factor when evaluating an individual's change of domicile?

- home
- voter registration
- items "near and dear"
- active business involvement



# Residency

## Knowledge Check



-  What is not considered to be a primary factor when evaluating an individual's change of domicile?
- home
  - voter registration
  - items "near and dear"
  - active business involvement



## Nonresident Domiciliaries

In some cases, a person whose domicile is New York State may be classified as a nonresident. Being classified as a nonresident usually results in paying less New York State income tax. To be classified as a nonresident, New York State domiciliaries must belong to one of two groups:

- Group A (30 day test)
- Group B (548 day test)



## Group A (30 Day Test)

Persons may be considered nonresidents if:

- they did not maintain a permanent place of abode in New York during the taxable year; and
- they maintained a permanent place of abode outside New York during the entire taxable year; and
- they spent 30 days or less in New York during the taxable year.



## Group B (548 Day Test)

Persons may be considered nonresidents if:

- they were in a foreign country or countries for at least 450 days during any period of 548 consecutive days; and
- they spent 90 days or less in New York during this 548 day period, and the taxpayer's spouse (unless legally separated) or minor children spent 90 days or less in New York during this 548 day period; and
- during the nonresident portion of the taxable year in which the 548 day period begins and ends, the taxpayer was present in New York for no more than the number of days which bears the same ratio to 90 as the number of days in such portion of the taxable year bears to 548.

Number of days in nonresident portion

\_\_\_\_\_

548

**x 90 =**

Maximum number of days allowed in  
New York



## Statutory Residency

A taxpayer may be required to pay income tax as a New York State resident even if he is not considered a resident for other purposes. These taxpayers are **statutory residents**.

As defined by New York State tax law\*, a **resident individual** is an individual who is not domiciled in New York State but:

- maintains a *permanent place of abode* in this state and
- spends more than 183 days of the taxable year in this state.

\* New York Tax Law, 605(b)(1)(B)



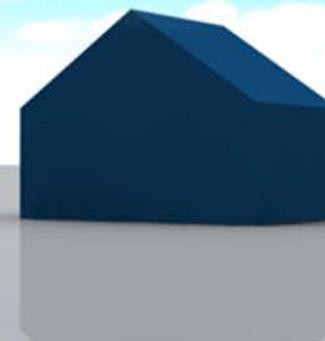
# Residency

## Permanent Place of Abode

In general, a *permanent place of abode* is a residence (a building or structure where a person can live) that:

- the individual maintains (whether owned or not); and
- is suitable for year-round use.

This generally includes a residence owned or leased by a spouse. A person can have more than one permanent place of abode.

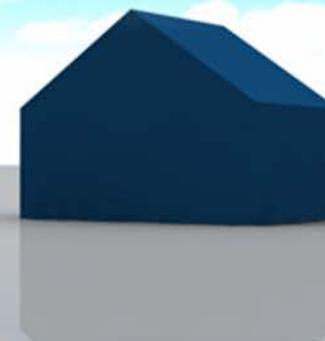




## Permanent Place of Abode - Physical Characteristics

A structure that is not suitable for year-round use and that a taxpayer can only use for vacations is not considered a permanent place of abode.

A barracks, or any other structure that does not contain facilities ordinarily found in a dwelling (such as facilities for cooking, bathing, etc.), is not generally considered to be a permanent place of abode.



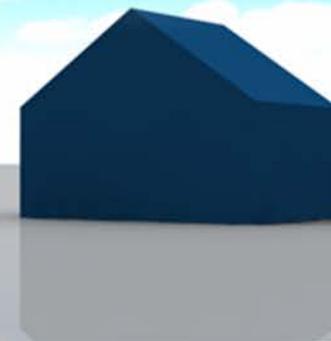


# Residency

## Permanent Place of Abode - Maintenance

A person is maintaining a permanent place of abode if he or she:

- maintains it for *substantially all of the tax year* (disregarding small portions of the year), and
- does whatever is necessary to continue his or her living arrangements in that place.
  - owns or leases the place where he or she lives
  - if not owned or leased, he or she is making contributions to the household, in the form of money, services, or other contributions





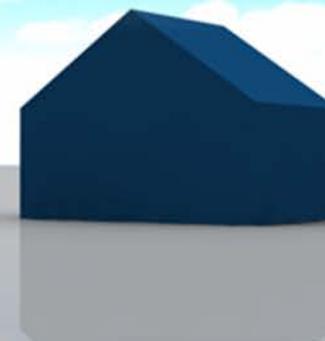
# Residency

## Permanent Place of Abode - Substantially All of the Tax Year

The taxpayer maintains a permanent place of abode for *substantially all of the tax year* if he or she maintains it for more than eleven months during the year.

The eleven months of maintenance required for a person to have a permanent place of abode in New York State can be divided among several residences.

For example, a taxpayer could sell one apartment in New York State and then purchase another during the same year. If the total time spent maintaining both apartments adds up to more than eleven months, the taxpayer has maintained a permanent place of abode in New York State during the tax year.





# Residency

## Permanent Place of Abode

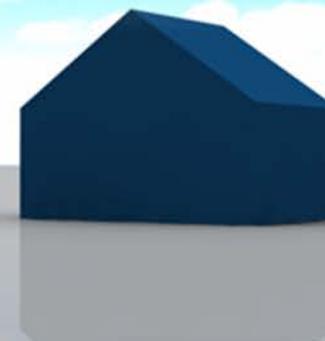
### Corporate Apartments

If a person's employer maintains an apartment (or other living quarters) that is suitable for year-round use, and it is maintained primarily for his or her use, then it is considered that person's permanent place of abode.

However, a corporate apartment generally will **not** be considered as a taxpayer's permanent place of abode if he or she is but one of many people using the apartment.

### Student Housing

The definition of a *permanent place of abode* excludes a dwelling place maintained by a full-time undergraduate college student.





## The 183 Day Rule

The second part of the test to determine statutory residence is the 183 day rule. When determining statutory residency, any part of a day spent in New York State for business or pleasure would count as a day spent in New York, even if the taxpayer arrives and leaves on the same day. The taxpayer does not have to use the permanent place of abode to demonstrate a New York presence.

There are two instances where presence does **not** count as a day in New York.

### Travel

Presence in New York will **not** count if the presence is solely for the purpose of boarding a plane, ship, train, or bus or for the purpose of passing through New York for travel.

### Medical Treatment

Inpatient days are **not** treated as New York Days (Stranahan Decision, 68 AD2d 250).  
Outpatient days **are** treated as New York days (Kern Decision, TSB-D-95(30)I).



## Record Keeping

Taxpayers maintaining a permanent place of abode in New York State bear the burden of proving they spent less than 184 days in the State for each year. Therefore, it is important that they keep records of the time spent in and out of the State if they are:

- domiciled in New York State and maintain a permanent place of abode outside New York State, or
- domiciled in another state but maintain a permanent place of abode inside New York State.



## Knowledge Check

Which of the following would not be considered a taxpayer's permanent place of abode for statutory residency purposes?

- a vacation home in the Hamptons available year round but used only on weekends
- a New York City apartment leased annually and utilized for occasional overnight stays
- an apartment rented by the taxpayer for the sole use of his parents
- a New York home owned by taxpayer's spouse to which is always available for his use



# Residency

## Knowledge Check



Which of the following would not be considered a taxpayer's permanent place of abode for statutory residency purposes?

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- an apartment rented by the taxpayer for the sole use of his parents
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Mr. Taxpayer, a New Jersey resident, maintains an apartment in New York City for all of 2013. He spends 170 days working in New York City, ten additional evenings attending shows and events in New York City and ten days on vacation in Southampton. How should he file?

- as a New York State nonresident
- as a New York City statutory resident
- as a New York State statutory resident
- he does not have a filing requirement with New York State



## Knowledge Check



 Which of the following would not be considered a taxpayer's permanent place of abode for statutory residency purposes?

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# Residency

Section 2: Nonresident Allocation

Page 23 of 67

[Previous](#) [Next](#)



Section 2

## Nonresident Allocation



## Nonresident Allocation

Taxpayers who are not domiciliaries or statutory residents of New York State may have to file a New York State nonresident return (Form IT-203) to report income that is taxable to a nonresident.

Nonresidents are taxed on New York source income which is defined in Tax Law Section 631.



## New York Source Income

The more common forms of New York source income are:

- distributive share of partnership income or loss
- pro rata share of New York S corporation income or loss
- share of estate or trust income or loss
- New York State Lottery winnings exceeding \$5,000
- gains from the sale of shares of stock in a cooperative housing corporation
- stock option grants, stock appreciation rights and restricted stock
- ownership of any interest in real or tangible personal property located in New York



## New York Source Income

Ownership of real property includes:

- an interest in a partnership, LLC, S corporation or a non-publicly traded C corporation that owns real property located in New York with a fair market value that equals or exceeds 50% of the entity's total assets as of the date of sale of the interest
- income from a business, trade, profession, or occupation carried on in New York State



# Residency

## New York Source Income

Nonresidents are taxed on income received from a business, trade, profession, or occupation previously carried on within New York. Income includes, but is not limited to, income related to covenants not to compete or termination agreements.



## Intangibles

Generally, income from intangible personal property is not taxable to a nonresident. Examples of intangible personal property include:

- interest income
- dividends
- shares of stock
- partnership interest

An exception to the general rule is if the intangible personal property is employed in a business, trade, profession, or occupation carried on in New York State.

**Example:** A nonresident conducts business in New York as a sole proprietor. He maintains a checking account in the business's name to pay expenses. Any interest he receives would be taxable as an intangible employed in a "trade or business."



## Wage Allocation (Days In/Out Method)

A nonresident employee performing services partly within and partly without New York State must allocate his or her wages based on a ratio of the number of days worked in New York to the total number of days worked.



## Example

Fred lives in Connecticut but works for a corporation based in New York City. Fred's salary in 2010 was \$800,000. During 2010, he performed the following services:

- services performed wholly in New York ..... 210 Days
- sales conventions in Arkansas and Florida ..... 10 Days
- calling on customers in Pacific Coast states ..... 20 days

$$\frac{210 \text{ (days worked in NY)}}{240 \text{ (total days worked)}} = 87.5\%$$

240 (total days worked)

$\$800,000 \times 87.5\% = \$700,000$  in taxable New York State wages.



## Part-year Allocation

The basic formula for allocating wages assumes that the taxpayer worked a full 365-day year. Taxpayers who worked less than a full year are allowed to allocate over the shorter period. For example, a taxpayer who changes employers during the year would allocate separately for each employer.



# Residency

## Travel Days

A day spent by an employee in traveling at the direction of the employer is considered a working day, even if such day is a Saturday, Sunday, or other day that would not normally be considered a working day. The day would not be a New York work day unless services were actually performed in New York on that day.





## Convenience Rule

Any allocation claimed for days worked outside New York State must be based on the performance of services that **obligate** the employee to work outside New York State. The services should be for the necessity of the employer and not the convenience of the employee. Such duties are those that by their very nature cannot be performed in New York State.

Days worked at home are generally considered to be for the taxpayer's convenience and not for the employer's necessity. These days are not allowed for allocation as a day worked out of New York and would be classified as New York work days. Note that since the taxpayer was not physically present in New York, they are not considered New York days for purposes of statutory residency.



## Knowledge Check

Which of the following statements is false?

- A day worked at home that is not a necessity of the employer will be deemed to be for the employee's convenience.
- Days worked at home for convenience would be considered days spent in New York State for statutory residency purposes.
- A taxpayer headquartered in the New Jersey office that comes into New York City for meetings would not be considered to be in New York for convenience.
- A day spent in travel status by an employee at the direction of his employer would be considered a day worked out of New York.



# Residency

## Knowledge Check



Which of the following statements is false?



- A day worked at home that is not a necessity of the employer will be deemed to be for the employee's convenience.
- Days worked at home for convenience would be considered days spent in New York State for statutory residency purposes.
- A taxpayer headquartered in the New Jersey office that comes into New York City for meetings would not be considered to be in New York for convenience.
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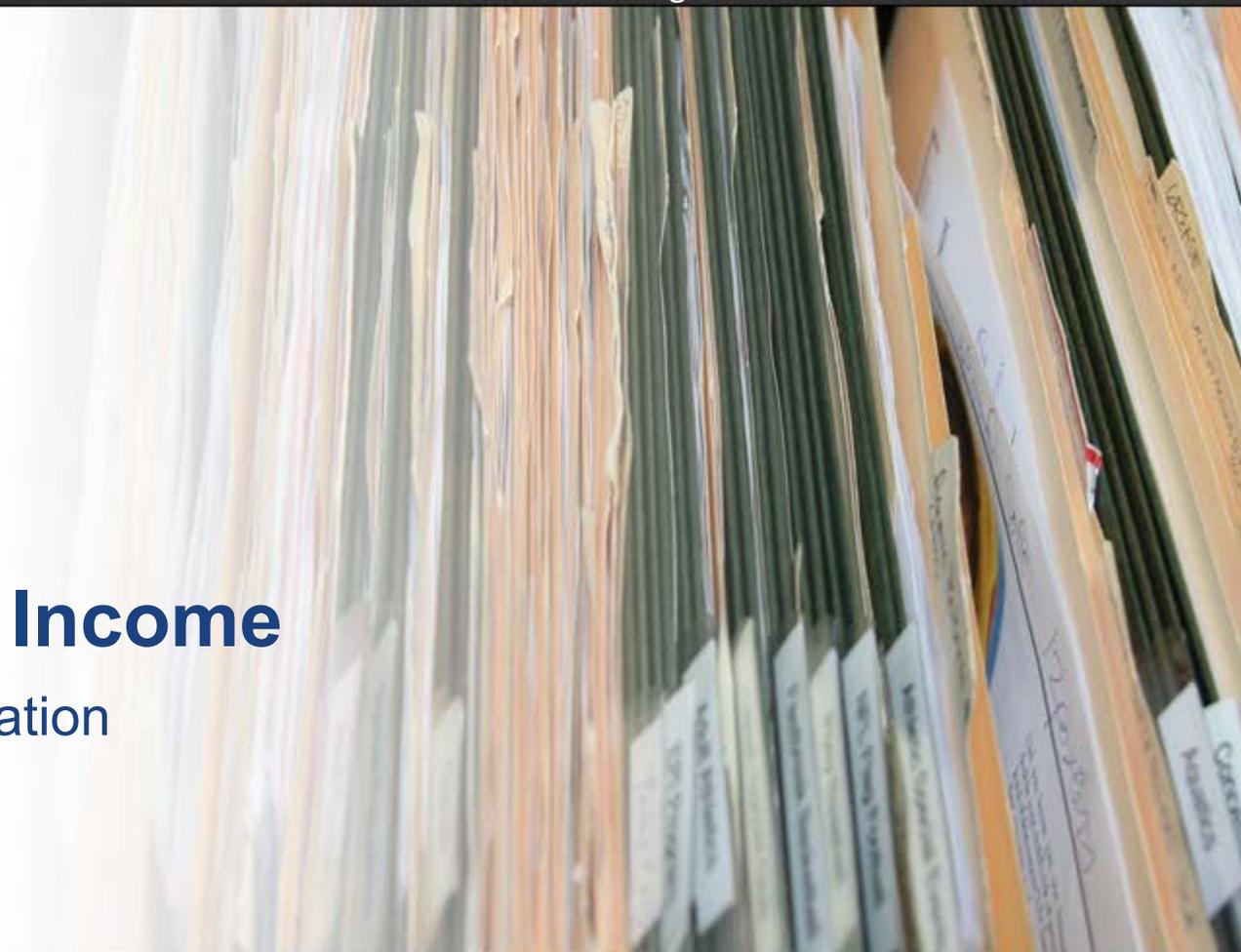


# Residency

## Section 3

# Categories of Income

for nonresident allocation





# Residency

## Section 3

# Categories of Income

for nonresident allocation





## Director's Fees

Nonresidents who serve on a company's board of directors are taxable on the fees they receive if the board meetings are held in New York (whether they are employees or not). The taxable portion of the fees is calculated as a percentage based on the ratio of the number of board meetings held in New York to the total number of board meetings attended.



## Director's Fees (cont.)

A separate allocation schedule should be prepared for each board a taxpayer serves on. If the nonresident is an employee in addition to being a board member, separate allocation schedules should be completed for both the wages and the board fees.

Make sure that the days are not being duplicated. The primary wage allocation schedule should show director's fees as "other nonworking days" for that employer.



## Bonuses

As a general rule, bonuses for personal services performed in New York State constitute income from New York sources.

- The bonus must be includable in Federal Adjusted Gross Income.
- The bonus is includable, even if it is for services rendered in an earlier year.

This would include bonuses or awards received by a nonresident for services performed in a previous taxable year. The bonus or award should be allocated using the same allocation that was used for the wages in the prior year.



## Termination and Severance pay

A nonresident may receive payments for past services upon termination of employment. These payments may take many forms.

- Severance pay is taxable to nonresidents.
- Income received by a nonresident is taxable if it is for services previously performed in connection with a business, trade, profession, or occupation in New York including, but not limited to:
  - termination pay, and
  - covenants not to compete.



## Stock Options

There are two types of stock options:

- Qualified or Statutory Options
- Nonqualified or Nonstatutory Options



## Stock Options (cont.)

There are four important dates in the life of a stock option.

- The **grant date** is the date on which the employee is granted options to purchase shares of stock from his employer at a fixed price.
- The **vest date** is the date on which the employee has satisfied all employment-related conditions that make the options non-forfeitable and exercisable. For example, the employee has completed the minimum two years required by the company to exercise the options.
- The **exercise date** is the date on which the employee actually purchases the stock at the fixed price
- The **sale date** is the date on which the employee sells the stock.



## New York Tax Treatment

New York's tax treatment of stock options differs, depending on the type of option.

### **Nonqualified Options:**

When nonqualified options are exercised and the income is recognized for federal purposes, New York recognizes this income as ordinary income.

### **Qualified Options:**

When qualified options are exercised, but not taxable until the stock is sold and the gain is recognized for federal purposes, New York recognizes this income as a capital gain.



## Allocating Stock Options

A nonresident would allocate the compensation from stock options by the total days worked within and without New York between the date the options were granted and the date the options vest.

If the options immediately vest at the time of grant, the regular wage allocation for the year of grant is used.

For a detailed analysis on the allocation of stock options, refer to TSB-M-07(7)I



# Residency

## Real Property

Income from real property located in New York is 100% taxable to a nonresident.

Real property includes land, a building, or a condominium. Cooperative apartments are **not** considered real property.



## Items Not Taxable to a Nonresident

- Intangibles (unless employed in a trade or business)
- Pensions and other retirement benefits (all qualified plans including IRAs and 401K plans and most nonqualified plans)
- Trading for own account - 631(d)
- Military pay to nondomiciliaries of New York - 631(e)
- Long term disability benefits if the taxpayer paid the premiums. See TSB-A-13(9)I to learn more.



## For More Information

To learn more about nonresident allocation, consult the following sources:

- New York State Tax Law, Sections 631- 639
- Section 132 of the IRS Regulations
- TSB-M-07(7)I



## Knowledge Check

Which of the following sources of income received in 2013 would not be allocated to New York State by a nonresident?

- bonus money received in 2013 for services performed in New York during 2012
- pension income from a New York employer
- Covenant not to compete related to services performed for a New York employer
- gain from the sale of New York Property



# Residency

## Knowledge Check



Which of the following sources of income received in 2013 would not be allocated to New York State by a nonresident?

- bonus money received in 2013 for services performed in New York during 2012
- pension income from a New York employer
- Covenant not to compete related to services performed for a New York employer
- gain from the sale of New York Property



# Residency

Section 4: Part-Year Residency

Page 48 of 67

[Previous](#) [Next](#)



Section 4

## Part-year Residency



# Residency

## Part-year Resident

Part year residents are taxed on their entire income during that part of the year they were residents. They can also be taxed on New York source income earned during their period of non-residence. Part-year residents are required to pay tax on income earned but not yet received.



## Accruals

New York State tax law requires individuals whose status changes from resident to the nonresident to accrue items of income, gain, loss, or deduction. Some examples of items which a taxpayer would have to accrue if they left New York State are:

- Bonuses
- Unrealized income from installments sales
- Lottery winnings

New York source income must be accrued if it meets these requirements:

- The amount is fixed and determinable at the time of the residence change, and
- The taxpayer has an unrestricted right to receive the income.



## Accruals

### Bonds

New York State gives the taxpayer a choice of either:

- paying the tax on the accrued earnings, or
- posting a security bond.

Taxpayers whose status changes from Resident to Nonresident can file form IT-203 for the year of change without special accruals if:

- the taxpayer files a bond or other acceptable security with the Tax Department, and
- agrees to report the accruable amounts on future New York State returns.

Specific information on bonds and other forms of collateral are found in the instructions for Form IT-260.



## New York City Change of Residence

New York City follows the same rules as New York State for change of residency status. The method for computing the tax differs from New York State in that the city computes a straight tax on the income earned during the period of residency.

Use Form IT-360.1 for a New York State change of residence.



## Knowledge Check

Which of the following sources of income would not be subject to the accrual rules?

- a bonus that was fixed and determinable in prior year when taxpayer
- unrealized income from installment sales
- lottery winnings
- stock option income that was exercised after the claimed move out date



# Residency

## Section 4: Part-Year Residency

## Knowledge Check



Which of the following sources of income would not be subject to the accrual rules?

- a bonus that was fixed and determinable in prior year when taxpayer
- unrealized income from installment sales
- lottery winnings
- stock option income that was exercised after the claimed move out date





# Residency

Section 5: International Students and Scholars

Page 54 of 67

[Previous](#) [Next](#)



Section 5

## International Students and Scholars



## Student Residency

Undergraduate full-time students who are pursuing a degree and whose permanent home is not in New York State are considered New York State nonresidents for income tax purposes.

Full-time international graduate students who are pursuing a degree, whose permanent home is not in New York State, and who are considered nonresidents for federal income tax purposes\* are considered New York State nonresidents for New York State income tax purposes.

The rules for determining New York State residency for New York State income tax purposes are different for:

- visiting scholars,
- postdoctoral fellows/associates, and
- international students who have been in the United States longer than five years and who are considered to be resident aliens for federal income tax purposes.

\* have been in the United States for five years or less



## Student Residency (cont.)

The student/scholar is a New York State resident for income tax purposes if:

- the taxpayer is a visiting scholar, postdoctoral fellow/associate, or international student who has been in the United States for longer than five years,
- the taxpayer is considered a resident alien for federal income tax purposes,
- the taxpayer's domicile (permanent home) is NOT New York State, but the taxpayer maintained a permanent place of abode (on-campus apartment or off-campus apartment or house) for more than eleven months during the calendar year, and
- the taxpayer spent more than 183 days in New York State.

**NOTE:** Dormitory rooms are not considered to be permanent places of abode



## Student Residency (cont.)

Visiting scholars, postdoctoral associate/fellows, and international students who have been in the U.S. for longer than five years and who are considered resident aliens for federal income tax purposes are only considered New York State residents if:

- they lived in an on-campus apartment or an off-campus apartment or house in New York State during the tax year, **and**
- maintained the apartment or house for more than 11 months during the tax year, **and**
- spent more than 183 days in New York State during the tax year.



## Scholarship / Fellowship Income

If any part of a taxpayer's New York scholarship or New York fellowship was included as income on the federal income tax return, then enter it on the line for *other income* on the taxpayer's New York State income tax return.



# Residency

## Example

Kumar is a visiting scholar from India who moved to Buffalo, New York, where he rented an apartment for the entire tax year. During the tax year, he went home to India from May 15 to August 14. While he was away, he continued to rent his apartment in New York.

Because Kumar maintained a permanent place of abode (an apartment) for more than eleven months and spent more than 183 days in New York, he is considered a resident for New York State income tax purposes.



# Residency

## Example

Kim is a full-time international student pursuing a degree at the State University of New York. She moved from California on June 30 and has since lived in New York state. She has been in the United States for three years and has filed as a nonresident on her federal income tax return (Form 1040NR-EZ).

Because Joy is a full-time international student pursuing a degree and has been in the United States for five years or less, she is considered a nonresident (Form IT-203) for New York State income tax purposes.



# Residency

Section 6: Military Personnel and Veterans

Page 61 of 67

[Previous](#) [Next](#)

Section 6

## Military Personnel and Veterans





## Residency for Military Personnel and Veterans

A persons residency status for income tax purposes does not change when they enter the military.

Persons who were New York State residents when they entered the military will remain New York State residents even if they were assigned to duty outside New York state.

By the same token, persons whose permanent home was not New York State when they entered the military, and who were assigned to duty in New York State, do not become New York residents, even if they have a permanent place of abode in New York.



## Military Pay

The taxpayer's military pay is subject to New York State tax to the same extent it is subject to federal tax.

Taxpayers whose domicile was New York State when they entered the military but who meet the conditions for nonresident status, will not have their military pay subject to New York State income tax. The same rules apply for New York City and Yonkers tax.



## Military Spouses

The Military Spouse Residency Relief Act of 2009 provides economic protection to military spouses who move to the location where their service member spouses are stationed.

As long as the spouse is moving for the sole purpose of being close to the service location, the spouse cannot lose or acquire residency for income tax purposes.

However, if the military spouse was obliged to file a New York State income tax return or pay New York State tax, the MSRRA does not relieve the spouse of that obligation.



# Residency

## For More Information

To learn more, see Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*.



# Residency

Conclusion

Page 66 of 67

[Previous](#) [Next](#)

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