

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-11(5)I
Income Tax
August 16, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1110517A

The Department of Taxation and Finance received a Petition for Advisory Opinion on behalf of [REDACTED] (Petitioner). The petition asks whether Petitioner's summer home in New York City, occupied under a proprietary lease from a cooperative corporation (Cooperative), falls under the "camp or cottage" exception to the "permanent place of abode" definition contained in the personal income tax regulations.

We conclude that under the facts specific to this taxpayer, the summer home falls under the exception.

Facts

Petitioner is a resident of New Jersey and regularly commutes to his job in New York City from his home in New Jersey. In addition to his New Jersey home, Petitioner maintains a summer home located in the Queens borough of New York City. He occupies the home pursuant to a proprietary lease from a Cooperative that owns real property in a summer beach community. All shareholders of the Cooperative are required to maintain and occupy their homes in accordance with the rules and regulations promulgated by the Board of Directors, pursuant to the by-laws. Violation of those rules and regulations can result in the cancellation of the member's proprietary lease, thereby terminating the shareholder's ownership interest in the property. Since 1961, the Cooperative's rules have provided that:

No house covered by a proprietary lease may be used for other than summer occupancy, without the written consent of and subject to such conditions as the Board of Director's (sic) may impose.

"Summer occupancy" is defined as the five-month period from May 1 through September 30. The Board requires that a shareholder who wishes to occupy a home other than for summer occupancy must file an application with the Cooperative and certify that the home contains, among other things, "an approved heating plant capable of supplying heat to the entire house, properly installed by a licensed plumber and/or electrician."

Although Petitioner's summer home previously had a heating system, on or about October 5, 2010, Petitioner had the heating system permanently removed by a licensed plumber. The home does not contain an electrical heating system. Following an inspection, the Cooperative formally advised Petitioner that his "home may no longer be used for all year residence...and is limited pursuant to your Proprietary Lease...to 'summer occupancy' only." Petitioner occupies his summer home only during the authorized summer occupancy period, principally on summer weekends and holidays.

Analysis

Tax Law §605(b)(1)(B)¹ provides that a resident individual is one “who is not domiciled in this state but maintains a ‘permanent place of abode’ in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state.” Although the statute does not define “permanent place of abode,” the regulations suggest that a permanent place of abode is a dwelling suitable for year-round use.

A permanent place of abode means a dwelling place of a permanent nature maintained by the taxpayer, whether or not owned by such taxpayer.... However a mere camp or cottage which is suitable and used only for vacations is not a permanent place of abode.²

In addition, “a permanent place of abode” is one maintained by a taxpayer for “substantially all of the taxable year.”³ As a general rule, the Department has interpreted “substantially all of the taxable year” as more than 11 months during the year.⁴

When the heating system was removed, the summer home was no longer suitable for year-round use, and its use was subsequently restricted by the Cooperative rules to a 5-month summer period. Because the heating system in Petitioner’s home was removed on or about October 5, 2010, the home was not maintained as a “permanent place of abode” for “substantially all of the taxable year.”⁵ Thus, even if Petitioner spent in the aggregate more than 183 days in New York State or New York City in 2010, Petitioner should not be considered a statutory resident of the State or City by virtue of his proprietary lease of the summer home described in the petition, because the home did not qualify as a “permanent place of abode” for substantially all of 2010.

DATED: August 16, 2011

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.

¹ References to New York Tax Law §605(b)(1)(B), applicable to the New York State resident income tax, also apply to Administrative Code of the City of New York §11-1705(b)(1)(B), applicable to the New York City resident income tax.

² 20 NYCRR 105.20(e)(1).

³ 20 NYCRR 105.20(a)(2).

⁴ TSB-M-09(2)I.

⁵ 20 NYCRR 105.20(a)(2).