

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

TSB-A-93 (12) I
Income Tax
November 9, 1993

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I930824A

On August 24, 1993, a Petition for Advisory Opinion was received from Price Waterhouse, 1177 Avenue of the Americas, New York, New York 10036.

The issue raised by Petitioner, Price Waterhouse, 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.

The taxpayer, Mr. A, 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 office in New York City. The corporation also maintains an office in Omaha, Nebraska. Mr. A's employment contract is for a period of four years. Mr. A 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 Mr. A plans to retire, resign his employment and return to Nebraska at that time.

During the term of his contract, Mr. A 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 Mr. A will spend more than 183 days in New York.

With respect to his current domicile in Nebraska, Mr. A 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 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.

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,

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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.

Herein, Mr. A 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. Mr. A 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. Mr. A 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, Mr. A 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, Mr. A will be a nonresident individual of New York State for the duration of his four employment contract because Mr. A will not maintain a permanent place of abode in New York State during such period. Mr. A's place of abode in New York City is not maintained by him and it is not permanent because Mr. A's employment in New York City is of a fixed and limited period of four years.

DATED: November 9, 1993

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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