

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

TSB-H-81-(2)-I  
Income Tax  
March 6, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I801030B

On October 30, 1980 a Petition for Advisory Opinion was received from Surasak Nimmannit, 575 Grove Street, Wayne, New Jersey 07015.

The issue raised is whether a domiciliary of another state would become a resident of New York for purposes of the Personal Income Tax imposed under Article 22 of the Tax Law by virtue of the purchase of a vacation home in New York.

Section 605 of the Tax Law, contained in Article 22 thereof, defines the term "resident individual," in relevant part, as "...an individual...(2) 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, unless such individual is in active service in the armed forces of the United States." The Personal Income Tax Regulations define the term "permanent place of abode," in relevant part, as follows: "A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. However, a mere camp or cottage which is suitable and used only for vacations, is not a permanent place of abode." 20NYCRR 102.2(e).

If the vacation home to be purchased by Petitioner constitutes "a mere camp or cottage, which is suitable and used only for vacations," its purchase would not render Petitioner a resident of New York for purposes of the Personal Income Tax. If the home is more substantial in nature and does constitute a permanent place of abode, its purchase could not by itself render the Petitioner a resident for purposes of the Personal Income Tax. However, if Petitioner purchases such a permanent place of abode and in addition spends "in the aggregate more than one hundred eighty-three days of the taxable year in this state" he would become a resident subject to tax as such under the Personal Income Tax. It is to be noted that an individual who is a nonresident is subject to the Personal Income Tax with respect to income derived from or connected with New York sources. Tax Law, §§ 632.

DATED: January 19, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau

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