RURAL AREA FLEXIBILITY ANALYSIS

DEPARTMENT OF TAXATION AND FINANCE

1. Types and estimated numbers of rural areas: This rule amends section 105.20(e)(1) of the personal income tax regulations to remove provisions allowing for a “temporary stay” exception from the definition of “permanent place of abode,” for determining residency for personal income tax purposes. The change will primarily affect non-domiciliaries maintaining residences in New York City. There may be a limited number, however, in rural areas. There are 44 counties in the State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule may affect the reporting requirements on certain non-domiciliaries who maintain a permanent place of abode within the state for more than eleven months of the taxable year and spend more than 183 days within the state. Such individuals are likely already required to file a non-resident income tax return, but under this rule may be required to file a resident income tax return instead. In addition, some individuals not currently required to file an income tax return may now need to file a resident income tax return.

3. Costs: These changes will place no additional burdens on rural areas. Certain non-domiciliary individuals living in rural areas may have an increased New York State personal income tax liability as a result of this rule, because they will be considered New York State residents for tax purposes and there will be a tax effect related primarily to unearned income. The impact on tax liability depends on the particular circumstances of the taxpayer.

4. Minimizing adverse impact: The rule does not adversely impact rural areas. The rule will provide non-domiciliary taxpayers with clear, objective, and easily applied rules for assessing their residency status for New York State personal income tax purposes.

5. Rural area participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the National Federation of Independent Businesses; the Division for Small Business of Empire State Development; the New York State Association of Counties; the Association of Towns of New York State; the New York Association of Convenience Stores; the Small Business Council of the New York State Business Council; the Retail Council of New York State; the New York State Conference of Mayors and Municipal Officials; the Office of Local Government and Community Services of the New York State Department of State; the Tax Section of the New York State Bar Association; the National Tax Committee for the National Conference of CPA Practitioners; and the New York State Society of CPAs. The Department also discussed the rule with the New York City Department of Finance. Only the New York State Society of CPAs submitted comments. The Society acknowledged the problematic nature of the temporary stay rule, but suggested a “safe harbor” analysis based on the duration of the individual’s stay in New York and the individual’s ties to his or her domicile. The Department concluded that this alternative would not resolve the fundamental problems caused by the temporary stay concept.