



New York Bankers Association

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**Michael P. Smith
President**

December 1, 2008

Mr. William Ryan
Director
New York State Department of Taxation and Finance
Taxpayer Guidance Division
Building 9, State Campus
Albany, NY 12227

RE: I.D. No. TAF 42-08-00016-P

By e-mail: Tax_Regulations@tax.state.ny.us

Dear Mr. Ryan:

In response to the notice of proposed rulemaking published in the October 15 State Register, the New York Bankers Association (NYBA) is submitting these comments on the definition of resident for purpose of the State's personal income tax law. NYBA opposes this proposal, which would eliminate the "temporary stay" exception to the definition of permanent place of abode for purposes of determining whether an individual is a resident for personal income tax purposes. Our Association believes the proposal would denigrate from New York's status as a headquarters State and could lead to inequitable results, potentially subjecting some taxpayers to double taxation and subjecting to taxation individuals who are in New York for reasons, such as medical treatment, having nothing to do with the production of income. We urge that it be dropped. NYBA is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. Our members have more than 300,000 employees and assets in excess of \$9 trillion.

The proposal would revise the definition of "permanent place of abode" in section 105.20 (e)(1) of the regulations implementing the Tax Law by eliminating the current "temporary stay" exception to the definition. The temporary stay exception has existed for many years to allow taxpayers to visit New York State (or elsewhere) for specific purposes without potentially subjecting themselves to New York State personal income taxation. It serves a very important purpose in reinforcing New York's status as a headquarters State for many business corporations, particularly in the financial services industry. It also provides equitable relief for individuals who might, absent its existence, be subject to double taxation by several states. Finally, it permits individuals to visit New York for specific purposes, such as medical treatment or education, without incurring potential income taxation.

It is routine among businesses to bring executives to headquarters for meetings, assignments, orientation and other functions that can only be provided where corporate management and staff are located. The temporary stay exception has allowed New York-headquartered corporations, including some of the largest financial institutions in the world, to bring executives into the State for relatively brief assignments or meetings without subjecting these executives, who continue to maintain residences in the state or country where they are permanently assigned, to New York State personal income taxation. This temporary stay exception benefits New York businesses that offer lodging, food, and other services to visiting businessmen and women and supports the State's status as a headquarters state. The elimination of the exception will simply encourage businesses to have meetings or assignments elsewhere, and will provide a disincentive to companies maintaining their headquarters in the State.

Moreover, elimination of the temporary stay exception will subject some taxpayers to taxation in two taxing states without the opportunity to get a credit for the double taxation. Most states allow a credit for nonresident taxes paid to another state; very few allow a credit for resident taxes paid. This proposal would potentially subject some taxpayers who lose the benefit of the temporary stay exception to taxation as residents of New York, even as they are taxed as residents of another state in which they truly reside.

Finally, elimination of this exception could have the result of subjecting some taxpayers who are in New York for temporary reasons, such as for medical care, to New York tax. Historically, the 183-day rule has been suspended for these taxpayers. This proposal would appear to subject them to tax, a result that would be highly unfair.

For these reasons, the New York Bankers Association strongly urges that this proposal not be adopted.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is written in a cursive style with a prominent initial "M".

Michael P. Smith