



NEW YORK CHAPTER CHATTER – APRIL 2009

Quiz: When did Governor Paterson sign the 2009 – 10 budget bill? You won't want to miss this answer!

NATP Member George Louie, CPA: I want to congratulate NY NATP member George Louie who was quoted in a Newsday article about taxes on Friday, March 6, 2009. It's nice when an NATP member is recognized by the media as a tax expert.

Permanent Place of Abode: New York has tightened the definition of a permanent place of abode. The changes are described in TSB-M-09(2)I, which is included in its entirety below.

NY Budget: There's a lot of "stuff" that will affect us and our clients, mostly negatively. Here are a few tidbits from the budget bill. I plan to have much more information about this in the next newsletter.

- The new law requires commercial "tax return preparers" who are compensated for the preparation of 10 or more tax returns and persons who "facilitate" refund anticipation loans (RAL) to register annually with the Department of Tax and Finance, and it imposes various requirements and restrictions. We also get to pay \$100 annually for this privilege! This fee must be paid by all tax return preparers and RAL facilitators, except lawyers, Public Accountants and CPAs (if they don't "facilitate RALs – my interpretation), and persons working under their supervision, who are exempt from registering and paying the fee.
- Eliminates the Middle-class STAR rebate program (but maintains the STAR exemption program that will continue to provide tax relief); reduces the personal income tax credit for New York City taxpayers; and adjusts the timing of reimbursement to New York City. At least I won't be spending more hours of my life than I would like making up State-wide STAR rebate tables!

Fall NY NATP Seminars: We have a "teaser" about the fall seminars NY NATP will be sponsoring. We're also trying something new this year: a course in basic IT-201 preparation. I'll include more information in future newsletters as it becomes available.

Welcome to New Members: I've included a list of tax professionals who joined NATP in February and March 2009 in the table on page 6.

I received three emails from NATP members a month ago that I never answered. Unfortunately my computer “hiccupped” and I lost them. Please resend them if you’d still like an answer.

I hope all of you survived tax season intact and richer!

Mike Hayes, EA

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President’s Message

Is it the end of April? It seems like the season still flowing! Did you notice the CP-2000 seems to be issued earlier than ever! I had clients in with TY 07 notices. Isn’t it amazing how many clients think that if they sold their stock at a loss, they did not need to report the sale! Simply amazing! The other item that crossed my desk is the sales tax on automobiles. They started with NYS reaching out to clients that sold their vehicles and asked why they did not report the sale of the car. (Remember when personal use assets are sold at a loss, most just let it go). The taxpayer gave NYS a signed affidavit that they sold the car for X dollars. Then NYS went to the buyer and asked for the sales tax. As a taxpayer who reported the “real” purchase price of my minivan, I applaud it. As Chapter Secretary Michael Novick says: “Never surprised, but constantly amazed.”

Speaking of important information, in mid January NYS released TSB-M-09(2)I that reports changes to the definition of permanent place of abode. For a copy of that notice, go to http://www.tax.state.ny.us/pdf/memos/income/m09_2i.pdf. It also included below in its entirety.

When I fell into the business, I did it with all my heart. Even with all these disclosures and EITC questions, I still love working with the clients. Over the years, I have found my involvement with NY NATP has provided me with the networking and education that has set me apart from my competitors. This coming year, our Education offerings continue to bring vital information to us that is timely as well as useful.

Think about getting involved. The next Education Committee Meeting will be at the Holiday Inn Express on Western Avenue in Guilderland (Albany) NY, directly off Exit 24 of the NY Thruway on Friday afternoon and Saturday May 29 and 30. Again, please think about getting involved. Albany area is beautiful in the Spring!

If you have any ideas or comments, please share them with me at KMKeaneEA@aol.com. I really do want to know what you are thinking.

Hope you had a successful tax season

Kathryn

Kathryn M Keane EA

NY NATP President

<http://www.natptax.com/ny.html>

Permanent Place of Abode

New York State Department of Taxation and Finance

Office of Tax Policy Analysis Taxpayer Guidance Division

TSB-M-09(2)I
Income Tax
January 16, 2009

Amendments to the Definition of Permanent Place of Abode in the Personal Income Tax Regulations

The Tax Department recently adopted amendments to section 105.20(e) of the Personal Income Tax Regulations. These amendments relate to the definition of *permanent place of abode*, which is a factor used in determining whether a taxpayer will be considered a resident or nonresident for personal income tax purposes. The amendments apply to New York State, New York City, and Yonkers income taxes for the tax years that **end** on or after December 31, 2008 (for calendar year filers, that means tax years 2008 and after). This memorandum provides a description of the amendments.

Background

Under section 605(b)(1) of the Tax Law, an individual who is not domiciled in New York is considered a resident for personal income tax purposes if that individual maintains a permanent place of abode in the state and spends more than 183 days of the taxable year in the state.

Section 105.20 (e)(1) of the Regulations provides the definition and further guidance on what will constitute a permanent place of abode. **Before** the amendments, it read as follows:

A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by such taxpayer, and will generally include a dwelling place owned or leased by such taxpayer's spouse. However, a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode. Furthermore, a barracks or any construction which does not contain facilities ordinarily found in a dwelling, such as facilities for cooking, bathing, etc., will generally not be deemed a permanent place of abode. **Also, 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, an individual domiciled in another state may have been 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. (Emphasis added)

Description of amendment and resulting effect

The amendment to the regulations repealed the language and related example that provided that an abode would not be considered permanent if it was maintained only during a temporary stay for the accomplishment of a particular purpose. As a result of the amendments, for tax years ending on or after December 31, 2008, New York State will no longer recognize a temporary stay exception in determining whether or not a taxpayer maintains a permanent place of abode inside or outside New York State.

Accordingly, a taxpayer is maintaining a permanent place of abode in New York State if the abode meets the physical characteristics described in the regulation (for example, it is not a mere camp or cottage) and the taxpayer maintains the abode for substantially all of the tax year (disregarding small portions of the year). Generally, a taxpayer *maintains a permanent place of abode for substantially all of the tax year* if the taxpayer maintains the abode for more than eleven months.

Under section 605(b)(1)(A) of the Tax Law, a taxpayer who is domiciled in New York State is a resident for personal income tax purposes unless the taxpayer meets one of the following rules:

30-day rule

- The taxpayer did not maintain any permanent place of abode in New York State;
- the taxpayer did maintain a permanent place of abode elsewhere; and
- the taxpayer spent 30 days or less in New York State during the tax year.

Or

548-day rule

- Within any period of 548 consecutive days the taxpayer is present in a foreign country or countries for at least 450 days;
- during the 548 consecutive day period the taxpayer is present in New York State for 90 days or less, and the taxpayer's spouse (unless legally separated) or minor children spent 90 days or less during the 548-day period in a permanent place of abode in New York State maintained by the taxpayer; and
- during the nonresident portion of the tax year in which the 548-day period begins, and during the nonresident portion of the tax year in which the 548-day period ends, the taxpayer is present in New York State for no more than the number of days that bears the same ratio to 90 as the number of days in that portion of the tax year bears to 548.

For purposes of the 30-day rule and the 548-day rule described above, the regulation change also applies in the determination of whether a taxpayer is maintaining a permanent place of abode inside or outside New York State.

New York City and Yonkers

Since both the New York City and the Yonkers income taxes conform to the rules and regulations applicable to New York State income taxes, the amendments to the regulation described previously also apply to those taxes. (Note: In applying the rules for residency, the words *New York State* should be replaced by either the words *New York City* or *Yonkers*.)

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.

W A Harriman Campus, Albany NY 12227 www.nystax.gov

Fall 2009 NY NATP Seminars

Here's an advanced look at the seminars we're planning:

Fall 2009 NYNATP Education Seminar Schedule

Date	Location
10/19/09	Middletown
10/20/09	Staten Island
10/21/09	New York City
10/22/09	Smithtown
10/24/09	Rockville Center
10/26/09	Buffalo
10/27/09	Rochester
10/28/09	Syracuse
10/29/09	Binghamton
10/30/09	Albany
11/5/09	Fishkill (Annual Meeting)
December 2009	Basic IT-201 Preparation - Downstate
December 2009	Basic IT-201 Preparation - Downstate
December 2009	Basic IT-201 Preparation - Upstate

Fall Seminar Topics

October & November 2009

NY Credits
NY Updates
NY State Speaker
Internet Sales
NYS Estate Tax Basics
NYS Source of Income

December 2009

Basic IT-201 Preparation

- Aimed at new preparers and experienced preparers looking for a refresher

New members – February and March 2009

I'd like to welcome the following new NATP members and thank you for joining.

Full Name	City	State
Brian C Allicock	Arverne	NY
Patrick Atwell	Brooklyn	NY
William M Auty	Gloversville	NY
Anna Lynn Bertrand	Syosset	NY
Uriel E Burgos	Bronx	NY
James M Callaghan	Ridge	NY
Peter Casella	Middletown	NY
Yvette Charoo	Brooklyn	NY
Steven Joseph Colon	Yonkers	NY
Arthur Dedominicis	Fishkill	NY
Michele Eaton	New Rochelle	NY
Gerald H Eisenberg	Lido Beach	NY
Gina Marie Ferri	Bronx	NY
Isaac Itzkowitz	Monsey	NY
Brenda Jeffries-Silmon	Buffalo	NY
Cheryl Leonard Kleiman	Henrietta	NY
Joanne Marie Lucernoni	Buffalo	NY
Anderson A Moran	New York	NY
Howard Mostovy	Brooklyn	NY
Lucille S Murray	Pleasantville	NY
Catherine Jean O'Brien	White Plains	NY
Hilda Quiroz	Bronx	NY
Marcell Richardson-Redden	Buffalo	NY
Rhina M Rodriguez	New York	NY
Jesus Romero	Bronx	NY
Chris Wong	New York	NY
Timothy K Wong	New York	NY

The State Office of the New York Chapter of NATP

Remember that we are here to help our membership. If you have a New York State tax question contact us. If we can answer your question we will or we will put you in touch with someone who can.

NY Chapter NATP State Office
1129 Front St., Binghamton, NY 13905
Phone (800) 822-3260. Fax (607) 723-1022.
Email NYNATPstateoffice@att.net

Quiz Answer:

When did Governor Paterson sign the 2009 – 10 budget bill?

Answer: All of the budget related **bills** for State Fiscal Year (SFY) 2009 – 10 were signed on April 7, 2009.

Note the plural; there were 11 budget bills. I got the following information from the NYS Assembly web site (<http://assembly.state.ny.us/>), and it wasn't clear to me whether A.160-A / S.60-A was signed into law or not. Here's the laundry list (click on the links to see the bills, which are very difficult to read):

2009-2010 Budget Bills

Appropriation Bills

[Public Protection and General Government Budget \(A.150-C/S.50-C\)](#)

[Transportation, Economic Development, and Environmental Conservation Budget \(A.155-C/S.55-C\)](#)

[Health and Mental Hygiene \(A.154-C/S.54-C\)](#)

[Education, Labor and Family Assistance Budget \(A.153-C/S.53-C\)](#)

[Appropriations for State Debt Service \(A.152/S.52\)](#)

[Appropriations for Legislature and Judiciary \(A.151-A/S.51-A\)](#)

Article VII - Language Bills

[Public Protection and General Government Budget \(A.156-B/S.56-B\)](#)

[Transportation, Economic Development, and Environmental Conservation Budget \(A.159-B/S.59-B\)](#)

- Click on link above, search for “VV” (contact me if you need help searching); second hit is where tax preparer registration requirement starts (under “S 32”).

[Health and Mental Hygiene \(A.158-B/S.58-B\)](#)

[Education, Labor and Family Assistance Budget \(A.157-B/S.57-B\)](#)

[Revenue \(A.160-A/S.60-A\)](#)