TAX ALERT: NEW YORK STATE ELIMINATES "TEMPORARY STAY" PROVISIONS

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Practices & Industries

State & Local Tax

New York State recently amended its residency rules to make more individuals qualify as state residents. This is significant because residents pay tax on their worldwide income, while nonresidents pay tax only on income sourced to New York. Individuals qualify as residents of New York State if: (1) they are domiciled in the state, or (2) they are statutory residents of the state. The rule change amends only the statutory residency portion of the test.

Statutory residents are those individuals who maintain a permanent place of abode in New York and spend more than 183 days in the state. Under the prior personal income tax regulations, an abode was not deemed to be permanent if the individual was in New York for a "temporary stay to accomplish a particular purpose." For example, a foreign national employed by a multinational corporation, who moves to New York City for two years to install, debug, and integrate a new computer system, could qualify as a New York nonresident. Or take for example the case of a college student moving to New York for school and renting an apartment in the state. Under the previous regulations, this individual could qualify as a nonresident. However, with the elimination of the "temporary stay" rules from the regulations, both of these individuals would be taxed as New York residents. This new tax consequence could deter people from coming to New York for a number of reasons including work and education.

There is much debate regarding whether the Department's revised regulation comports with the requirements of the Tax Law. Under the Tax Law, only those individuals who maintain a ***permanent*** place of abode in the state qualify as residents. Thus, if an individual is in the state for a temporary period, he or she should not qualify as a resident. Moreover, the revised regulation applies retroactively to the 2008 tax year. Thus, those individuals who relied on the temporary stay rules this past year may find themselves with a significantly increased tax liability and insufficient withholding. As a result, it is likely that this rule change will lead to increased litigation and confusion.