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July 17, 2008

John W. Bartlett, Director of Regulations
NYS Department of Taxation and Finance
Building 9, Room 161
W. A. Harriman Campus
Albany, New York 12227

**Re: Request for Comments on Developing Amendments to the Provisions of the
Personal Income Tax Regulations that Define the Term “Resident Individual” for
Income Tax Purposes**

Dear Mr. Bartlett:

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned release. The NYSSCPA thanks the New York State Department of Taxation and Finance for the opportunity to comment.

The NYSSCPA’s New York, Multistate and Local Taxation Committee deliberated the pertinent New York State tax law and prepared the attached comments. If you would like additional discussion with the committee, please contact Wayne K. Berkowitz, chair of the New York, Multistate and Local Taxation Committee, at (212) 832-0400, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



Sharon Sabba Fierstein
President

Attachment



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**COMMENTS ON DEVELOPING AMENDMENTS TO THE PROVISIONS OF
THE PERSONAL INCOME TAX REGULATIONS THAT DEFINE THE TERM
“RESIDENT INDIVIDUAL” FOR INCOME TAX PURPOSES**

July 17, 2008

Principal Drafter

Wayne K. Berkowitz

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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON DEVELOPING AMENDMENTS TO THE PROVISIONS OF
THE PERSONAL INCOME TAX REGULATIONS THAT DEFINE THE TERM
“RESIDENT INDIVIDUAL” FOR INCOME TAX PURPOSES**

We are responding to a request from the New York State Department of Taxation and Finance (the Department) to provide comments for use in the development of amendments to the provisions of the personal income tax regulations that define the term “resident individual” for income tax purposes.

Specifically, we are commenting on the section of 20 NYCRR 105.20(e)(1), which states that “...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.”

While there are many other issues to comment on regarding this regulation, our comments are limited to this portion alone.

In the past few years, there has been a vast amount of litigation, the subject of which centered on what constitutes a “temporary stay” in New York. The typical facts are that an employee had been sent to New York by his or her employer. The employee was in New York for an extended period of time and secured living quarters there. The regulation was designed to protect those employees that are in New York for a “particular purpose” from being subject to New York State and City income tax on all of their sources of income.

What constitutes a “temporary stay” as compared to a permanent stay is the cause of the longstanding controversy and is what impacts the courts’ decisions. It requires a detailed and often onerous examination of the intent of both the employer and the employee. This examination, at best, results in a protracted audit and litigation and, at worst, in inconsistent results among similarly situated taxpayers.

We would not recommend eliminating the “temporary stay” provision as we believe this would put New York State and New York City at a competitive disadvantage in attracting business. As an alternative to eliminating the provision, we suggest that the regulations be modified to provide a “safe harbor” provision in which a taxpayer who meets certain requirements as to the length of time spent in New York and the maintenance of certain ties to his or her state of domicile will satisfy the temporary stay provisions and a presumption will be created in his or her favor. Those taxpayers who do not meet the “safe harbor” provisions might be able to meet the temporary stay provision, but must overcome a presumption in favor of residency.

We strongly believe that the specifics of creating a safe harbor is an area that requires further communications among the Department, the Society and other interested parties in order to formulate a proposal that is fair and amenable to both the State and to taxpayers.