

THE GENETELLI CONSULTING GROUP  
*State and Local Tax Services*  
431 FIFTH AVENUE  
NEW YORK, NY 10016

(212) 684-4111  
FACSIMILE: (212) 213-1020  
EMAIL: [rgenetelli@genetelli.com](mailto:rgenetelli@genetelli.com)

**Subject: NYS Personal Income Tax - Permanent Place of Abode**  
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To Our Clients and Friends:

A recent ruling by an Administrative Law Judge illustrates the intricacies of maintaining a permanent place of abode and trying to claim nonresident status for taxpayers who come to work and live in New York on a temporary basis. In Petition of Vazquez, Division of Tax Appeals, May 5, 2005, the taxpayer was deemed a New York resident based on the following fact pattern.

During both 2000 and 2001, the taxpayer worked and rented an apartment in New York, and was present in New York for more than 183 days. On his New York personal income tax return for each of the years, the taxpayer claimed nonresident status. The returns included a statement that the taxpayer was in the United States for a temporary period to accomplish a particular purpose as prescribed by his employment contract. According to the statement, the taxpayer intended to return to Argentina upon the termination of his service in the United States. After an audit inquiry, the Division of Taxation sought to tax the taxpayer as a New York resident.

The relevant authority provides that an individual who is not domiciled in New York, but maintains a permanent place of abode in New York and spends more than 183 days of the taxable year in New York, is taxable as a New York resident. A place of abode is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose.

After finding the place of abode provision to be a two part test (i.e., if the place of abode is to be deemed not permanent, it must be maintained during a temporary stay and the stay must be for the accomplishment of a particular purpose), the Administrative Law Judge upheld the Division's classification of the taxpayer as a New York resident. The key evidence was the taxpayer's employment documentation, which (1) indicated the taxpayer's assignment to New York was for general duties (rather than for the accomplishment of a particular purpose), and (2) did not specify a definite period of time for the taxpayer's assignment to New York (leading to an interpretation of an indefinite duration of employment).

As the Vazquez case demonstrates, taxpayers must be properly prepared to support nonresident status in New York based on the 183 day test and temporary stay for the accomplishment of a particular purpose provision. The appropriate documentation must be established at the outset to evidence that an assignment to New York is temporary and to accomplish a specific task.

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If you have any questions regarding the within or any other state and local tax matters, please do not hesitate to contact me.

Richard W. Genetelli  
The Genetelli Consulting Group  
State and Local Tax Consultants  
431 Fifth Avenue, 3<sup>rd</sup> Floor  
New York, NY 10016  
Tel: (212) 684-4111  
Fax: (212) 213-1020  
Website: [www.genetelli.com](http://www.genetelli.com)