N.Y. Comp. Codes R. & Regs. Tit. 20 § 132.18 - Earnings of nonresident employees and officers

- State Regulations
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(a) If a nonresident employee (including corporate officers, but excluding employees provided for in section 132.17 of this Part) performs services for his employer both within and without New York State, his income derived from New York State sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within New York State bears to the total number of working days employed both within and without New York State. The items of gain, loss and deduction (other than deductions entering into the New York itemized deduction) of the employee attributable to his employment, derived from or connected with New York State sources, are similarly determined. However, any allowance claimed for days worked outside New York State must be based upon the performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer. In making the allocation provided for in this section, no account is taken of nonworking days, including Saturdays, Sundays, holidays, days of

absence because of illness or personal injury, vacation, or leave with or without pay.
Example 1:A, a resident of Connecticut, is an officer and substantial stockholder of the X Corporation, having its principal office in New York City. During the taxable year, A performs the following services for X Corporation:

Services performed for X Corporation wholly

within New York State. 210 days

Sales conventions in Hot Springs, Ark. and Miami, Fla. (A passed through New York State to board

airplanes on four of these days.) 10 days

Calling on customers in Pacific Coast states. 20 days

A's salary from the X Corporation is $40,000 per year.

A's New York adjusted gross income is determined as follows:

Total number of working days within New York State (210) divided by total number of working days both within and without New York State (240) is 210/240 or 87.5 percent, which, when applied against A's salary of $40,000, equals $35,000, A's New York adjusted gross income. Days on which A entered New York State solely for the purpose of boarding or disembarking from an airplane or train do not count as days worked in New York State.

Example 2:B, a resident of New Jersey, is an employee of the X Corporation, having its principal office in New York

City. During the taxable year, B was sent to Chicago by X Corporation to help establish a new sales office. All other services which he performed for X Corporation were performed wholly within New York State. B passed through New York State to board a plane on Sunday, March 31st, and to disembark on Friday, April 26th. While in Chicago, B held meetings in his hotel room on Saturday, April 6th, and Saturday, April 20th. B allocates 217 working days to New York State as follows:

Total days in year 365

Nonworking days:

Saturdays and Sundays (there are 104 Saturdays and Sundays; however, since the Sunday spent traveling and the two Saturdays spent holding meetings in his hotel room in Chicago are to be included in total working days, these days are not included in nonworking days). 101

Holidays 11

Sick leave 3

Vacation 10

Total nonworking days 125

Total days worked during year (365 minus 125) 240

Total days worked outside New York State. (A total of 27 days was spent in Chicago; however, four of these days are Saturdays or Sundays on which no services were rendered for his employer and are included in nonworking days, not in days worked outside New York State.

Therefore, in determining the total number of days worked outside New York State, B includes the 20 normal working days spent in Chicago, plus the Sunday spent traveling, plus the two Satur-

days spent holding meetings in his hotel room.) 23

Total days worked in New York State (240 minus 23) 217

(b) Where a nonresident employee (including corporate officers, but excluding employees provided for in section 132.17 of this Part) performs services both within and without New York State for only part of a taxable year, his income derived from New York State sources during that period includes only that portion of compensation received during the period he performs services both within and without New York State, multiplied by a fraction the numerator of which is the number of days he worked within New York State and the denominator of which is the number of days he worked both within and without New York State during the period he was required to perform services both within and without New York State.
Example:E, a resident of New Jersey for the entire taxable year, was employed by T Corporation for the entire taxable year. During the period from January 1st through June 30th he worked at the company's Philadelphia, Pa. office. Since E did not perform any services within New York State during this period, none of the compensation received for such period would be includible in computing his New York adjusted gross income. On July 1st, E was transferred to the company's New York City office where he was required to perform services both within and without New York State. The

New York adjusted gross income of E includes the total compensation received from T Corporation during the period from July 1st through December 31st, multiplied by a fraction the numerator of which is the number of days worked within New York State during the period from July 1st through December 31st and the denominator of which is the total number of days worked both within and without New York State during this same period.

(c) If a nonresident employee (including corporate officers, but excluding employees provided for in section 132.17 of this Part) performs services for more than one employer both within and without New York State, he must determine separately for each such employer the allocable compensation attributable to New York State sources. In determining the income from New York State sources, the total compensation from each such employer must be multiplied by a fraction the numerator of which is the number of days the nonresident employee performed services within New York State for such employer and the denominator of which is the total number of days during which the employee performed services both within and without New York State for such employer. The sum of the amounts of compensation determined as allocable to New York State sources must be included in computing the New York adjusted gross income of the nonresident employee.
Example:B, a resident of New Jersey, performed services for Y Corporation during the period January 1st through June 28th, for which he received total compensation of $20,000. He performed services for Y Corporation a total of 120 working days during this period, of which 90 days

were attributable to services performed wholly within New York State and 30 days were attributable to services performed wholly outside New York State. B terminated his employment with Y Corporation at the close of business on June 28th and went to work for Z Corporation on July 1st. For the period July 1st through December 31st he received total compensation of $25,000. He performed services for Z Corporation for 120 working days during this period, of which 60 days were attributable to services performed wholly within New York State and 60 days were attributable to services performed wholly outside New York State. B's New York adjusted gross income includes compensation for personal services in the amount of $27,500, computed as follows:

Y Corporation 90/120 x $20,000 = $15,000

Z Corporation 60/120 x $25,000 = 12,500

Total $27,500