

SECTION 605

General provisions and definitions

Tax (TAX) CHAPTER 60, ARTICLE 22, PART 1

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§ 605. General provisions and definitions. (a) Accounting periods and methods. (1) Accounting periods. A taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(2) Change of accounting periods. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this article shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the New York standard deduction and the New York exemptions shall be prorated under regulations of the tax commission.

(3) Accounting methods. A taxpayer's method of accounting under this article shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, New York taxable income shall be computed under

such method as in the opinion of the tax commission clearly reflects income.

(4) Change of accounting methods. (A) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be similarly changed.

(B) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(C) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the tax commission.

(b) Resident, nonresident and part-year resident defined.

(1) Resident individual. A resident individual means an individual: (A) who is domiciled in this state, unless (i) the taxpayer maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or (ii) (I) within any period of five hundred forty-eight consecutive days the taxpayer is present in a foreign country or countries for at least four hundred fifty days, and (II) during the period of five hundred forty-eight consecutive days the taxpayer, the taxpayer's spouse (unless the spouse is legally separated) and the taxpayer's minor children are not present in this state for more than ninety days, and (III) during the nonresident portion of the taxable year with or within which the period of five hundred forty-eight consecutive days begins and the nonresident portion of the taxable year with or within which the period ends, the taxpayer is present in this state for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in that portion of the taxable year bears to five hundred forty-eight, or

(B) who maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, whether

or not domiciled in this state for any portion of the taxable year, unless such individual is in active service in the armed forces of the United States.

(2) Nonresident individual. A nonresident individual means an individual who is not a resident or a part-year resident.

(3) Resident estate or trust. A resident estate or trust means:

(A) the estate of a decedent who at his death was domiciled in this state,

(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state, or

(C) a trust, or portion of a trust, consisting of the property of:

(i) a person domiciled in this state at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become

irrevocable; or

(ii) a person domiciled in this state at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

(D) (i) Provided, however, a resident trust is not subject to tax under this article if all of the following conditions are satisfied:

(I) all the trustees are domiciled in a state other than New York;

(II) the entire corpus of the trusts, including real and tangible property, is located outside the state of New York; and

(III) all income and gains of the trust are derived from or connected with sources outside of the state of New York, determined as if the trust were a non-resident trust.

(ii) For purposes of item (II) of clause (i) of this subparagraph, intangible property shall be located in this state if one or more of the trustees are domiciled in the state of New York.

(iii) Provided further, that for the purposes of item (I) of clause

(i) of this subparagraph, a trustee which is a banking corporation as

defined in subsection (a) of section fourteen hundred fifty-two of this chapter, as such section was in effect on December thirty-first, two thousand fourteen, and which is domiciled outside the state of New York at the time it becomes a trustee of the trust shall be deemed to continue to be a trustee domiciled outside the state of New York notwithstanding that it thereafter otherwise becomes a trustee domiciled in the state of New York by virtue of being acquired by, or becoming an office or branch of, a corporate trustee domiciled within the state of New York.

For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(4) Nonresident estate or trust. (A) A nonresident estate means an estate which is not a resident.

(B) A nonresident trust means a trust which is not a resident or part-year resident.

(5) Part-year resident individual. A part-year resident individual is an individual who is not a resident or nonresident for the entire taxable year.

(6) Part-year resident trust. A part-year resident trust is a trust which is not a resident or nonresident for the entire taxable year.

(c) Tax treatment of charitable contributions for determining domicile. Notwithstanding any other provision of any other law to the contrary, the making of a financial contribution, gift, bequest, donation or any other financial instrument or pledge in any amount or the donation or loan of any object of any value, or the volunteering, giving or donation of uncompensated time, or any combination of the foregoing, considered a charitable contribution under subsection (c) of section one hundred seventy of the internal revenue code, or to a not-for-profit organization, as defined in subdivision seven of section

one hundred seventy-nine-q of the state finance law, shall not be used in any manner to determine where an individual is domiciled.