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Deferred Compensation—Delayed, but Not Forgotten

Allocating deferred compensation and other payments to New York is a challenging endeavor.

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When it comes to state personal income tax issues, residency gets the most attention. Residency is interesting and dangerous. It can also be high stakes. The line-up behind residency issues usually includes withholding matters, the constitutionality of credit regimes and, down the line, nonresident income allocation.

Nonresident income allocation, however, is more important every day as technological advances make telecommuting more usual and the pool of earners becomes more mobile. Pressure on states to find revenue is rising and we often see states "looking outward" to tax individuals and businesses with relatively small in-state footprints. We see the pressure manifest in different ways and across different taxes, including more aggressive residency audits, shifts from "place of performance" to "market based" corporate franchise and income tax sourcing regimes, and expanded nexus rules for sales and corporate income tax purposes. We also see states keeping a closer eye on nonresidents allocating income.

Many New York resident and nonresident taxpayers earn income that isn't paid out until later. If the taxpayer never resided in the state or states where the income was earned, or changed his or her residency before receiving the income, is there any income tax still due? The answer, of course, is "maybe." The answer may be different still for a taxpayer who was once a New York resident, but then changes residency prior to receiving the deferred compensation.[1] This article provides a detailed review of New York's nonresident income allocation system for major types of wage-based deferred compensation, and covers record-keeping best practices to prepare for a possible New York audit.

Nonresidents Allocating Income to New York—the Nuts and Bolts

Nonresident taxpayers who earn income from services provided both in and out of New York are required to allocate a portion of the income to New York, and pay tax accordingly. New York's nonresident income allocation regime is not particularly complicated—so long as the taxpayer, the taxpayer's employer, the taxpayer's vendors, or all of the above have kept great records! It also helps to be cognizant of the rules and issues before a nonresident earns deferred compensation allocable to New York.

Today's workforce is mobile, which makes our analysis even more interesting. It's worth pointing out a distinction between allocating income to New York State and New York City here at the outset. Despite the amazing amount of economic activity and wages earned by nonresidents in New York City, the City does not impose a personal income tax on nonresidents, period. If you're not a City resident, you simply do not pay City tax on your wage income.[2] If you are a City resident (like New York State residents), you pay City tax on everything.[3]

Stock options, stock grants, and restricted stock units

Stock-based compensation is a common way for employers to compensate—and incentivize—ordinary W-2 employees, executives, and even non-employees like directors and committee members. Stock-based compensation can be deferred, and can take many forms. Stock options, stock grants, and restricted stock units are three common forms of compensation New York nonresidents find themselves allocating to New York State.

Stock options generally take two forms, statutory/qualified or non-statutory/non-qualified. Generally speaking, no matter the type of option, as noted by the New York Tax Department, nonresidents who receive stock options connected to services provided in New York must keep an eye on four important dates during the life of the options: (1) the *grant* date, which is the date the option is received by the grantee (the option is to purchase shares at a specified price in the future); (2) the *vest* date, which is the date the grantee has satisfied all employment-related conditions which make the options nonforfeitable and exercisable; (3) the *exercise* date, which is the date the grantee actually buys the stock; and (4) the *sale* date, the date the grantee sells the stock for a certain price.[4]

For New York nonresident income allocation purposes, the difference in the option price (the price the grantee is offered to buy the stock at) and the fair market value of the stock at the time the options are exercised is considered compensation to a nonresident.[5] The nonresident will pay tax to New York when the option income is recognized for federal income tax purposes—but only on gain earned up to the exercise date.[6] The gain earned on the stock options beyond the exercise date, if any, is considered intangible gain, like other gain from the sale of stock or securities, and in most cases the additional gain beyond the exercise date is not subject to New York allocation by a nonresident.

So, we know the base amount of option income allocable to New York. How does a nonresident actually allocate the income? The nonresident must compute a New York "allocation period" for each tranche of option income, and for purposes of computing the allocation period, the grant and vest dates are most important. The "allocation period" is the period that begins on the date the option was granted, and ends on the date the option vests.[7] If the grant and vest dates are the same, the option income is allocated like other ordinary wage income earned from the same employer in the year of the grant.[8]

Once the allocation period is set, the grantee computes a fraction, where the total number of days spent working in New York during the allocation period is the numerator, and the total days spent working everywhere during the period is the denominator. The grantee multiplies the option income by this fraction to arrive at the portion allocable to New York.[9]

Restricted stock units (RSUs) are another common form of deferred compensation used to compensate key employees and directors. As the name suggests, there are often conditions embedded in these grants, most often a period of years the grantee must remain with the issuing entity before the stock will vest (the stock usually vests when the conditions are met, and is no longer subject to substantial risk of forfeiture).

For New York income allocation purposes, the key dates for nonresident taxpayers who receive this type of compensation are the grant and vest dates, just like the allocation regime for stock options. To determine what portion of the RSU or grant is allocable to New York, nonresident employees should tally the total number of days worked in New York between the grant and vest date, and also tally the total number of days worked everywhere during this same period. This is the same process necessary to allocate option income. Sounds easy, right?

Let's take a look at the application of these principles to a fairly common set of facts. Bob is a nonresident, and as an executive working in New Jersey for a company based there, he is granted RSUs on January 10, 2016. Bob periodically has meetings in New York and sometimes works out of the company's New York sales office. Bob's 2016 RSUs will vest, if at all, at three different points: 1/3 will vest on January 10, 2017; another 1/3 will vest on January 10, 2018; and the final 1/3 will vest on January 10, 2019. Bob receives another grant of RSUs the following year with the same rolling vest program. So, as enough time goes by, Bob has the potential to earn income from RSUs granted in any of the three prior years.

Bob's record-keeping, which we'll cover in the sections below, is key to simplifying this process. Assuming all of these RSUs vest in the ordinary course, Bob will recognize income from the RSUs in the same year they vest, and Bob will allocate the RSU income to New York as appears in the accompanying Exhibit 1.

Exhibit 1. Sample allocation of restricted stock units to New York

RSU tranche	Allocation period (grant to vest)	New York workdays	Total workdays	Percent of RSU allocable to NY
First 1/3	1/10/16 – 1/10/17	35	220	35/220 = 15.9%
Second 1/3	1/10/16 – 1/10/18	75	440	75/440 = 17.05%
Third 1/3	1/10/16 – 1/10/19	150	660	150/660 = 22.73%

With solid records and the ability to avoid some of the trouble spots discussed below, nonresident taxpayers can properly allocate their income to New York and be ready to defend an income allocation audit.

Wage-based deferred compensation

Delayed bonuses are an area we see reviewed regularly on audit. The question is whether a nonresident taxpayer has properly sourced a bonus earned in year one, that's actually received by the taxpayer in year two.

A typical situation works along these lines: Gail, a Connecticut resident, works for a New York-based company. Gail works in her New York office on a regular basis, but travels often, and therefore the amount of time she spends in New York each year fluctuates. In 2016 Gail spent 100 workdays in New York, and 140 more traveling outside New York. Gail never works from home. Gail would allocate 41.67% (100/240) of her wage compensation earned for services performed in 2016 to New York. On January 10, 2016, Gail received a $3,000,000 performance bonus for work performed in 2015, reported to Gail on a Form W-2 along with the balance of her 2016 wage income. The January 10, 2016 bonus, however, isn't allocated like the other 2016 ordinary wage income. It's allocated using a New York workday to total workday allocation percentage, using the period covered by the performance bonus.[10] In Gail's case, the allocation period for this bonus would be January 1-December 31, 2015. Let's assume Gail only worked 25 days in New York during this period, against 240 days worked everywhere. If Gail allocated the bonus received in 2016 like the rest of her 2016 income, she'd pay more tax to New York than she had to, and Connecticut's resident credit won't cover the entire payment.

Taxpayers and representatives alike should keep an eye on this issue. It can result in an occasional refund on audit, though it might never be examined in an audit if the nonresident taxpayer has a consistent New York allocation percentage year after year.

Sometimes severance payments or termination pay aren't "deferred" in the traditional sense, but they are often made after or at the time an employee ceases working for an employer, which raises the question: if the employee didn't perform any services in New York for this compensation, is it allocable to New York?

All types of ordinary termination and separation pay, severance payments and other post-employment payments such as a payment for a covenant not to compete are subject to New York nonresident income allocation.[11] Prior to January 1, 2010, this issue was more interesting. Beginning on January 1, 2010, income "related to a business, trade, profession or occupation previously carried on within the state, whether or not as an employee" became allocable to New York, including income associated with termination pay and covenants not to compete, which had formerly been excluded.[12] The change applies to income received on or after January 1, 2010, even if the contract or agreement was entered in a previous year.

Prior to 2010, contract termination payments were considered payments for the "relinquishment of [the employee's] right to future employment," which was not necessarily connected to New York sources, and the payments were therefore not subject to New York allocation like other wage income. Payments for covenants not to compete are payments to refrain from a given activity for a prescribed time—after the taxpayer's employment is terminated or completed. Severance pay, which is considered a payment made to a departing employee in respect of prior services for the company, was allocable to New York prior to 2010.[13]

Severance payments (separation payments for prior services) and termination payments are allocated using a unique formula, based on the ratio of New York *compensation* to total compensation earned from the employer during the year of separation and the three prior years.[14]

New York resident and nonresident employees alike earn "nonqualified"[15] deferred compensation during the course of their employment that is distributed over a set period. For example, a New York resident executive may be entitled to payments of $500,000 per year for a period of 10 years, paid in annual distributions, and the trigger to initiate these payments is the resident executive's separation from service. Assume the executive spent her entire career working for a New York company, rarely traveling outside the state. The day after the executive retired, however, she packed up, sold the New York house, and moved to Florida.

Ordinarily, payments made to a retiring executive in respect of prior services—like a severance payout—are subject to New York nonresident income allocation. So, if we were dealing with a severance, our retiring executive would still owe New York tax. Certain forms of nonqualified deferred compensation, however, avoid New York nonresident allocation thanks to a federal prohibition against states attempting to tax a nonresident's "qualified retirement" income.[16] The prohibition covers more conventional streams of retirement income like distributions from a 401(k) plan, Roth IRA and annuity payments. Where things get more interesting is with the narrow category of protected "nonqualified" deferred compensation, which presents both planning opportunities and audit risk. This is also why it often gets a closer look from the New York Tax Department.

To qualify as exempt "nonqualified" deferred compensation, the deferred compensation must fit into one of two categories: (1) income from a plan that makes substantially equal payments like an annuity, i.e. for the shorter of 10 years or for the former employee's life expectancy at the time the employee retired, or (2) the nonqualified deferred compensation payment must be received after an employee's retirement under a plan maintained to provide retirement benefits in excess of certain limitations applicable to qualified retirement plans under the Internal Revenue Code ("I.R.C."), specifically I.R.C. Sections 401(a)(17) and 415.[17]

This type of deferred compensation plan is often from an "excess benefit" or "top hat" plan. If a nonresident's nonqualified deferred compensation fits within one of these two buckets, it avoids allocation to New York, even if it was earned in New York. If the nonresident happens to live in a low or no income tax jurisdiction like Florida or Texas, there are significant state tax savings associated with this federal protection.[18] Even if a pension or retirement benefit doesn't fit within the federal protections, it may not be subject to New York allocation on account of New York's annuity exclusion.[19]

Let's take a look at a planning opportunity. If a retiring employee who formerly performed services in New York was set to receive equal, annual payments of $400,000 from an employer-sponsored nonqualified deferred compensation plan for five years after her separation from service, the payments would be allocable to New York like a severance.[20] If the plan was tailored so that the employee received $300,000 per year over 10 years, it could avoid nonresident allocation. Depending on the terms of the plan, the potential tax savings, the health of the former employee and the business responsible for making the payments, the state of the retiring employee's residence, and other factors, adjusting or negotiating the terms of a nonqualified deferred compensation plan appropriately prior to an event that triggers distributions from the plan could make a lot of sense.

Record-Keeping for Wage-Based Deferred Compensation—Best Practices

When a nonresident taxpayer's claimed allocation of income to New York is challenged by the New York Tax Department, what materials must be produced in order to substantiate the filing positions taken on the return? Who has the burden of proof and by what standard?[21] These are good questions, and they generally boil down to a simple truth: the nonresident taxpayer must prove the claimed allocation on the return was proper, and the more complete the taxpayer's records, the easier the audit review process will be.

In the context of deferred compensation, keeping good records can be even more important. Several years can go by between the date an employee is granted an option and the date that option vests. All the while, a New York "allocation period" is accruing. Will the nonresident employee be able to reasonably prove where she worked during this period?

The type and scope of records that a taxpayer will be expected to produce during an audit will vary with the nature of the taxpayer's work in New York. Any number of records or formats will work, but as a best practice—for ordinary wage-earning employees—keep the following guidelines in mind:[22]

Calendars: Recommend that the employee and/or her assistant keep a detailed, contemporaneous calendar or diary indicating work location and the timing of any work and personal travel. A contemporaneous work calendar, like an Outlook or desk calendar, typically sets the base in proving a taxpayer's claimed wage or deferred compensation allocation. The calendar alone won't often carry the day, but a detailed calendar supported by third-party records will be a key starting point.

Practice pointer: None of us list every call, meeting, event, etc., on our contemporaneous calendars. Some of these things arise spontaneously and noting the calendar isn't a priority. But in certain cases, particularly where the "convenience test" is involved (discussed below), keeping close track of all meetings and events can be critical. In the convenience test context, if an auditor thinks an employee is working from home outside New York—even if the employee is out in the field—because there are no or few calendar entries, the auditor may try to source the workday to New York.

Expense reports: Employees should keep copies of filed, detailed expense reports. There's probably no better way to prove that a certain trip, dinner, or event had a work purpose than to prove the employee's costs were reimbursed. Companies regularly merge, go out of business, or inadvertently lose or destroy records. Employees shouldn't count on these expense records being available two or three years later (or, with some deferred compensation, several years later) when they receive a New York audit notice.

Practice pointer: Flight manifests for trips on chartered or private jets might not find their way into an employee's expense report. These records are important, and may be subject to destruction also. Obtain them as soon as possible.

Travel records: These include frequent flyer statements, boarding passes and itineraries, hotel folios, and contemporaneous calendar entries that match the other third-party records. These records are key. It's also important to distinguish personal travel from business travel. If an auditor can't tell why an employee traveled to a certain location, and the employee can't prove the trip was reimbursed, the auditor might assume an out-of-state work trip was actually vacation, which could result in additional New York-source income.

Practice pointer: We often see employees board a plane for a work trip, often to a foreign country, on a Sunday evening. In most allocation audits, where the goal is to try and determine the employee's New York workday allocation percentage, weekend days are presumed to be non-workdays, unless the employee's records or patterns prove otherwise. In the case of a work-related flight, however, the weekend day should count as an "out" workday, even if the trip originated from a New York airport.[23] So, if an employee who lives in Connecticut, but works in New York, drove to New York's Kennedy airport and boarded a flight to London at 5 p.m. on a Sunday, we would call that Sunday a full workday, and more specifically, a full "out" workday, in calculating the employee's New York workday allocation percentage.

Credit and debit card statements: Employees should keep copies of personal and corporate credit card statements for two key reasons: to prove both their location during the workweek, and to prove work-related spending.

Practice pointer: If other members of an employee's family or colleagues have access to the card or account, obtain separate cards for these people. If the credit card statements don't reflect the audited taxpayer's location or usage, they may be thrown out as a valid record source, or worse, the erroneous usage could be imputed to the taxpayer, again resulting in additional New York tax.

Grab bag: Anything else that proves the employee's location and/or work purpose on a given day can be useful in an allocation audit. These records include:

- Office swipe access records: These records are not kept for very long by most buildings, so employees should request and keep them on a rolling basis, perhaps every six to 12 months.
- Commuting records: EZ Pass, train tickets, toll tickets, etc.
- Cell phone records: Verizon and AT&T currently produce cell phone records with call origination detail that can help prove an employee's location on a certain day. These records may not be perfect for a variety of reasons, but they may be helpful.
- Passport/U.S. Customs and Border Control records: Primarily to prove an employee's travel.
- Testimony: A taxpayer's testimony or statement to an auditor or appeals agent has value, but the testimony (and patterns developed in a taxpayer's work) should be supported by third-party evidence.
- Smart phone "apps": Cell phone-based software that can track an employee's location can be useful. One example is the location tracking software provided by MONAEO.

The most cost-efficient and straightforward audits are those in which the taxpayer has excellent records. If the prep work prior to filing a return that allocates deferred compensation to New York is based on allocation schedules prepared with these records and a high attention to detail, the taxpayer will be in a good position to successfully defend the audit. Keep in mind that taxpayers who pay full New York tax as a resident on wage income may not have to pay full New York tax on deferred compensation paid out after the taxpayer moves to another state, and it would be up to the taxpayer, as it is in every audit, to prove proper allocation, using the methods described herein.

Other Issues Allocating Deferred Compensation to New York

The host of allocation issues that arise for New York nonresidents is incredible. It seems like there's something new every day. There are several issues worth reviewing, and one other important issue that arises in the context of allocating deferred compensation is analyzed below.

New York's "convenience of the employer test"

New York's "convenience test," as it's colloquially known, is infamous. Some think its standard application to employees who work from home can result in an unfair and unrealistic allocation of income to New York and that the test hasn't appropriately evolved with our shifting remote economy.

Still, despite the grumblings, the "convenience test" has survived constitutional scrutiny,[24] and it's still on the books in New York.[25] So employees need to be aware of it, deal with it, and plan to allocate deferred compensation in line with it. As noted at the beginning of this article, New York nonresidents who provide services for their employer both within and without New York must allocate a portion of their wage income to New York.[26]

For nonresident employees whose primary or assigned work location is in New York, the New York Tax Department takes the position that days worked by an employee in a home office outside New York do not "count" as non-New York workdays if the employee is working outside the state for the employee's own convenience, as opposed to employer necessity. This is what we call the "convenience test." So, if a nonresident employee assigned to a New York office spends days working from a non-New York home or some other location without actual employer necessity, those days are sourced back to New York under the test.

There are exceptions to the convenience test, and the New York Tax Department, to its credit, established a safe harbor (premised in part on a factor-based test)[27] for certain out-of-state employees who convert their home office into a deemed bona fide employer office. But the test regularly poses issues for taxpayers allocating deferred compensation. Some of these issues can be avoided with appropriate planning and by negotiating and maintaining copies of employment agreements/contracts that clearly indicate the employee's assigned office.

In some situations, the taxpayer shouldn't back down on this issue when confronted on audit. For example, was the day spent at home really a workday, or was it a vacation or sick day? Were there meetings and events near the taxpayer's home that the calendar doesn't reveal, but another record source would? Is the taxpayer's general pattern of work and position with the company the kind that should even be subject to the convenience test at all, a provision originally intended to attach to out-of-state telecommuters? If faced with this issue when allocating deferred or ordinary wage compensation on audit, the taxpayer doesn't need to concede right away. Consider all of the alternatives.[28]

Conclusion

New York nonresidents, enjoying the warm weather hundreds or thousands of miles away, might still feel the icy sting of a New York income allocation audit. This article covers the mechanics of New York nonresident income allocation of wage and equity-based deferred compensation, but only in select permutations. Taxpayers and representatives should keep these issues in mind as deferred compensation hits nonresident tax returns or, even better, before the deferred compensation is earned.

[1] *See generally* New York's income accrual rule, N.Y. Tax Law § 639; N.Y. Comp. Codes R. & Regs. tit. 20, § 154.10; Treas. Reg. 1.451-1(a).

[2] *But see* footnote 1.

[3] *See* N.Y. Tax Law §§ 601(e), 631; New York Nonresident Allocation Guidelines at p. 61-62 (2013) (hereinafter "Guidelines").

[4] Guidelines at p. 56.

[5] Guidelines at pp. 57-58; N.Y. Tax Law § 631(g); N.Y. Comp. Codes R. & Regs. tit. 20, § 132.24; *Michaelson v. Tax Commission*, 67 N.Y.2d 579 (1986) ("Thus, in conformity with Federal law, we conclude that the proper method of valuing the compensation derived from an option that has no readily ascertainable fair market value on the date it is granted is to subtract the option price from the fair market value of the stock on the date the option is exercised.")

[6] For statutory/qualified options, the income is generally taxable for federal (and therefore New York) purposes as of the sale date, and the gain would be capital. For non-statutory/non-qualified options the gain would usually be taxable as of the exercise date. *See* I.R.C. §§ 421-423 and I.R.C. § 83. New York's tax rates do not distinguish between capital gains and other items of income.

[7] N.Y. Tax Law § 631(g); N.Y. Comp. Codes R. & Regs. tit. 20, § 132.24; TSB-M-07(7)I (October 4, 2007).

[8] For example, if the option is granted and is exercised on May 10, 2016, the nonresident taxpayer would allocate the option income using the same wage income allocation methodology (New York workdays/total workdays) for the 2016 tax year. If the same-day grant/vest option income was earned by a non-employee board member, the board member would allocate the option income based on the number of board meetings in New York over the number of board meetings everywhere, during the year the option income was earned. N.Y. Comp. Codes R. & Regs. tit. 20, § 132.24; Guidelines at pp. 45-46.

[9] *See Michaelson v. Tax Commission*, 67 N.Y.2d 579 (1986); N.Y. Tax Law § 631(g); N.Y. Comp. Codes R. & Regs. tit. 20, § 132.24.

[10] N.Y. Comp. Codes R. & Regs. tit. 20, § 132.4(c); Guidelines at pp. 21, 43; N.Y. Comp. Codes R. & Regs. tit. 20, § 132.18.

[11] N.Y. Tax Law § 631(b)(1)(F); TSB-M-10(9)I (August 31, 2010).

[12] *See Matter of McSpadden*, New York Tax Appeals Tribunal (Sept. 15, 1994) (regarding treatment of a lump sum contract termination payment prior to 2010 amendment to New York Tax Law) and *Matter of Colitti*, New York Tax Appeals Tribunal (June 19, 2003) (regarding treatment of covenants not to compete earned prior to 2010 amendment).

[13] N.Y. Comp. Codes R. & Regs. tit. 20, § 132.20.

[14] N.Y. Comp. Codes R. & Regs. tit. 20, § 132.20: "Where the employee's services were performed partly within and partly without New York State, the amount includible in the individual's New York adjusted gross income is the proportion of the amount included in the individual's Federal adjusted gross income which the total compensation, received from the employer for the services performed in New York State during a period consisting of the portion of the taxable year prior to retirement and the three taxable years

immediately preceding the retirement, bears to the total compensation received from the employer during such period for services performed both within and without New York State"; TSB-M-10(9)I.

[15] I.R.C. § 3121(v)(2)(C).

[16] 4 U.S.C. § 114(b)(1)(l)(ii); Pub. L. No. 104-95, 109 Stat. 979.

[17] *See* Guidelines at p. 52, and I.R.C. § 3121(v)(2)(C).

[18] The federal prohibition protects taxpayers all across the United States, not just taxpayers who earned a living or formerly lived in New York.

[19] N.Y. Comp. Codes R. & Regs. tit. 20, § 132.4(d).

[20] N.Y. Comp. Codes R. & Regs. tit. 20, § 132.20.

[21] *See generally* N.Y. Comp. Codes R. & Regs. tit. 20, § 158.1. The corners of a nonresident taxpayer's burden of proof in an allocation audit are not well defined. All nonresident taxpayers with New York source income who must file a New York return: "must keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits and other matters required to be shown by such person in any New York State income tax return or New York State return of information." So, as common sense dictates, the taxpayer must be able to prove the return filed was accurate.

[22] An auditor might expect that a taxpayer would have all of these records in a file ready to support the filed return. This is often not the case, and isn't always a reasonable expectation. Sometimes a taxpayer will rely on a calendar or a smaller sample of records to prepare an income allocation, and during an audit the auditor just wants to see more. Obtaining these records can be costly and time consuming, so keeping copies as they're generated is often helpful.

[23] Guidelines at p. 15.

[24] *Matter of Zelinsky v. Tribunal*, 1 N.Y.3d 85 (2003); *Matter of Huckaby v. Tribunal*, 4 N.Y.3d 427 (2005).

[25] N.Y. Comp. Codes R. & Regs. tit. 20, § 132.18 ("If a nonresident employee . . . 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 . . . **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.**" (emphasis added)).

[26] N.Y. Comp. Codes R. & Regs. tit. 20, § 132.18.

[27] TSB-M-06(5)I (May 15, 2006).

[28] TSB-M-06(5)I (May 15, 2006), *see also* Comeau, Noonan, Endres, *New York's Revised Convenience Rule Provides Some Clarity and Continued Controversy*, 16 JMT 6 (August 2006).