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Letter Ruling 09-5: Residency

June 30, 2009

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You have asked for a ruling as to whether you are considered a resident of Massachusetts for personal income tax purposes. In asking for this ruling, you give the following facts:

You are a graduate student on a J1-student visa, pursuing a 5-year doctoral degree at *****. Your family and legal domicile are still in ***** and you moved to Massachusetts in July 2007 in order to pursue your degree. You had not lived in Massachusetts before your enrollment.

You are currently renting a university-owned studio apartment, consisting of one room plus bathroom and kitchen, located one block away from ***** main campus. You pay rent for this apartment on a one-year lease through your term bill. This studio apartment is available only to ***** affiliated student/faculty/staff and is not open for rent to the general public.

You were present in Massachusetts for more than 183 days in 2008. Your only income during this period was a stipend from ***** specifically designated for living expenses. You do not have to teach, do research, or work in any way to receive the stipend, which is paid out automatically to students in your program.

In order to be sure that you have complied with the tax laws of the Commonwealth, you have filed as a resident and paid the corresponding tax for this year.

The Law

Under G.L. c. 62, both residents and non-residents of the Commonwealth are liable for taxes on personal income. Residents are generally taxed on their world-wide income, but non-residents are taxed only on items of gross income that are derived from or effectively connected with (1) any trade or business, including any employment carried on by the taxpayer in Massachusetts; (2) the participation in any lottery or wagering transaction in Massachusetts; or (3) the ownership of any interest in real or tangible personal property located in Massachusetts. G.L. c. 62, § 5A(a). If you are classified as a non-resident, your 2008 income would not be subject to tax, as it is not derived from any of the three taxable categories.

You state, however, that you were present in Massachusetts for more than 183 days in the latest tax year. Under G.L. c. 62, § 1(f), however, a "resident" or "inhabitant" of the Commonwealth is defined

as "(1) any natural person domiciled in the commonwealth, or (2) any natural person who is not domiciled in the commonwealth but who maintains a permanent place of abode in the commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth." *Id.* Since the 183 day test is met, you will be considered a resident of Massachusetts under this provision if you also have a permanent place of abode here within the meaning of the law.

Discussion

As guidance in this matter, the Department has issued TIR 95-7, which states:

Whether a person maintains a permanent place of abode in Massachusetts is a factual determination. The Department of Revenue interprets a "permanent place of abode" to mean a dwelling place continually maintained by a person, whether or not owned by such person, and will include a dwelling place owned or leased by a person's spouse.

A permanent place of abode generally will not include the following:

* * * * *

a camp, military barracks, dormitory room, hospital room or room in any other similar temporary institutional setting;

a hotel or motel room, but a determination will be made based on the facts and circumstances of each individual's situation.

Id. The TIR also includes several examples, in one of which a student's shared dormitory room is not considered a permanent place of abode. In another, a student at a university in Massachusetts lives in an off-campus apartment near the university with three other individuals who share living expenses. In this situation, the student *is* considered to have a permanent place of abode and the student is considered a resident of Massachusetts although his domicile is elsewhere and he intends to leave Massachusetts upon graduation. *Id.*

Ruling

Whether a particular residence constitutes a "permanent place of abode" is a question of fact, and on the basis of the facts presented, we do not think your apartment is a "permanent place of abode" within the meaning of the statute and TIR 95-7. In making this determination we are particularly mindful of the fact that accommodations in the building are limited to ***** students, faculty and staff, and that rent for the studio is paid directly to the university as part of the term bill for classes, *etc.* As a result, we believe the studio apartment is closer in type to a dormitory room or suite than to an off-campus apartment without university affiliation and open to the general public. As a result, you should be classified as a non-resident for Massachusetts income tax purposes despite the fact that you were in Massachusetts more than 183 days.

As you have already paid income tax for 2008 on income that does not fall into any of the categories of income taxable to non-residents under G.L. c. 62, § 5A, you are entitled to an abatement. This may be claimed by filing an application for abatement, Form CA-6, within the applicable statute of limitations.

Very truly yours,

/s/Navjeet K. Bal

Navjeet K. Bal
Commissioner of Revenue

NKB:MTF:erm:jlr

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