

Tests For Statutory Residency Versus Domicile In New York State And City

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One of the most contested areas of state and local tax law are the concepts of statutory residency and domicile. In the metropolitan area, the issue arises in particular when a taxpayer may live in New Jersey but also maintain a residence in New York City. This is a particularly sensitive area if the taxpayer has earned income derived from New York sources. While the statutory residency rules are generally more black-and-white, domicile is somewhat more subjective in determining a taxpayer's obligations to the State of New York, as well as, New York City.

Under the Statutory Residency Test, an individual will be considered a resident of New York State if a permanent place of abode is maintained in New York that is "suitable for living year-round." A home may be considered "maintained" if the individual has exclusive use of a residence even if someone other than the occupant is paying the expenses. Additionally, an individual is considered a Statutory Resident of New

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York if he or she also spends more than 183 days of the taxable year in New York. A "day" is defined as "any part of a calendar day." The counting of a day in New York is disregarded if it is solely for boarding a plane, train, ship or bus for a location outside New York, or continuing travel which originated outside the state by automobile, plane, or train to a destination outside the state. Additionally, treatment at a hospital, other than outpatient treatment, may also be disregarded. Overall, a taxpayer who maintains a permanent place of abode and is not considered a domiciliary of New York becomes a statutory resident after the 183rd day that he or she spends in New York. At this point, the taxpayer is required to file a resident tax return and pay tax on worldwide income.

By definition, domicile in any U.S. state is the place that an individual considers his or her permanent "place of abode." With the objective of establishing a pattern, the following information is analyzed in determining the domicile: (i) the use and maintenance of the New York home compared to another home outside New York; (ii) patterns of employment and business activities in New York; (iii) time spent in New York; (iv) location of items with sentimental value including family heirlooms, works of art and other valuable collections. Other sources of information influenc-

ing this determination include the location of close family members (i.e. spouse and children), location of bank accounts, auto registrations, and telephone records. It should be noted that a taxpayer who is domiciled in New York, must file a resident tax return regardless of the number of days he or she is in the state if he or she maintains a permanent place of abode.

Circumstances that involve a taxpayer that files a New York non-resident tax return due to earned income in the state, and where the taxpayer has indicated on the return that he or she possesses a New York residence often result in an audit where residency status is challenged. In these cases, the auditors will likely first look to investigate statutory residence (number of days in New York State / City). If a physical presence test is not met, they can proceed to examine the notion of domicile.

Other than the factors relating to residency and domicile above, in case of a New York audit, the auditor will then look at the following "other" factors:

1. The address at which bank statements, bills, financial data and correspondence concerning other family business is primarily received;
2. The physical location of the safe deposit boxes used for family records and valuables;
3. Location of auto, boat and airplane

registrations as well as personal driver's or operator's license;

4. Indication as to where you are registered to vote and an analysis of the exercise of said privilege; the auditor should not limit the review to the general elections in November, but also question the taxpayer's participation in primary or other off-season elections, including school board and budget elections;

5. Possession of a New York City Parking Tax exemption;

6. An analysis of telephone services at each residence including the nature of the listing, the type of service features, and the activity at the location;

7. The citation in wills, testaments and other legal documents that a particular location is to be considered your place of domicile; and

8. Physical presence by use of credit card or EZ-Pass records.

Overall, maintaining a part-time residence in New York can potentially lead to a question of domicile and raise the potential for a taxpayer to be classified as a New York resident. Earning income alone in New York while domiciled out-of-state will not lead to a question of residency. Combining employment with a part-time residence in New York only further complicates the matter and increases the probability that a taxpayer would be subject to the income tax obligations of a New York resident.

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