

# Residency Tax Planning for High-Net-Worth Individuals

Before your client buys that vacation home or apartment for a child in college, know that particular state's residency rules. Many high-net-worth residents are likely to own or rent more than one dwelling, work in a neighboring state and retire to a more tax-friendly state. That makes them targets for increased state tax residency audits. It's no secret that New York has developed advanced residency audit techniques. It probably performs more residency audits than all other states combined.



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## Key Concepts

Such audits revolve around several critical concepts: "permanent place of abode," "access" and counting a "day." Recent rulings by New York have changed the definition of "access." Now, merely having a key and unlimited access to an apartment or house is enough, in some cases, to implicate statutory residence status, provided the dwelling was available for use more than 11 months during the year. New York does not have to prove that you lived in the New York dwelling for more than 183 days, only that you had

access to a permanent place of abode and spent greater than 183 days either working in or visiting New York. Under New York's residency rules, you would be taxed as a resident if either (1) you are domiciled in New York; or (2) you maintain a permanent place of abode in New York and spend more than 183 days there during the tax year.

## Case Study

One case involved a non-resident owner/operator of a 24-hour Staten Island service station. There was no question the taxpayer was in New York more than 183 days each year, but the issue of access to an abode revolved around the fact that he also owned a multi-family residence in Staten Island, which he claimed was for investment only. Two units were rented to third parties and one unit was maintained for the taxpayer's parents. Unfortunately for the taxpayer, he maintained and paid all his parents' utility bills in his name, in addition to claiming them as dependants.

The court held that where a taxpayer has a property right to the subject premises, it is unnecessary to consider the taxpayer's subjective use of the premises. The taxpayer clearly maintained the property because he owned it and paid the upkeep expenses. The taxpayer's occasional use of the

property was irrelevant. For resident status purposes, the taxpayer is not required to actually dwell in the abode, but merely have access to it. Moreover, the court rejected the taxpayer's argument that he is required to maintain the premises for his own use. Therefore, because the taxpayer maintained a permanent place of abode within New York City, he was a statutory resident for state and city income tax purposes.

### State Tax Impact

Residency is a critical concept in state taxes because they are taxed on all types of income, not just compensation and earned income. Thus, taxpayers face the prospect of full taxation on their worldwide income if they qualify as New York residents. And since New York City residents must also pay a separate tax of almost 4 percent, residency classifications in New York State and New York City can carry huge

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consequences. The real issue is that their state of domicile may not offer tax credits equal to those taxes paid in New York. For example, Connecticut allows a credit only for taxes paid on earned income in other states, while New Jersey would generally allow a credit on all income taxed in the other jurisdiction. Certain states will even allow credits for taxes paid to Canada, so it is important to understand the potential exposure and remedies available when your clients are telling you about their new digs.

### Documentation

It is critical for potential statutory residents to keep clear records of their whereabouts in and out of New York. Documentation, such as E-ZPass and credit card receipts, works well and adequately logs resident whereabouts. The state will assume that any undocumented day is a New York day. Be aware of automatic monthly credit card payments to health or dining clubs. Without contrary evidence, the state will use that to document a presence on that day.

### What Day Is It?

What is a "day?" A day in New York is not 24 hours; it is any portion of a day,

no matter how brief. So, a late-night dinner and show could cost the unwary taxpayer an extra day simply by being in New York on both sides of midnight. One exception is a transient day (e.g., solely for boarding a plane, ship, train or bus for travel to a destination outside New York or while traveling through New York).

### Other Considerations

There are many other rules and nuances to consider, such as when a person retires to Florida but retains ownership of property in New Jersey. How that property is held, directly or in a partnership, is critical to the potential exposure to New Jersey estate and inheritance taxes. How the state treats a stay in a hospital is another consideration.

### Perpetuating Residency

Many states have stringent regulations regarding the perpetuation of residency even if you leave the state and sell your home. Referred to as "leave and land," you must establish a bona fide replacement domicile in another state to no longer be considered a resident of the former state. For example, leaving New Jersey for a year to work in Spain and then returning does not vitiate state

residency during the time abroad if the state can prove intent to return. In other words, no other state residency was established during the absence.

Because of proximity, New Jerseyans are most likely to be exposed to New York residency issues, but it would seem to be just a matter of time before other cash-starved states begin their own hunts for more taxable residents. And who is a better target for a return on the audit costs than the high-net-worth client? ❏

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