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The Nuts and Bolts of State Residency Rules, Part I (Non-N.Y. Edition)

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In this installment of Noonan's Notes, the authors examine the residency rules of Connecticut, California, and New Jersey, including the statutory particulars, the administrative guidance, and the factors that courts and tax administrators use to determine changes in residency.

Over the years, we've dedicated a lot of space to New York residency issues in this column.[1] This is no accident. As most practitioners are aware, the New York Department of Taxation and Finance operates the most sophisticated and aggressive residency audit program in the country, generating countless issues for taxpayers and (billable) hours of fun for us practitioners. It gives us a lot to talk about! But in recent years, especially with the migration of so many taxpayers from high-tax states like New Jersey, Connecticut, California, and Illinois, we're expecting that other states will join the conversation. To that end, a couple of months ago, we outlined Massachusetts residency issues, given what we expect to be an increase in focus on the issue because of the almost doubling of the tax rate applicable to high-income taxpayers.[2]

But why stop there? There are several more states seeing a huge outflow of taxpayers, with most heading toward low- or no-tax states. So we decided to dedicate a couple of articles to these other states, highlighting the nuts and bolts of the residency rules that we expect will come into focus more as states turn their attention to the issue. In this installment, we'll cover Connecticut, California, and New Jersey. For each state, we'll

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[1]Timothy P. Noonan and Joshua K. Lawrence, "*Obus*: A Return to Reason in New York's Residency Saga," *Tax Notes State*, Dec. 19, 2022, p. 1093; Noonan and Open Weaver Banks, "New Sourcing Rules for Investment Managers in New York," *Tax Notes State*, Oct. 24, 2022, p. 287; Noonan and Kristine L. Bly, "The Nuts and Bolts of New York's 548-Day Rule, Revisited," *Tax Notes State*, Oct. 18, 2021, p. 283; Noonan and Ariele R. Doolittle, "The Power of Testimony in New York Domicile Cases," *State Tax Notes*, Nov. 27, 2017, p. 827; Noonan and Daniel P. Kelly, "The Nuts and Bolts of a New York Residency Audit, Revisited," *State Tax Notes*, Oct. 27, 2014, p. 207; Noonan and K. Craig Reilly, "New York City Residents May Be Asked to Pay a Little More in Taxes," *State Tax Notes*, Feb. 10, 2014, p. 357.

[2]Noonan and Katherine Piazza McDonald, "An Open Letter to Massachusetts Residents: Here's How to Move!" *Tax Notes State*, Feb. 20, 2023, p. 685.

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explain the basics of the rules, identify any published or official guidance issued by the states, and highlight the top residency cases that have been recently decided. In Part 2, we'll cover the next big three states for outward migration: Illinois, Oregon, and Pennsylvania.

Connecticut

The top personal income tax rate in Connecticut is 6.99 percent, and based on a 2022 study by the Tax Foundation, Connecticut saw a 0.1 percent overall *increase* in population in 2022.[3] But that equates to only 2,850 people moving into the state, and when you factor in how many New Yorkers moved to Connecticut last year (reported to be as high as 50,000 taxpayers),[4] there's definitely been a significant migration of taxpayers out of Connecticut too.

Residency Rules: The Basics

We could probably get through this easily with a "*see* New York" citation. Connecticut's residency rules mirror those in New York and follow the typical residency rules and definitions used by most states. Specifically, Connecticut has two separate tests for determining whether someone is a "resident" of the state: statutory residency and domicile. Under the objective statutory test, someone who is not domiciled in Connecticut but maintains a permanent place of abode in the state *and* spends more than 183 days of the year in the state is a resident.[5] For counting purposes, any part of a day spent in Connecticut counts as a Connecticut day, unless merely passing through, in transit from one state to another.

On the other hand, the subjective Connecticut domicile test is based on an assortment of factors the state uses to weigh whether an individual is a resident. Connecticut defines domicile as the place someone intends to be their permanent home and to return to whenever absent.[6] As a signatory to the Cooperative Agreement on Determination of Domicile ratified by the Northeastern States Tax Officials Association (NESTOA), the state has referenced an extensive list of factors for determining domicile.[7] However, Connecticut agreed to focus on four primary factors: location and nature of homes, location and nature of time spent, location of "near and dear" personal possessions, and active business involvement.[8] A taxpayer's family connections will be considered when the four primary factors are inconclusive.[9]

Like New York, Connecticut has a couple of safe harbors under which a domiciliary of the state can avoid taxation as a resident. One is the so-called 30-day rule, under which an individual that would otherwise be considered domiciled in Connecticut is *not* a resident of Connecticut in any year that the individual does not maintain a permanent place of abode in the state, maintains a permanent place of abode outside the state, *and* spends no more than 30 days of the year in Connecticut.[10]

Another safe harbor excuses an individual domiciled in Connecticut from being a resident if the individual (1) is *not* present in Connecticut for more than 90 days during a 548-day period and does not maintain a permanent place of abode in the state where family members are present for more than 90 days; (2) is present in a foreign country for at least 450 days out of the 548-day period; *and* (3) does not exceed a ratio of 90 days in Connecticut to 548 days in the nonresident portion of the year.[11]

Residency Rules: The Guidance

Connecticut's Office of Legislative Research posted a report on June 21, 2022, that serves as a useful "Guide to Connecticut's Personal Income Tax."[12] In a brief 10-page document, it spells out

[3] Timothy Vermeer, "State Individual Income Tax Rates and Brackets for 2023," Tax Foundation, Feb. 21, 2023; Janelle Fritts, "Americans Moved to Low-Tax States in 2022," Tax Foundation, Jan. 10, 2023.

[4] Selim Algar, "Over 545,000 New Yorkers Left the State in 2022 — Headed for Florida, Texas and Farther: Census Bureau," *New York Post*, Oct. 24, 2003.

[5] Conn. Agencies Regs. section 12-701(a)(1)-1(a).

[6] Conn. Agencies Regs. section 12-701(a)(1)-1(d)(1).

[7] Conn. Agencies Regs. section 12-701(a)(1)-1(d)(8).

[8] NESTOA, "Cooperative Agreement on Determination of Domicile" (ratified Nov. 1996).

[9] *Id.*

[10] Conn. Agencies Regs. section 12-701(a)(1)-1(b).

[11] Conn. Gen. Stat. section 12-701(a)(1)(A)(ii).

[12] Office of Legislative Research, "OLR Backgrounder: A Guide to Connecticut's Personal Income Tax" (June 21, 2022).

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who must pay personal income tax, filing thresholds, and how taxable income is calculated.

Residency Rules: The Cases

Connecticut's personal income tax has only been around since 1991, and we haven't seen a lot of reported cases focused on the application of the domicile tests. Only two significant cases put the residency rules in the crosshairs. An important case relating to domicile is *Amen v. Commissioner of Revenue Services*.[13] In *Amen*, a taxpayer argued he and his family moved to Belgium and abandoned Connecticut as their domicile.[14] In the year the taxpayer claimed he moved to Belgium, he did not sell his family home in Connecticut, but leased it for short periods of time and returned to it when the family visited the United States.[15] The court concluded that for the first year, the taxpayer maintained his domicile, but the next year, when he did not maintain a permanent place of abode in Connecticut, the taxpayer had changed his domicile to Belgium.[16] As foundation for its determination, the court reasoned that the taxpayer's family gave up full possession of their home, "immersing themselves fully into the Belgian community life."[17]

The only other case that remotely discusses Connecticut's residency rules is *Chatterjee*.[18] There, the issue was whethe. the taxpayers were owed a refund for income taxes they claim were mistakenly paid. The taxpayers, who were domiciled in India, purchased a "getaway home" in Connecticut for use as a weekend residence. During the years at issue, the taxpayers had spent only 24 and 37 days in Connecticut, respectively. The dispute centered on the fact the tax commissioner disallowed a refund for two years (out of a five-year audit period) because the claims were filed beyond the three-year statute of limitations. The court remanded the case for the commissioner to revisit the residency question, but the commissioner upheld his determination of disallowance without an analysis of day count, and the court concluded it had no right to review the commissioner's decision.[19] Regardless, the commissioner agreed with the taxpayers that they were owed a refund of taxes for the other audit years because they had spent less than 183 days per year in Connecticut, so they could not be taxed as residents.[20]

California

The top personal income tax rate in California is 12.3 percent (with an additional 1 percent surcharge for income over $1 million).[21] Based on the 2022 Tax Foundation study, California lost 0.35 percent of its population to outward migration in 2022 — roughly 138,400 people.[22]

Residency Rules: The Basics

California does not follow the traditional two-pronged residency definition used by New York and Connecticut. Instead, for California income tax purposes, an individual is taxed as a resident if that individual is: (1) in California for other than temporary or transitory purposes, or (2) domiciled in California, but outside the state for temporary or transitory purposes.[23] Thus, an individual may be a California resident although not domiciled in the state and, conversely, may be domiciled in California without being a resident.[24] And an individual may have several residences simultaneously, but can have only one domicile at any time.[25] There is no six-month statutory residency rule, but there is a rebuttable presumption of California residency when an

[13] *Amen v. Commissioner of Revenue Services*, Dkt. No. CV 02 0515337 (Conn. Super. Ct. Apr. 14, 2005).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Chatterjee v. Commissioner of Revenue Services*, Dkt. No. CV 00 0500672S (Conn. Super. Ct. Apr. 29, 2003). The taxpayer was represented by the authors' firm.

[19] *Chatterjee v. Commissioner of Revenue Services*, Dkt. No. CV 00 050072S (Conn. Super. Ct. Mar. 10, 2004).

[20] *Id.*

[21] Cal. Const. Art. XIII, section 36(f)(2); Cal. Const. Art. XIII, section 36(f)(3); California Franchise Tax Board Memorandum on Indexing, Personal Income Tax Law, 2023 Tax Year; Tax Foundation, "Taxes in California" (Aug. 30, 2023).

[22] Fritts, *supra* note 3.

[23] Cal. Rev. & Tax. Code section 17014(a)(1), (2); Cal. Code Regs. tit. 18, section 17014(a) ("If an individual is domiciled in [California], he remains a resident unless he is outside of this State for other than temporary or transitory purposes.").

[24] Cal. Code Regs. tit. 18, section 17014(a).

[25] Cal. Code Regs. tit. 18, section 17014(c); *Whittell v. Franchise Tax Board*, 231 Cal. App. 2d 278, 284 (1964).

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individual is present in California for more than nine months of a tax year.[26] However, the converse is not true — there is no presumption of nonresidency when a taxpayer spends less than nine months of the year in California.

Thus, to analyze a taxpayer's residency, we first must determine the location of the taxpayer's domicile. After that, we turn to the temporary/transitory test. As noted in California decisions on this issue, "the key question under either facet of the 'resident' definition is whether the individual is present in California, or absent from California, for a temporary or transitory purpose."[27] This determination isn't based solely on a taxpayer's subjective intent, but it is instead based on each taxpayer's objective facts.[28] And in cases in which a taxpayer has significant contacts with more than one state, the "state with which the individual maintains the closest connections during the taxable year is the state of residence."[29]

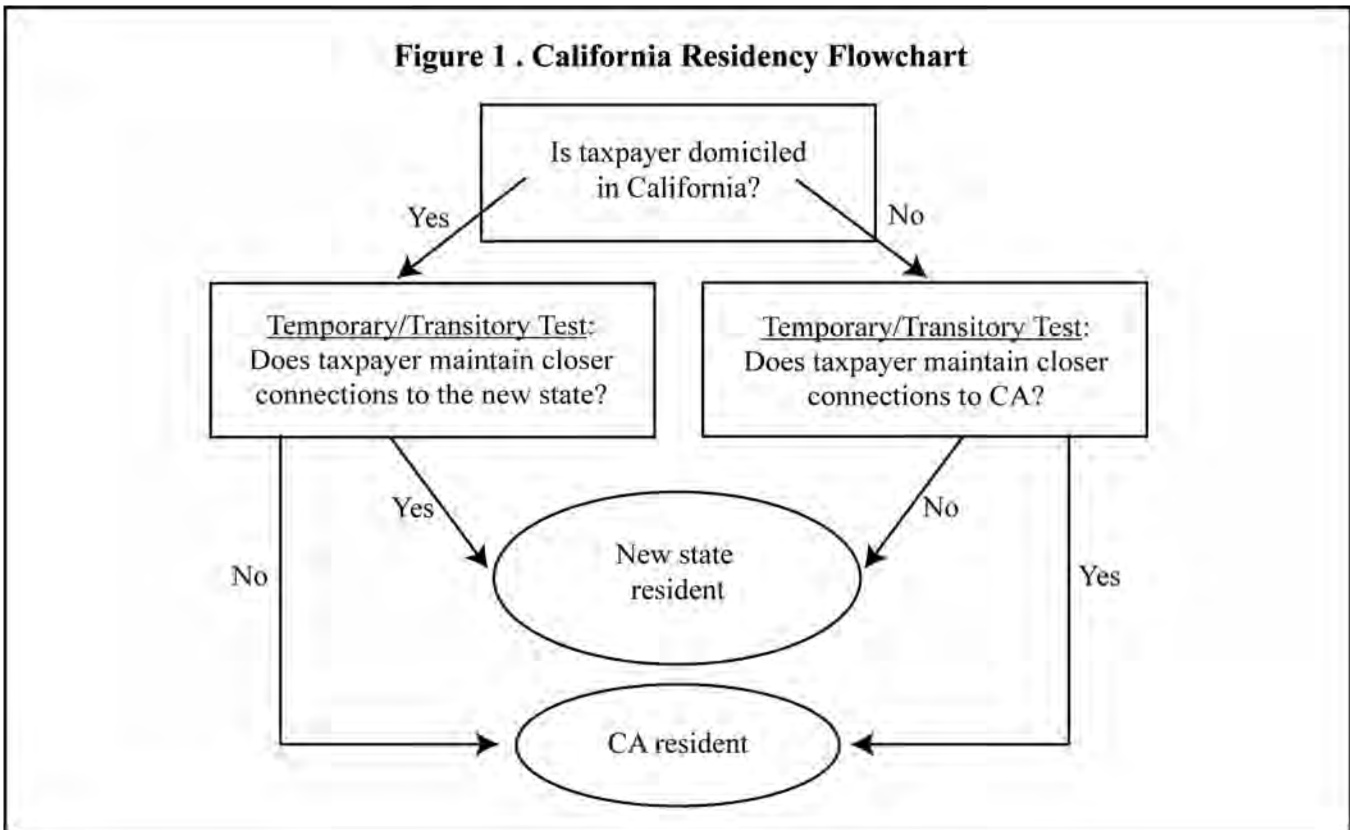
If a taxpayer is not domiciled in California, he can be taxed as a California resident only if he is inside the state for other than a temporary or transitory purpose. If instead the taxpayer is unable to establish that he is domiciled outside the state, then he will be taxed as a California resident *unless* he is outside California for other than a temporary or transitory purpose. And in either situation, the temporary/transitory analysis will turn on where the taxpayer maintains the closest connections. See the flowchart in Figure 1 to illustrate how to make a residency determination under these rules.

[26] Cal. Rev. & Tax. Code section 17016.

[27] *See Appeal of Zupanovich*, 76-SBE-002 (Cal. Office of Tax App. Jan. 6, 1976), and *Appeal of Hardman*, 75-SBE-052 (Cal. Office of Tax App. Aug. 19, 1975) ("On balance, we must conclude that after their arrival in England appellants had closer connections with that country than with California, an important indication that their absence from California was for other than a temporary or transitory purpose.").

[28] *See Hardman*, *supra* note 27.

[29] Cal. Code Regs. tit. 18, section 17014(b); *Appeal of Berner*, 2001-SBE-006-A (Cal. Office of Tax App. Aug. 1, 2002).



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Like New York, California has a safe harbor to the rules of residency. While the state does not have a 30-day rule, it does have a 546-day rule, under which a resident of the state is treated as a nonresident if they leave for the purpose of employment and maintain a residence outside the state for at least 546 consecutive days.[30] There are two conditions to this rule: (1) if the individual has intangible income over $200,000 in any year during the term of the employment contract, they cannot be considered a nonresident; and (2) the principal purpose for being outside California cannot be tax avoidance.[31]

Residency: The Guidance

The California Franchise Tax Board published guidelines for determining resident status for tax purposes.[32] The guidelines provide a number of factors that are looked at when determining a taxpayer's residency, including the amount of time spent in California compared with time spent elsewhere, the location of a spouse, the location of the taxpayer's residence, the state that issued the taxpayer's driver's license, where they are registered to vote, and where they hold professional licenses, among other factors.[33] The guidelines also provide additional information on the temporary/transitory purpose test, which look to the permanence of a taxpayer's stay inside or outside California. If there is no obvious reason for the taxpayer to maintain a residence within or without California (for example, for a job assignment), the FTB looks to where the taxpayer maintains their closest connections, often boiled down into three groups: registrations and filings, personal and professional associations, and physical presence and property.[34]

Residency: The Cases

Unlike Connecticut, there have been a significant number of reported cases interpreting California's residency rules over the years. One pivotal case was *Noble*, which (spoiler alert) found against the taxpayers who claimed their move took place before they actually moved into their new house.[35] In *Noble*, the issue was whether the taxpayers had changed their domicile as of March 1994, which happened to coincide with two separate capital gain events. The Nobles had lived in Colorado until 1988 when they both became California residents and domiciliaries. The Nobles intended to move back to Colorado in early 1994. In January 1994 they removed their son from California schools and began to home-school him. In February 1994 they began to show their California residence for sale, and they eventually sold it in November 1994. Mr. Noble began spending time in Colorado in January 1994. The Nobles contended that it was their intention to move to Colorado as of March 1994. The Nobles owned a residence in Colorado in early 1994, but they did not physically reside in the property at that time. They ultimately moved into a different home they purchased in Colorado in June 1994. The court ruled against the Nobles, finding that despite the Nobles' claimed intentions, "intention is to be gathered from one's acts." The court noted that the Nobles had failed to take any permanent steps toward relocation until they moved into their home in Colorado in June 1994 — the point at which they acquired actual residence. The court further said intent to move out at some point in the future does not make that person someone who is in California for a temporary or transitory purpose.

Another example of a more recent residency case is the *Appeal of Bracamonte*.[36] The issue was whether the taxpayer was a resident of California as of July 18, 2008, when he sold his business and generated significant capital gain income. Here again, the taxpayers were domiciled in California before the move. At the time, the Bracamontes owned a home in California. In February 2008 the taxpayers drove to Nevada and stayed for three days. During that time, they found an apartment to rent; obtained a post office box and had their

[30] Cal. Rev. & Tax. Code section 17014(d).

[31] *See* California Franchise Tax Board, "2020 Guidelines for Determining Resident Status" (2020).

[32] *Id.*

[33] *Id.*

[34] *Appeal of Bragg*, 2003-SBE-002 (Cal. St. Bd. Eq. May 28, 2003); *Appeal of Mazer*, 2020-OTA-263P (Cal. Office of Tax App. July 23, 2020) (citing *Appeal of Bragg*).

[35] *Noble v. Franchise Tax Board*, 118 Cal. App. 4th 560 (Cal. Ct. App. 2004).

[36] *Appeal of Bracamonte*, 2021-OTA-156P (Cal. Office of Tax App. Mar. 22, 2021).

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mail forwarded to Nevada; registered to vote in Nevada; acquired Nevada driver's licenses; opened a Nevada bank account; and Mr. Bracamonte acquired a Nevada cell phone with a new Nevada phone number. They officially moved into their Nevada apartment in March 2008, and the initial lease term ran through August 2008, though it was extended until September 2008. By September 2008, they had purchased a home in Nevada. Between February 2008 and July 18, 2008 (the day of the sale), the taxpayers spent 28 days in Nevada and 90 days in California. From July 18, 2008, through December 31, 2008, the taxpayers spent 72 days in Nevada and 24 days in California.

The Bracamontes argued that their domicile was in Nevada by February 2008, but the court disagreed. The court found it compelling that the taxpayers had only rented an apartment in Nevada, retained their large California home, and left much of their personal property in that home — not to mention they spent far more time in California than in Nevada. After addressing the domicile issue, the court continued to the analysis of whether the Bracamontes were outside California for a temporary or transitory purpose. It found that their connections to California remained significant as of July 18, 2008, and they were therefore still California residents on that date. Importantly, despite the connections the taxpayers began building toward Nevada, the court noted the continued ownership of their California post office box, bank accounts, residence, relationships with doctors, and most significantly their physical presence in California. Thus, the court held that their strongest connections were in California as of July 18, 2008.

Another recent precedential and unanimous decision by the California Office of Tax Appeals (OTA) in the *Appeal of Beckwith* provided more guidance on how to determine California domicile and residency for state personal income tax purposes.[37] Once again, the issue was not *whether* the taxpayer changed his domicile, but *when* he changed his domicile. But here, it was the FTB that was claiming that the taxpayer became a resident *earlier* than the taxpayer reported. The taxpayer conceded that he was a California domiciliary as of January 3, 2013, about two weeks after he received a $9 million gain from a transaction. The FTB asserted that the taxpayer was a Tennessee resident only until November 1, 2012, so the issue of his residency between November 1, 2012, and January 3, 2013, was under examination. First, the OTA concluded that Beckwith had changed his domicile from Tennessee to California by December 19, 2012, before the big transaction. Of significant note, by that date, the taxpayer already had a physical residence in California, which he shared with his fiancé, and he had no residence in Tennessee. But the analysis for Mr. Beckwith did not stop at domicile; the issue then became whether he was *outside* California for only a "temporary or transitory purpose." But the OTA concluded that based on the amount of time Beckwith spent in California during the period, it was clear that any time he spent in Tennessee was for a temporary or transitory purpose. As the OTA determined Beckwith was domiciled in California, and because he spent the majority of his time there, it determined that his strongest connections were with California. Therefore, Beckwith was a resident of California on the date of the sale.

New Jersey

New Jersey is also quietly one of the higher-tax states, with its top personal income tax rate capping out at 10.75 percent.[38] Interestingly, while the Garden State lost 0.1 percent of its population to other states in 2022, according to the Tax Foundation's recent report, that's still about 10,000 people.[39] And like Connecticut, the state has likely benefited from an influx of New Yorkers. Plus, anecdotally, we've seen a material uptick in clients calling us for advice on getting out of New Jersey.

Residency Rules: The Basics

Here again, we see the New York model. New Jersey defines a resident taxpayer as an individual who (1) is domiciled in New Jersey; or (2) is not domiciled in New Jersey but maintains a permanent place of abode in the state and spends

[37] *Appeal of Beckwith*, 2022-OTA-332P (Cal. Office of Tax App. July 28, 2022).

[38] *See* N.J. Rev. Stat. section 54A:2-1.

[39] Fritts, *supra* note 3.

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in the aggregate more than 183 days of the tax year in New Jersey.[40] New Jersey has a 30-day rule that functions as a safe harbor provision to its definition of a resident taxpayer.[41] Under the 30-day rule, an individual is *not* domiciled in New Jersey if they (1) maintain no personal place of abode in New Jersey; (2) maintain a permanent place of abode elsewhere; and (3) spend in the aggregate no more than 30 days of the tax year in New Jersey.[42]

For New Jersey personal income tax purposes, "domicile" means any place an individual regards as a permanent home — the place to which the individual intends to return after a period of absence.[43] "A domicile, once established, continues until a new, fixed and permanent home is acquired. No change of domicile results from moving to a new location if the intention is to remain only for a limited time, even if it is for a relatively long duration."[44]

As a signatory to the 1996 NESTOA agreement, New Jersey agreed to examine four primary factors when determining domicile for income tax purposes: location and nature of residences, location and nature of time spent, location of "near and dear" personal possessions, and active business involvement. If these four primary factors are inconclusive, the NESTOA states will also examine the taxpayer's family connections.

Residency Rules: The Guidance

There's not much in the way of official guidance in New Jersey. The New Jersey Division of Taxation has offered guidance for determining residency in a report titled "Part-Year Residents and Nonresidents: Understanding Income Tax." It confirms that a taxpayer has only one domicile, even though a taxpayer may have more than one place to live.[45] One's home is not considered permanent if it is maintained only during a temporary period to accomplish a specific purpose (for example, a temporary job assignment).[46] Also, if a taxpayer changes domicile and meets the definition of a resident or nonresident for only part of the year, they are a resident for *only part of the year* (part-year resident) and a nonresident for the remainder of that year (part-year nonresident).[47]

Otherwise, we don't see a lot of action in New Jersey, either in the way of guidance from the Division of Taxation or enforcement efforts (audits) of former residents. Unlike its neighbors in New York, the Division of Taxation has not developed a robust residency audit program, and residency audits themselves are rare. Perhaps that's because, according to the Tax Foundation study, fewer people are leaving New Jersey (Who knew it was such a wonderful place!?). Or perhaps it's because New Jersey has decided to focus on other areas.

Residency Rules: The Cases

There is not an overwhelming amount of case law on the domicile issue, owing in large part to the fact that the New Jersey Division of Taxation does not have a residency audit program that we know of.

But in *Goffredo*, the New Jersey Tax Court looked at driver's licenses, bank accounts, and business records, among other evidence, in concluding that the taxpayers were domiciled in New Jersey and not Pennsylvania as they claimed. Even though Mr. Goffredo and his wife moved to Pennsylvania for his new job, they retained their New Jersey residence where their three adult daughters continued to reside at various times. Further, once Mr. Goffredo retired, he immediately returned to New Jersey. Accordingly, the court said the Goffredos did not intend to make Pennsylvania their home indefinitely or abandon their New Jersey home.[48]

[40] N.J. Stat. Ann. section 54-A:1-2(m).

[41] New Jersey does not have a 548-day rule like New York and Connecticut.

[42] N.J. Stat. Ann. section 54-A:1-2(m).

[43] Paul R. Comeau, Mark S. Klein, and Noonan, *New York Residency Audit and Allocation Handbook* (2018) (citing letter from Michael J. Roach, chief, Gross Income Tax Audit Branch, New Jersey Division of Taxation, to Andrew B. Sabol (Mar. 13, 1998) (on file with book's authors)).

[44] *Id.*

[45] New Jersey Division of Taxation, "Part-Year Residents and Nonresidents: Understanding Income Tax" (Jan. 2023).

[46] *Id.*

[47] *Id.*

[48] *See Goffredo v. Director, Division of Taxation*, 9 N.J. Tax 135 (1987).

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More recently, the Superior Court of New Jersey drew on this decision in holding that a taxpayer had failed to establish a new domicile in Lithuania. In *Gruodis*, the court looked to evidence stemming from the location and nature of the taxpayer's residence, such as the taxpayer filing a homestead rebate in New Jersey, the taxpayer filing a New Jersey Saver rebate, and the continual use of the taxpayer's New Jersey home address not only in his domestic endeavors (bank, marriage license, partnerships, and so forth), but also in his foreign endeavors (his Lithuanian bank account). So, in his case, the court placed much weight on these more surface-level factors and concluded that the taxpayer was still a New Jersey domiciliary.[49]

To be continued. . . . Stay tuned for Part 2! ■

[49] *See Gruodis v. Director, Division of Taxation*, Docket No. A-5370-04T35370-04T3 (N.J. Super. Ct. App. Div. 2006).

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