

Living the SALT Life

by Timothy P. Noonan

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Behind the Board is a series that highlights the milestones, challenges, and lessons that *Tax Notes State* advisory board members have experienced over the course of their careers.

This installment features Timothy P. Noonan, partner in the Buffalo and New York offices of Hodgson Russ LLP.

What was the greatest milestone of your career?

That's an easy one for me. It has to be the 2014 *Gaied* case. This was the first residency case to reach New York's highest court in decades, and in a unanimous and groundbreaking decision, New York's Court of Appeals redefined the scope of New York's statutory residency test. The question in that case was whether an apartment maintained by Mr. Gaied for his parents was sufficient to qualify as a "permanent place of abode" under New York's statutory residency test, which defines a New York resident to include a taxpayer who spends more than 183 days in New York and maintains a permanent place of abode there. I took the case mostly on a lark, after the taxpayer had lost at all the lower levels, because I was troubled by the direction of New York's statutory residency rules, occasioned in part by the Tax Appeals Tribunal's 2011 decision in the *Barker* matter, in which I unsuccessfully argued that a rarely used vacation home was not a permanent place of abode for purposes of the statutory residency test. My grand plan was to take the *Gaied* case, win it, and then use that to clarify that the

purpose of the statutory residency test was really just to tax people who looked and acted like other New York residents, with the idea that the win would effectively reverse decisions like *Barker* where the statutory residency test was more broadly applied. So to take a case in which the taxpayer lost at every level, and to argue an issue that had been rejected several times before by the tax department and courts, and then to win it was absolutely one of the highlights of my career. And funny enough, just a couple of weeks ago a New York appellate court, relying almost exclusively on *Gaied*, held that a rarely used vacation home did not constitute a permanent place of abode in the *Obus* case, for which I also offered up an amicus brief to the Tax Appeals Tribunal. So it took 10 years, but mission accomplished (assuming the decision is not overturned on appeal)!

What was the biggest obstacle or challenge you encountered?

The biggest challenge I have always faced has been around balance. When I started my career in the fall of 1999, I "only" had three kids, with a fourth on the way. Fast-forward 23 years, and I have nine more kids, three grandchildren, and I still somehow have a 2-year-old running around the house! So building a tax practice that required taking weekly plane rides from Buffalo to New York City (at least until recently, thanks to COVID), writing monthly articles for my favorite tax publication, speaking at 25 or 30 seminars a year, etc., was an incredible challenge, and not possible, of course, without an amazing wife and a great group of partners and colleagues. So far, so good, though, with reasonably well-adjusted kids and a tax practice I thoroughly enjoy!



Noonan's family

What do you hope to achieve in the near future?

Sanity! With the recent explosion in taxpayers moving around states and telecommuting from all sorts of different locations, and especially with the jump in taxpayers moving or trying to move out of New York, we've never been busier. And as New York and other states ramp up audits and investigations of all these COVID-related moves, our team is going to be taxed, no pun intended. Thankfully I only have eight kids in the house now, so things are way quieter.

What is the most important lesson you have learned?

There is no substitute for clarity. As tax lawyers, we live in a complicated space. Half the battle is often just trying to get a client or an

adversary or a judge to understand what you are talking about. So don't make it harder than it is. Talk like a regular person, and then write like you talk. If a client doesn't understand what you are talking about, they probably aren't going to hire you, and they definitely won't refer you to others. If an adversary can't understand you, you won't get what you want. And if a judge doesn't understand you, good luck winning your case! So be clear, be direct, and be quick about it.

Do you have any additional thoughts to share?

Someone remarked to me recently that all the tax lawyers they know are more or less happy people. A little boring, maybe. A little nerdy, for sure. But maybe because we don't always have to fight with other lawyers about motion practice, or discovery, or rights of first refusal, etc., and maybe because there is something tangible and gratifying about solving complex problems that no one else can, we tax lawyers have a little bit more fun doing our job. This is something I try to communicate to young prospective lawyers who might otherwise think, as I did back in law school, that a tax practice is exclusive to accounting nerds with pocket protectors and bow ties. ■