



State Tax

New York Residency Rules

Tax Issues and Audits

Presented by

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Summary of Topics

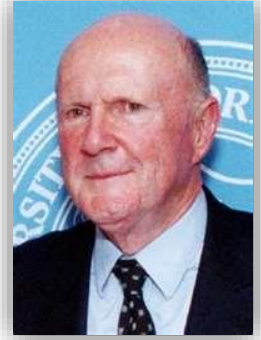
Section 1: Overview of New York Residency Rules,
Part 1: Domicile

Section 2: Overview of New York Residency Rules,
Part 2: Statutory Residency

Section 3: Residency Audits: Nuts and Bolts Issues

Introduction

- What do these people have in common?



1. All have great hair
2. None have visited Florida
3. All have been audited by New York State

Section 1

Overview of New York Residency Rules, Part 1: Domicile



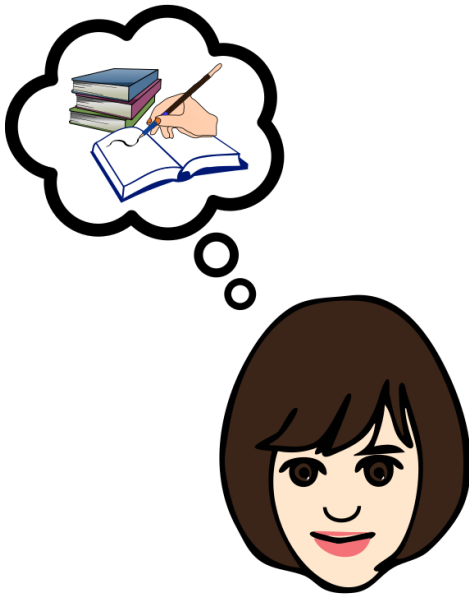
Domicile

- Importance of Residency Status
 - The One Thing
- The Two Residency Tests
 - Domicile
 - “Statutory” Residency
- Exceptions to Domicile
 - The 30-Day Rule
 - The 548-Day Rule

Domicile

What is it?

INTENT



ACTIONS



Domicile

- Burden of proof issues
 - The *Jeter* case
 - “Clear and Convincing” Evidence
- Looking for a “lifestyle change”
- Examples
 - Typical snowbird
 - Retirement
 - Upsizing and downsizing
 - Health issues



Domicile



- The 5 Domicile Factors
 - Home
 - Business
 - Time
 - Near and Dear
 - Family
- The “Other” Factors

? Polling Question #1

What do you think is the most important domicile factor?

- Home
- Business
- Time
- Near and dear
- The “other” factor
- Tim, this is a stupid trick question

Domicile

- The HOME Factor
 - Comparing size, value, etc.
 - Keeping the historical home?
 - Transferring title?
- The BUSINESS Factor
 - What you do, not just where you do it
 - Focus on active business ties



Domicile



- The TIME Factor
 - NOT the 183-day test!
 - Looking for a change in patterns
 - Less days in NY than claimed domicile state
 - Not as important in “commuter cases”; quality, not quantity

Domicile

- The NEAR AND DEAR Factor
 - Where's your teddy bear?
 - Use of pictures
 - Moving bills/insurance



Domicile



- The FAMILY Factor
 1. The presumption
 2. Separate spousal domicile
 3. Minor Children can be critical
 4. New Guidelines broaden this factor

Domicile

- The OTHER Factors: the three-legged table
 1. Mailing address for bills, financial records, etc.
 2. FL Homestead/domicile declaration
 3. Safe deposit box
 4. Vehicle registrations
 5. Registering to vote (driver's license)
 6. Manhattan Parking Tax Exemption
 7. Telephone service
 8. Citations in legal documents (wills, contracts, etc.)
- Best Offense is a Good Defense
- Planning Considerations

Domicile

Foreign Domicile Changes

- New Audit Guidelines
 - “A comparison of the domicile factors between New York and the foreign country may not necessarily be a true measure of the taxpayer’s intent”
 - Immigration Status
 - Business Ties
 - Foreign Tax Return Status

Domicile Summary

- Bringing it “Home”
- It’s all about “intent”
- Focus on Big Picture and Lifestyle Factors
- Tell a compelling story
- *Matter of Irene D. May, ALJ (January 8, 2015)*

Section 2

Overview of New York Residency Rules, Part 2: Statutory Residency



Statutory Residency

- The Statutory Residency Test
 - 183 days + a “PPA”
 - Does it trump domicile?
 - i.e., Oct 2013 domicile change
 - *Sobotka* (ALJ, Sept 2015)
- Double Tax **NOT** Unconstitutional?
More later ...



Statutory Residency Factor #1: Day Counting



- A “day” in New York: a minute is a day
 - *Matter of Zanetti* (TAT, Feb. 2014): Part of a day is still a day
 - *The Julian Robertson Case* (see attached article)

Statutory Residency *Day Count Records*

Credit card
statements

ATM usage

Personal
diary

Outlook
calendar

Flight records
(frequent
flyer reports)

EZ Pass

Limo logs

Landline
phone

Cell phone
logs

IP address?

Travel
itineraries

Swipe Card
records

MONAEO

Another Option



www.monaeo.com

Statutory Residency

Factor #2: A 'Permanent Place of Adobe'

- Any type of dwelling
- The “11-month” rule
- Habitability issues



Statutory Residency

Issues in Recent Audits/Litigation

- Issues in Recent Audits/Litigation
 - *Knight*: Girlfriend/company apartment
 - Barker: A vacation home?
 - Other people's usage
 - Non-usage or minimal use
- Does "Relationship" Matter?



February 2014 Gaied Case

NY's High Court Speaks

- Facts
 - NJ resident, worked in NYC (Staten Island)
 - Owned 3-unit apartment building in Staten Island, near workplace
 - 2 units generally rented
 - 1 for parents
 - Taxpayer paid all bills; stayed occasionally when parents needed assistance
 - Tribunal says “property rights plus suitability” is enough, regardless of usage; upheld on initial appeal

February 2014 Gaied Case *NY's High Court Speaks*

Oral Argument
Before NY High Court
(see video clip)

What's Point of
the Law?

“It Just
Doesn't Make
Sense!”

What's the
Right Test?

February 2014 Gaied Case *NY's High Court Speaks*

- Court's Decision (see copy of case and article attached)
 - Intent of law
 - Taxpayers who “really are residents”
 - In order to be statutory resident, taxpayer must use an abode “as a residence”
 - Must have “residential interest”

February 2014 Gaided Case

NY's High Court Speaks

- New June 2014 Audit Guidelines
 - *Gaided* is consistent with current audit policy (Really?)
 - New Examples: incorporating the “residential interest” test, *sort of ...*
 - Prior Guidelines were just fine
 - See attached Noonan’s Notes article: “NY Tax Department Response to Gaided Misses the Mark” (July 21, 2014)

The “Supremes” Take a Tax Case

A “WYNNE” FOR TAXPAYERS



“Maryland’s [tax law] creates an incentive for taxpayers to opt for intrastate rather than interstate economic activity.... States cannot ... tax [interstate] income earned by individuals ... less favorably.... This violates the Federal Constitution.”

New York's WYNNE Case?

- Domiciliaries of CT were NYC commuters with a NYC apartment
 - They came to NY 183+ days annually
- As Statutory Residents of NYC and CT domiciliaries, they paid both NY and CT full taxes on \$15 million of income from Intangibles
- Both States tax their “residents” on worldwide income, including investment income from Intangibles
- Neither State allows a “Credit” for income not “sourced” to the other State
- Double Taxation?
- Unconstitutional?

Section 3

Residency Audits: Nuts and Bolts Issues



Polling Question #2

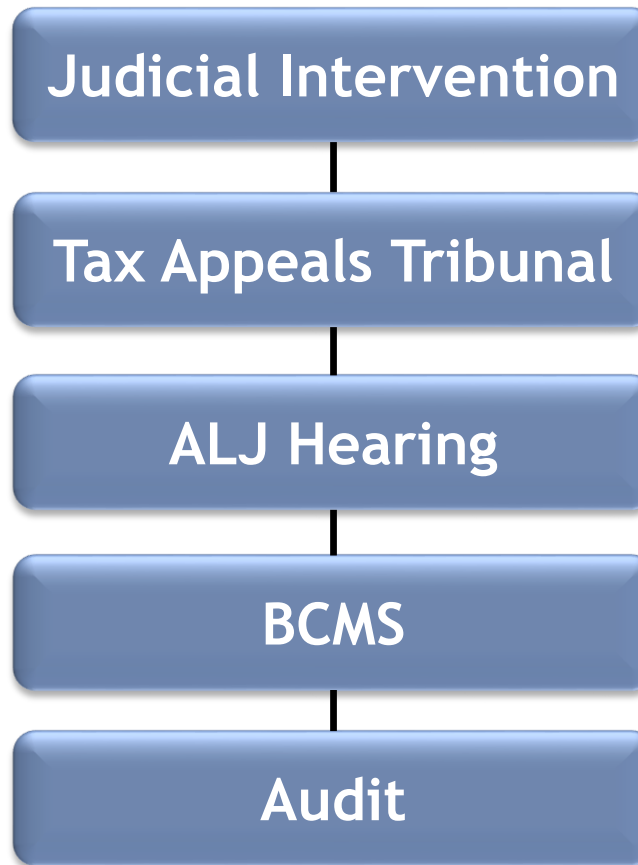
How many nonresident audits does NYS do each year?

- 1,000
- 3,000
- 5,000
- 10,000

Residency Audits

Nuts and Bolts Issues

Overview of the System



Residency Audits

Nuts and Bolts Issues

Year of residency change – almost automatic

Substantial difference between federal and state

Answer to “living quarters” question

Number of days in NY on return

NY addresses reported on a Form 1099 or K-1

Cross-check with real property records

Any STAR or NYC parking exemptions

Past audit history

All press is not good press

Audits of related parties, partners, etc.



Residency Audits

Nuts and Bolts Issues

- First steps in process — Audit Phase
 - Initial IDR
 - Nonresident questionnaire
 - Summary of residence and employment
 - Federal audits

Residency Audits

Nuts and Bolts Issues

- IDR #2

- Domicile stuff

Property records

Employment agreements

Utilities

Insurance policies

- Day count stuff

Cell phone

Credit cards

Calendars

Swipe cards

- Other stuff

Bank statements

Cancelled checks

- Remaining IDRs — Case Specific

- Meetings, calls, Up-the-Chain, etc.

Section 3

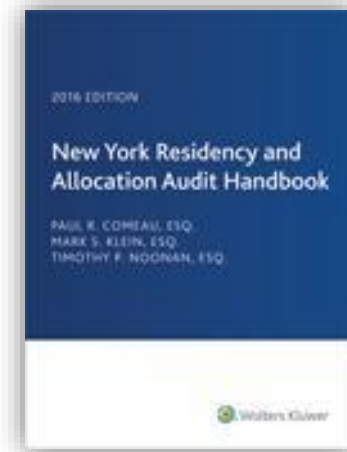
Enforcement – Top Tips and Traps

- Nobody moves on January 1
- Getting resident tax credits elsewhere
- Consistency!
- Husbands and wives usually share a domicile
- Correct W-2s, 1099s and K-1s with old address
- Don't let client “chat” with auditors
- But sometimes they can make all the difference
- Understand the burden of proof
- Never amend a return under audit

Residency Audits

Nuts and Bolts Issues

Is that it?



<https://www.cchgroup.com/store/products/new-york-residency-allocation-audit-handbook-2016-prod-10017300-0003/book-softcover-item-1-10017300-0003>

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Question and Answer Session

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Conclusion



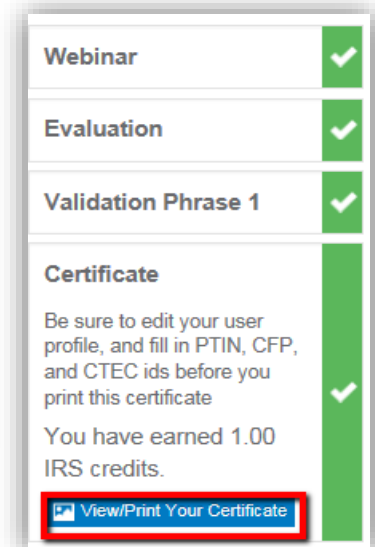
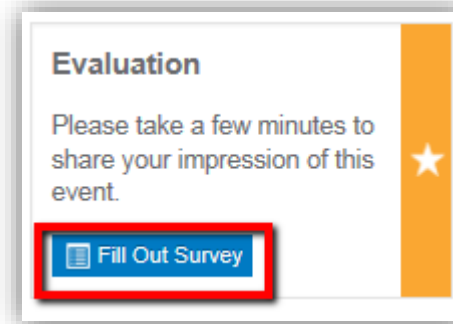
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What Do You Mean I Have to File in That State? Nexus for the Perplexed

Friday, May 20, 2016

Presented by

Bruce Nelson, M.A., CPA