

# TAX RESIDENCY

The New York State Department of Taxation and Finance conducts more residency audits and nonresident income allocation audits than any state in the nation. Hodgson Russ tax attorneys are at the forefront of many of these audits. In fact, high-ranking Tax Department officials have told us that Hodgson Russ handles more residency cases than any other law firm in the state.

We have numerous attorneys and paralegals dedicated to handling residency cases. Our team includes former residency auditors and the former head of tax enforcement at the Tax Department.

While many practitioners in this area need to read books and articles to understand how these residency cases work, the Hodgson Russ attorneys have literally written the book on New York residency audits. Tim Noonan, Paul Comeau and Mark Klein are co-authors of the 2018 *"New York Residency and Allocation Audit Handbook,"* published by CCH and of its previously published 2014 version. Tim's monthly column in *State Tax Notes*, "Noonan's Notes," regularly addresses residency topics.

The firm also publishes an easy-to-read, comprehensive guide, *What to Expect in a Residency Audit*, that many practitioners use as a guidebook for handling residency audits.

Our residency team has handled some of the most controversial and important residency cases over the past few years, including *Matter of Gaied v. (NY) Tribunal*, a 2014 victory in New York's highest court that redefined the standard for taxation under New York's statutory residency test. Many of these cases have received extensive coverage in publications such as *"Forbes," "The New York Times" and "The Wall Street Journal,"* to name a few.

{{embed=1407443817}}

## What Is a New York Residency Tax Audit?

Taxpayers may get a letter from the New York State Tax Department ("Tax Department") alerting them of an impending residency tax audit. Taxpayers affected by an audit will be investigated to determine whether they are residents or nonresidents of New York State and/or New York City. Since residents of New York State are subject to different taxes, the results can be significant.

If a taxpayer is deemed to be a New York State resident and has substantial investment income, they need to pay taxes on their worldwide income, meaning they may have to pay back taxes. If someone is a nonresident, they only need to pay taxes on a portion of their income, making this tax status important to defend.

## Contact

Timothy Noonan  
716.848.1265  
tnoonan@hodgsonruss.com

## Professionals

### Attorneys

Katherine Cauley  
Thomas Collura  
Paul Comeau  
William Comiskey  
Ariele Doolittle  
Christopher Doyle  
Catherine Eberl  
Joseph Endres  
Debra Herman  
Daniel Kelly  
Mark Klein  
Joshua Lawrence  
Timothy Noonan  
Elizabeth Pascal  
K. Craig Reilly  
Emma Savino  
Joseph Tantillo  
Andrew Wright

### Audit Managers

Rhonda Brinkman

### Senior Audit Manager

Diana Mathis  
Michael Van Wagnen

## TAX RESIDENCY

During a New York City tax audit, an auditor will determine whether the taxpayer has a domicile in New York State, as defined under New York State law. Domicile depends not only on permanent place of abode, but also on where a person's permanent residence is, based on logistics as well as emotional ties. In many cases, an auditor will consider whether someone has moved during an audit period and whether they have undergone significant life changes, such as marriage or divorce, or some other significant change. This may apply to "snowbirds."

An auditor may claim that a taxpayer has changed his or her domicile by leaving an old residence and intending to permanently relocate to a new residence. Since it can be difficult to quantify feelings and intentions regarding residency, it's important to consult with New York residency tax lawyers at Hodgson Russ LLP.

Our tax attorneys can help evaluate your domicile based on the Tax Department's five factors:

1. **Home.** Auditors will consider many factors, including home maintenance and where one spends holidays and special events when determining where a taxpayer calls home.
2. **Time.** The time spent at home and the time involved in moving to a new home can help determine domicile.
3. **Active business involvement.** For taxpayers who are in business or still working, auditors may examine where business decisions are made, where someone works and how they participate in business or work in New York State or New York City.
4. **Personal items.** Auditors will often examine where treasured and important personal items are kept, using this as a determination of where the domicile is. They may use insurance paperwork or other proofs to establish whether items of personal import and substantial value are kept at a specific residence.
5. **Family members.** The location where family -- especially children and spouses -- live, work and go to school is considered important. Traditionally, this factor been considered important in cases where the previous four factors cannot be used to establish domicile. However, family members may be used as part of an ongoing investigation.

Auditors are examining these factors and not just looking at the address on a driver's license or voter registration to determine residency. Taxpayers who are concerned about any potential red flags should contact Hodgson Russ for representation and legal advice. Working with a tax residency attorney in New York can ensure that multiple homes or seemingly minor issues, such as keeping valuables at a second home, aren't used against a taxpayer in an audit.

Our attorneys are also leading technological changes in this area. As special legal advisors to the technology company Topia, Tim Noonan and Mark Klein assisted in the creation of a GPS-powered smartphone app and software service to help taxpayers track their time spent in various locations for tax purposes.

We believe you won't find a more experienced team of professionals to handle your residency case. During the past 25 years, we have handled thousands of residency and income allocation cases. This includes representation of about 25 of the billionaires on the 2014 *"Forbes Guide to the World's Richest People."*

## TAX RESIDENCY

### Experience

Hodgson Russ served as lead tax counsel in two New York State Division of Tax Appeals cases that redefined rules outlining the manner in which part-year residents of New York State allocate flow-through income. In one, our attorneys successfully enforced the doctrine of estoppel against the New York State Department of Taxation and Finance, one of the few times ever in reported cases where the estoppel doctrine has been used against the Department. In the second case, we reversed a long-standing position that the Tax Appeals Tribunal had taken, and the result of that case was ultimately incorporated into a tax law amendment.

Hodgson Russ represented a New Jersey taxpayer facing a difficult residency audit before the New York State Department of Taxation and Finance. The primary issue was whether the taxpayer maintained his permanent place of abode in New York City by virtue of owning an apartment used by his elderly parent. Hodgson Russ's negotiations with the auditor led to a cancellation of the assessment.

Hodgson Russ attorneys assisted a high-net-worth individual with his residency change from New York to Florida prior to a multi-hundred-million-dollar sale of foreign investment. Planning for the residency change involved a detailed review of residency requirements as well as the application of New York's accrual provisions for changes of residency.

Hodgson Russ assisted a high-net-worth taxpayer with planning associated with New York State's 548-day rule. The planning involved detailed work with our client and his advisors on interpretation and application of New York's residency provisions as well as the obtainment of a favorable advisory opinion on certain points related to the 548-day rule.

Hodgson Russ represented an individual in a New York State tax audit and at a conciliation conference through the New York State Department of Taxation and Finance Bureau of Conciliation and Mediation, resulting in the cancellation of a \$1 million tax assessment based on residency.

Hodgson Russ attorneys represented the victorious taxpayer in a highly anticipated decision in a tax residency case before the New York Court of Appeals. In *John Gaied v. New York State Tax Appeals Tribunal*, the court agreed with the position advocated by Hodgson Russ on behalf of Mr. Gaied and established a new rule for determining when individuals domiciled outside of New York may still be taxed in New York as "statutory residents." This was the first case in several decades to prompt New York's highest court examined the scope and extent of New York's residency rules. The case has been widely cited in the press, including the *Wall Street Journal* and *Law360*.

### In the News

After the Move – Part II: New York State's Income Sourcing Rules for Business Sales

*TaxStringer*, September 1, 2023

After the Move – Part I: New York State's Income Sourcing Rules for Telecommuting and Deferred Compensation

*TaxStringer*, August 1, 2023

## TAX RESIDENCY

New York State Income Tax: Rates and Who Pays in 2022-2023

*NerdWallet*, May 16, 2023

NY Teleworker Tax Precedent Should Be Scrapped, ALJ Told

*Law360*, April 25, 2023

Maybe Jordan Poyer Has a Point: If You Think Your Taxes Are Complicated, Try Being a Pro Athlete

*Buffalo News*, March 13, 2023

NY Vacation Home Ruling Limits Reach of Residency Tax Test

*Law360*, February 17, 2023

NY High Court Won't Consider Vacation Home Residency Case

*Law360*, February 10, 2023

New York Tribunal Says Siblings Received Distributions, Not Loans

*Tax Notes*, March 4, 2022

For Trump, being a Florida resident is easy. But will N.Y. let go?

*The Palm Beach Post*, November 19, 2020

Leaving New York: High earners in finance and tech explain why they left the 'world's greatest city'

*CNBC*, October 31, 2020

## Press Releases

Two Hodgson Russ LLP Attorneys Recognized in 2023 *JD Supra Readers' Choice Awards*

March 6, 2023

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of Upstate New York Super Lawyers

*Hodgson Russ Press Release*, August 23, 2022

Two Hodgson Russ Attorneys Selected to Author Monthly Columns in Tax Notes State

*Hodgson Russ Press Release*, April 27, 2020

Attorney Timothy Noonan Lends Tax Litigation Know-How to Major Legal Publication

*Press Release*, October 21, 2015

Hodgson Russ Attorneys Mark Klein & Timothy Noonan Author New York Tax Guide

*Press Release*, February 20, 2015

Hodgson Russ Lawyers Win Residency Case at New York's Court of Appeals

*Press Release*, February 19, 2014

## TAX RESIDENCY

### **Publications**

Private Jets Leave NY Minutes Before Midnight as Rich Flee Taxes  
*Bloomberg Tax*, April 19, 2024

The Nuts and Bolts of State Residency Rules, Part II (Non-N.Y. Edition)  
*Tax Notes State*, January 15, 2024

The Nuts and Bolts of State Residency Rules, Part I (Non-N.Y. Edition)  
*Tax Notes State*, November 20, 2023

The Convenience Rule: Another Bite of the Big Apple  
*Tax Notes State*, June 26, 2023

An Open Letter to Massachusetts Residents: Here's How to Move!  
*Tax Notes State*, February 20, 2023

Obus: A Return to Reason in New York's Residency Saga  
*Tax Notes State*, December 19, 2022

COVID-19 Impact on New York Residency, Day Counts, and Allocation  
*Tax Notes State*, April 13, 2020

The Nuts and Bolts of Nonresident Wage Allocation in New York  
*Tax Notes State*, March 30, 2020

Looking Ahead in New York Taxes: Ending the Vacation Home Debate  
*Tax Notes State*, December 30, 2019

Update on Tax Relief for victims of Hurricanes Harvey and Irma  
*New York State Residency Alert*, September 15, 2017

### **Presentations & Events**

Hot Topics in NYS/NYC Residency and Personal Income Taxes  
May 2, 2024

Syracuse Chapter Taxation Conference  
Embassy Suites - Syracuse Destiny, November 1, 2023

Hot New York Tax Topics in the Hedge Fund World Tech Session  
July 6, 2023

Best Strategies for Changing State Residency and Reducing Your Taxes  
May 16, 2023

TAX RESIDENCY

Tax Strategy Series: Domicile and State Residency

March 22, 2023

2022 Hodgson Russ Fall Tax Series

October 26, 2022

53rd Annual Sidney Kess New York Estate, Tax, & Financial Planning Conference

September 20 - September 21, 2022

Life Insurance Planning for Clients with U.S. Family Members

April 6, 2022

Nonresident and Mobile Workers: Nexus Triggers, State Tax Traps

March 17, 2022

2022 Florida Residency Seminar Series

Manalapan/Palm Beach, Boca Raton, Sarasota and Naples, Florida, February and March 2022