

# HODGSON RUSS LAWYERS WIN RESIDENCY CASE AT NEW YORK'S COURT OF APPEALS

Press Release

February 19, 2014

As many of our clients and friends learned yesterday, the New York State Court of Appeals has issued its highly-anticipated decision in *John Gaied v. New York State Tax Appeals Tribunal*. The court's decision, in a victory for the taxpayer, established a new rule for determining when individuals domiciled outside of New York may still be taxed here as "statutory residents." Hodgson Russ attorney Timothy Noonan argued the case on behalf of Mr. Gaied.

It's hard to overstate the significance of the court's decision, especially considering how often New York asserts resident tax treatment against individuals who clearly live in other states.

For years, the Tax Department has broadly interpreted its residency rules so that an individual who maintained some connection with property in New York could be taxed as a resident of New York if they also spent more than 183 days here. In the Department's view, it didn't matter whether a taxpayer actually lived or resided in the state in any fashion—all that was required was that they maintained an abode. But as the Court of Appeals pointed out in its decision, this test, known as "statutory residency," was originally intended to discourage tax evasion by people who are "really and [for] all intents and purposes . . . residents of the state," i.e. people who really live here. Thus, in no uncertain terms, the court held that in order for an individual to qualify as a resident under this test, there must be some basis to conclude that the taxpayer maintained a dwelling in the state that was used as the taxpayer's residence. Stated another way, the court said the abode in question must relate to the taxpayer, and that the taxpayer himself must have a residential interest in the place. This result should affect many open cases as well as help restore the "statutory residency" test to its original intention; that is, to tax those persons (and only those persons) who really live in New York.

## More about this important victory:

[Click here to view the webcast of Tim's oral argument at the Court of Appeals.](#)

This decision was reported on in the articles "Taxpayer Wins New York State Residency Appeal," *Tax-News.com*, February 26, 2014; "NY Residency Ruling Shortens Leash For Auditors," February 20, and "NY High Court Balks At Tax

## Practices & Industries

State & Local Tax

Tax Residency



HODGSON RUSS LAWYERS WIN RESIDENCY CASE AT NEW YORK'S COURT OF APPEALS

Authority's Residency Test," February 18, by *Law360*, and in "New York High Court Overturns Tax Tribunal's Definition of Statutory Resident," February 19, by *TaxAnalyst*.

