

NEW YORK DEPARTMENT OF TAXATION AND FINANCE

New York Domicile Rules (IT-201-I)

N.Y. Dep't of Taxation & Fin., IT-201-I (2019)

SUMMARY

This document outlines New York State's income tax residency rules, defining a resident as someone domiciled in New York or someone who maintains a permanent place of abode in the state for more than 11 months and spends at least 184 days there. It explains that domicile is the place intended as a permanent home, requiring clear and convincing evidence to change, and lists factors such as home size, employment ties, time spent, and family connections. Special provisions exclude certain undergraduate students' residences from the definition of a permanent place of abode, exempt qualifying military personnel and spouses from the statutory residency test, and allow domiciliaries to be treated as nonresidents if they meet strict day-count and foreign-country presence tests (Group A or Group B).

CASE DETAILS

COURT	New York Department of Taxation and Finance
JURISDICTION	New York
DISPOSITION	other
PRECEDENTIAL VALUE	administrative_guidance

TOPICS

tax

PRACTICE AREAS

Tax

Administrative Law

QUESTIONS PRESENTED

1. Criteria for determining New York State residency for income tax purposes
2. Definition and establishment of domicile
3. Definition of permanent place of abode and exception for undergraduate students
4. Exceptions to residency for individuals with a New York domicile under certain conditions (Group A and Group B)
5. Definition of nonresident and part-year resident

6. Special accrual rules for full-year New York State residents
7. Net operating loss deduction limitation for New York State residents

HOLDINGS

1. An individual is a New York State resident for income tax purposes if their domicile is New York, or if they maintain a permanent place of abode in New York for more than 11 months and spend at least 184 days in the state. A domicile in New York does not confer residency if the individual meets all the conditions in either Group A or Group B, which generally require no New York abode, an out-of-state abode, and limited presence in New York.
2. A change of domicile must be clear and convincing. Primary factors include comparing the size, value, and nature of use of residences, employment and business connections, amount of time spent, location of items with sentimental value, and close family ties. Easily controlled factors like voter registration, driver's license, and will location are not primary factors.
3. A residence maintained by a full-time student enrolled at an institution of higher education in an undergraduate degree program leading to a baccalaureate degree and occupied by the student while attending the institution is not a permanent place of abode with respect to that student.
4. Full-year New York State residents are subject to the special accrual rules only if they have accrued income for the taxable year and they were a nonresident on the prior December 31 or will be a nonresident on the following January 1.

KEY QUOTATIONS

“In general, your domicile is the place you intend to have as your permanent home. Your domicile is, in effect, where your permanent home is located. It is the place you intend to return to after being away (as on vacation abroad, business assignment, educational leave, or military assignment).” (at 42)

“You can have only one domicile. Your New York domicile does not change until you can demonstrate that you have abandoned your New York domicile and established a new permanent domicile outside New York State.” (at 42)

“A change of domicile must be clear and convincing. Easily controlled factors such as where you vote, where your driver's license and registration are issued, or where your will is located are not primary factors in establishing domicile.” (at 42)

“To determine whether you have, in fact, changed your domicile, you should compare (1) the size, value, and nature of use of your first residence to the size, value, and nature of use of your newly acquired residence; (2) your employment and/or business connections in both locations; (3) the amount of time spent in both locations; (4) the physical location of items that have significant sentimental value to you in both locations; and (5) your close family ties in both locations.” (at 42)

“A change of domicile is clear and convincing only when your primary ties are clearly greater in the new location.” (at 42)

“In general, a permanent place of abode is a residence (a building or structure where a person can live) that you permanently maintain, whether you own it or not, that is suitable for year-round use.” (at 42)

“Your domicile is not New York State but you maintain a permanent place of abode in New York State for more than 11 months of the year and spend 184 days or more (a part of a day is a day for this purpose) in New York State during the taxable year.” (at 42)

“For New York State income tax purposes, your NOL deduction is limited to the lesser of your federal NOL deduction or your federal taxable income computed without the NOL deduction.” (at 43)

FACTUAL BACKGROUND

This publication provides guidance on determining New York State residency for personal income tax purposes. It defines domicile, permanent place of abode, and outlines rules for residents, nonresidents, and part-year residents, including special rules for military personnel, students, and individuals in foreign countries. It also addresses special accruals and net operating loss deductions.

PROCEDURAL HISTORY

This is an instructional publication issued by the New York State Department of Taxation and Finance. It is not a judicial opinion.

DISPOSITION

other

OPINION

42 2019 IT-201-I, Additional information Access our website at www.tax.ny.gov Place of Abode in the Personal Income Tax Regulations Relating to Certain Undergraduate Students. Note: Special rules apply to military personnel and their spouses; see Publication 361, New York State Income Tax Information For Military Personnel and Veterans. Resident You are a New York State resident for income tax purposes if: • Your domicile is not New York State but you maintain a permanent place of abode in New York State for more than 11 months of the year and spend 184 days or more (a part of a day is a day for this purpose) in New York State during the taxable year.

Note: If you maintain a permanent place of abode in New York State but are claiming to be a nonresident for tax purposes, you must be able to provide adequate records to substantiate that you did not spend more than 183 days of the tax year in New York State.

However, if you are a member of the armed forces, and your domicile is not New York State, you are not a resident under this definition. If you are a military spouse, you may not be considered a resident under this definition.

For more information, see TSB-M-10(1)I, Military Spouses Residency Relief Act and TSB-M-19(3)I, Veterans Benefits and Transition Act of 2018; or • Your domicile is New York State. However, even if your domicile is New York, you are not a resident if you meet all three of the conditions in either Group A or Group B as follows: Group A 1) You did not maintain any permanent place of abode in New York State during the taxable year; and 2) You maintained a permanent place of abode outside New York State during the entire taxable year; and 3) You spent 30 days or less (a part of a day is a day for this purpose) in New York State during the taxable year.

Group B 1) You were in a foreign country for at least 450 days (a part of a day is a day for this purpose) during any period of 548 consecutive days; and 2) You, your spouse (unless legally separated) and minor children spent 90 days or less (a part of a day is a day for this purpose) in New York State during this 548-day period; and 3) During the nonresident portion of the taxable year in which the 548-day period begins, and during the nonresident portion of the taxable year in which the 548-day period ends, you were present in New York State for no more than the number of days which bears the same ratio to 90 as the number of days in such portion of the taxable year bears to 548.

The following formula illustrates this condition: $\text{Number of days in the nonresident portion} \times 90 = \text{Maximum number of days 548 allowed in New York State Nonresident}$ You are a New York State nonresident if you were not a resident of New York State for any part of the year. Definitions used to determine resident, nonresident, or part-year resident You may have to pay income tax as a New York State resident even if you are not considered a resident for other purposes.

For income tax purposes, your resident status depends on where you were domiciled and where you maintained a permanent place of abode during the taxable year. Domicile In general, your domicile is the place you intend to have as your permanent home. Your domicile is, in effect, where your permanent home is located. It is the place you intend to return to after being away (as on vacation abroad, business assignment, educational leave, or military assignment).

You can have only one domicile. Your New York domicile does not change until you can demonstrate that you have abandoned your New York domicile and established a new permanent domicile outside New York State. A change of domicile must be clear and convincing. Easily controlled factors such as where you vote, where your driver's license and registration are issued, or where your will is located are not primary factors in establishing domicile.

To determine whether you have, in fact, changed your domicile, you should compare (1) the size, value, and nature of use of your first residence to the size, value, and nature of use of your newly acquired residence; (2) your employment and/or business connections in both locations; (3) the amount of time spent in both locations; (4) the physical location of items that have significant sentimental value to you in both locations; and (5) your close family ties in both locations.

A change of domicile is clear and convincing only when your primary ties are clearly greater in the new location. When weighing your primary ties, keep in mind that some may weigh more heavily than others, depending upon your overall lifestyle. If required by the Tax Department, it is the taxpayer's responsibility to produce documentation showing the necessary intention to effect a change of domicile.

If you move to a new location but intend to stay there only for a limited amount of time (no matter how long), your domicile does not change. For example, Mr. Green of ABC Electronics in Newburgh, New York, was temporarily assigned to the Atlanta, Georgia branch office for two years.

After his stay in Atlanta, he returned to his job in New York. His domicile did not change during his stay in Georgia; it remained New York State. If your domicile is in New York State and you go to a foreign country because of a business assignment by your employer, or for study, research or any other purpose, your domicile does not change unless you show that you definitely do not intend to return to New York.

Permanent place of abode In general, a permanent place of abode is a residence (a building or structure where a person can live) that you permanently maintain, whether you own it or not, that is suitable for year-round use. A permanent place of abode usually includes a residence your spouse owns or leases.

For additional information, visit our website. However, a residence maintained by a full-time student enrolled at an institution of higher education in an undergraduate degree program leading to a baccalaureate degree and occupied by the student while attending the institution is not a permanent place of abode with respect to that student.

For additional information, see TSB-M-09(15)I, Amendment to the Definition of Permanent Additional information Access our website at www.tax.ny.gov 2019 IT-201-I, Additional information 43 Part-year resident You are a New York State part-year resident if you meet the definition of resident or nonresident for only part of the year. New York City and Yonkers For the definition of a New York City or Yonkers resident, nonresident, and part-year resident, see the definitions of a New York State resident, nonresident, and part-year resident beginning on page 42, and substitute New York City or Yonkers in place of New York State.

For more information on nonresidents and part-year residents, see the instructions for Form IT-203. **Special accruals** As a full-year New York State resident for 2019, or if you are a full-year New York City resident or New York City part-year resident for 2019, you may have to use special accrual rules (see below) to compute your New York State and New York City personal income tax for 2019.

If you are subject to the special accrual rules, see the instructions for Form IT-225, addition modification number A-115 and subtraction modification number S-129. Full-year New York State residents You are subject to the special accrual rules only if you have accrued income for 2019 (see below), and • you were a nonresident of New York State on December 31, 2018; or • you will be a New York State nonresident on January 1, 2020.

You have accrued income for 2019 if: • you have an item of non-New York source income* that was fixed and determinable in a tax year prior to 2019, but you are reporting that income for federal income tax purposes in tax year 2019; or • you have an item of income that was fixed and determinable in tax year 2019, but you will be reporting that income for federal income tax purposes in a tax year after 2019.

Full-year and part-year New York City residents You are subject to the special accrual rules only if you have accrued income for 2019 (see below), and • you were a nonresident of New York City on December 31, 2018, but you were a full-year New York City resident for tax year 2019; or • you were a full-year New York City resident for 2019 but you will be a New York City nonresident on January 1, 2020; or • you were a New York City part-year resident for tax year 2019.

You have accrued income for 2019 if: • you have an item of non-New York source income* that was fixed and determinable in a tax year prior to 2019, but you are reporting that income for federal income tax purposes in tax year 2019; or • you have an item of income that was fixed and determinable in tax year 2019, but you will be reporting that income for federal income tax purposes in a tax year after 2019; or • you have an item of income that was fixed and determinable in your 2019 New York City resident period, but that income is not reportable for federal income tax purposes in your 2019 New York City resident period; or • you have an item of non-New York source income (see footnote below) that was fixed and determinable in your 2019 New York City nonresident period, but that income is not reportable for federal income tax purposes in your 2019 New York City nonresident period.

Estates and trusts Estates and trusts are subject to the New York State personal income tax. The fiduciary for an estate or trust must file Form IT-205, Fiduciary Income Tax Return. Each beneficiary of an estate or trust must include his or her share of the estate or trust income on Form IT-201.

For more information on responsibilities of beneficiaries, see Beneficiaries (estates and trusts) on page 17. Deceased taxpayers If a taxpayer died after 2018 and before filing a return for 2019, the taxpayer's spouse or personal representative may have to file and sign a return for that taxpayer. A personal representative can be an executor, administrator or anyone who is in charge of the deceased taxpayer's property.

If a taxpayer did not have to file a federal return but had New York State tax withheld, a New York return must be filed to get a refund. If a joint federal income tax return was filed for the deceased taxpayer and the surviving spouse, a joint New York State return can be filed. Write Filing as surviving spouse in the area where you sign the return. If someone else is the personal representative for the deceased spouse, he or she must also sign the return.

The person who files the return for the deceased taxpayer should write the deceased taxpayer's date of death in the area indicated near the top of the return. Partnerships/limited liability partnerships or companies Partnerships, limited liability partnerships (LLPs) and limited liability companies (LLCs), limited liability investment companies (LLICs) and limited liability trust companies (LLTCs) that are treated as partnerships for federal purposes are not subject to the New York State personal income tax, but individual partners (members) of the partnerships are.

If your partnership has a partner who is a New York State resident, or if the partnership has any income from New York State sources, it must file Form IT-204, Partnership Return. If your partnership carried on a business in New York City, it may also have to file New York City's Form NYC-204, Unincorporated Business Tax Return for Partnerships (including Limited Liability Companies).

Since New York State does not administer the New York City unincorporated business tax, do not file your Form NYC-204 with your state return. Net operating loss (NOL) For New York State income tax purposes, your NOL deduction is limited to the lesser of your federal NOL deduction or your federal taxable income computed without the NOL deduction.

For additional information, see the instructions for Form IT-225, addition modification number A-215, and Publication 145, Net Operating Losses (NOLs) for New York State Resident Individuals, Estates, and Trusts. Additional information (continued) * Non-New York source income is income that is not attributable to (1) a business, trade, profession, or occupation carried on in New York State, or (2) the ownership of any interest in real or tangible personal property in New York State.