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