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Politics & Policy

Working From Home? The New York State Taxman Doesn't Care

What to do if auditors chase you down (and they absolutely will) for claiming that you don't owe taxes on income earned while living elsewhere during the pandemic.

By Alexis Leondis
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More than 100,000 people who used to work or live in New York State have received notices from the tax department questioning them about their whereabouts last year and asking why they paid less to the state than they have in years past. Additional notices are likely to be sent once high earners, many of whom routinely ask for filing extensions, submit their 2020 returns in October.

New York, famed for its aggressive tax policies, is targeting those who were employed by companies based in the state but worked remotely during the pandemic. According to the state, nonresidents who telecommuted are still on the hook for New York state income taxes even if New York offices were closed due to Covid-19.

New York tax authorities are also going after those who said they moved out of the state last year. New York has a five-part test with high hurdles that must be met to prove relocation. Some of the notices being sent include questions to figure out whether those taxpayers are truly no longer residents.

Since the notices are often followed by a tax bill, or withholding of a tax refund, taxpayers should think carefully about how they want to respond. Aside from the

obvious (don't throw the notice out; be sure to consult with a tax professional), there are some nuanced issues to keep in mind.

First, nonresident taxpayers should make sure they understand the rules. There are only a few ways for workers to stop allocating income to New York State: If they were reassigned to an office in a different state or created what's known as a bona fide home office in another state. The onus will be on the taxpayer to provide proof, otherwise the state will presume she owes taxes, according to Barry Halpern, a partner in New York at accounting firm Marcum LLP.

Be sure to weigh the amount of the additional tax liability New York claims against the time, effort and cost of appealing it, especially if a professional is retained. Keep in mind that nonresidents employed by New York-based companies may receive credits from their home states, including New Jersey and Connecticut, to avoid double taxation, so factor that in.

But there could be messy situations last year for those who relocated to no-income tax states like Florida (and therefore didn't get a credit) or to states that have different rules from New York's when it comes to taxing teleworking.

Evidence of being reassigned might include a company directory listing the taxpayers in the new location and dated correspondence with employers explaining the reason for the move. Be aware that New York tax authorities aren't going to be easily persuaded. They're likely to say no if an employer opened a small satellite office in Florida and said their employees moved there, while maintaining a big building in Manhattan. By contrast, employers who have completely shuttered their offices and gone 100% virtual are likely to give their workers a better shot at avoiding New York state income taxes.

Those who claim that they created a bona fide home office out of state will need to prove that it's more than a tax dodge by documenting how some of the core duties of the job are performed from the home office, or by demonstrating that their employer reimburses them for home-office expenses.

And those who say they've moved and are no longer "domiciled" in New York need to document things like the relocation of valuables, discontinuation of club fees or school tuitions and utilities being disconnected in New York houses. The state requires the same criteria to be met for those who say they've moved from New York City to a summer home in the Hamptons or upstate and thus want to stop paying the city's personal income tax.

Fudging is always a bad idea. The state will go to great lengths to investigate whether someone has really left, or is no longer working at a New York office. Auditors will look at everything from cell phone records to building swipe passes and E-ZPasses used to pay highway tolls to see if a taxpayer was where he said he was, and when.

Tim Noonan, a tax partner at Hodgson Russ LLP in New York, says it’s better to respond to the new tax notices online than by mail. He also advises including documentation rather than just filling out the required questionnaire. That’s because some taxpayers are getting hit with tax bills right after sending responses back, instead of being given a chance to document or explain, or undergoing an audit.

Taxpayers should be aware that if their out-of-state claims are legitimate and refunds are held up for more than 45 days, New York may be required to pay interest to the taxpayer. For nonresidents wrestling with New York's tax octopus, there may be no better payback.