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Owning a Sweet New York Vacation Home and Avoiding the Tax Bite

July 21, 2022, 4:45 AM

New York taxes residents on all of their income, while nonresidents are subject to tax only on New York-sourced income. If owning a vacation home makes you a resident, you could end up paying New York a lot more taxes than anticipated, say Marcum LLP’s Barry Halpern and Lisa Haime.

Taxpayers may have the opportunity to reap the lifestyle benefits of owning a vacation home in New York while avoiding a significant tax bite. But they need to understand the tax implications of maintaining a place of residence in New York or risk significant tax consequences.

The New York State Supreme Court’s appellate division recently made a decision favorable to taxpayers in *Nelson Obus v. New York State Tax Appeals Tribunal* that aimed to address the “permanent place of abode” requirement of New York’s residency rules. The decision could help shield some taxpayers from being considered residents of New York—but does it really?

New York taxes residents on all of their income, including intangible income, regardless of source, while nonresidents are subject to tax only on New York-sourced income. If owning a vacation home makes you a resident, you could end up paying a lot more tax to New York than you anticipated.

What It Means to Be a Statutory New York Resident

A resident of New York either is domiciled in New York or is a statutory resident. Assuming your domicile isn’t New York but you want to own a vacation home there, you would need to consider statutory residency rules.

A statutory resident is an individual who is not domiciled in New York but maintains a permanent place of abode in the state and spends in aggregate more than 183 days of the taxable year there. If we assume that you work in New York and are present in the state for more than 183 days, what remains is the requirement to maintain a permanent place of abode, or PPA.

PPA Requirement

There have been numerous cases addressing what it means to maintain a PPA, whose regulations require a “dwelling place of permanent nature maintained by the taxpayer ... a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode.” The regulations further state that barracks or constructions without general dwelling needs, such as cooking or bathing facilities, will not be deemed a PPA.

New York generally looks at both the physical aspects, such as whether the dwelling is a permanent structure suitable for year-round use, and the relationship—whether the taxpayer has a residential interest in living in the dwelling—for purposes of determining whether a taxpayer maintained a PPA in the state.

Is Ownership of a Seldom-Used Home Enough?

In *Obus*, the New York Supreme Court analyzed the state’s position on the physical aspect test related to ownership of a vacation home in New York that was suitable for year-round use. The court reversed a 2021 Tax Appeals Tribunal [decision](#) that treated ownership of a vacation home in New York as a PPA for statutory residency purposes. The court determined that a New Jersey domicile who spent more than 183 days in New York City and maintained a vacation home in upstate New York for temporary use was not a statutory resident for New York income tax purposes.

The court rejected the notion that maintaining a vacation home that could be used as a permanent place of abode is enough to satisfy the statute. Rather, the court focused on the intent of the statute alluded to in other cases, which is to tax individuals who are essentially residents of the state. Therefore, consideration is given to how the property is used. The dwelling must be used consistently with a taxpayer’s residence. Mere ownership of a property, although suitable for year-round living, is not sufficient to make it a PPA. The facts and circumstances of each case must be considered.

Although the vacation home in *Obus* had permanent dwelling facilities, Nelson Obus and his wife only used the home for temporary vacationing. They spent three weeks per year there at most and brought their personal items for each visit. Furthermore, the vacation home was not a convenient access point to Obus's job in New York City, as it was more than 200 miles away. The court determined that the statute never intended to tax such a taxpayer as a resident.

Remaining Uncertainty

While the *Obus* case seems fair, it leaves some uncertainty. The case clearly requires New York to subjectively analyze actual use of a property rather than the objective nature of the dwelling. However, future cases may test the court in defining what will be considered enough to cross the boundary from status as a temporary dwelling to something more permanent, enabling New York to impose tax.

The upstate vacation home in *Obus* wasn't in a location convenient for the taxpayer to get to work. What if the taxpayer had worked closer to the vacation home, where it could have been used full time to access his job? At what point does the home become too far?

In addition to only occupying the house for three weeks at most throughout the year, Obus and his wife didn't leave any personal items there. The decision doesn't really address how much time spent in New York will be considered too much time to flunk the PPA test. It is also unclear if the decision would have been different had the taxpayer spent three consecutive weeks in the vacation home.

Domicile Considerations

Another interesting fallout from *Obus* relates to an exception whereby a New York domiciliary taxpayer will not be deemed a resident if the person does not maintain a PPA in New York but maintains a PPA outside of New York and spends no more than 30 days in New York.

Consider situations, such as the Covid-19 pandemic, where New York domiciliary taxpayers were away for a large part or all of an entire year and: spent a significant amount of time in a "vacation home" in another state, didn't use the New York home as a dwelling, spent less than 30 days in New York, and have since returned. Will the

exception apply to such taxpayers, so they aren't considered residents of New York for that year?

Can a non-domicile taxpayer who spends more than 183 days in New York maintain a vacation home in New York without having the sting of a New York residency tax bite? The answer to that question will depend on the taxpayer's facts and circumstances, plus any future case rulings.

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