

## ***New York's highest court concludes statutory resident test requires individual to reside at in-state dwelling***

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### ***In brief***

Addressing the standard to be applied when determining whether a person 'maintains a permanent place of abode' in the state, the New York Court of Appeals concluded that there must be some basis to conclude that the dwelling was utilized as the taxpayer's residence. In so ruling, the court overturned decisions of a lower court and the tax appeals tribunal. This decision by the state's highest court should prompt individual taxpayers that maintain property in the state to examine whether they are New York residents. [*In the Matter of John Gaied, v. New York State Appeals Tribunal, et al*; NY Court of Appeals, No. 26, (2/18/2014)].

### ***In detail***

In this instance, the taxpayer was domiciled in New Jersey, worked in New York, and purchased an apartment building in New York, where one unit was inhabited by the taxpayer's parents and the other two units were rented. The taxpayer never lived in the apartment building nor kept any personal effects there. During the years at issue, the taxpayer filed nonresident income tax returns in New York.

Under the New York Tax Law, an individual is taxed as a New York resident if he or she is domiciled in the state or, if not domiciled in the state,

maintains a permanent place of abode in the state and spends in the aggregate more than 183 days of the taxable year in the state. The taxpayer conceded that he spent more than 183 days in the state during each of the years at issue but argued that he did not maintain a permanent place of abode in New York.

On audit, the Division of Taxation and Finance determined that he was a statutory resident because he maintained a permanent place of abode at the apartment building during the years at issue. The taxpayer appealed the resulting assessment, which was upheld by an administrative law

judge and then, later, the tax appeals tribunal. The tribunal said that there was "no requirement that the petitioner actually dwell in the abode, but simply that he maintain it" in order to be considered a statutory resident. This decision was upheld by the New York Supreme Court, Appellate Division. This appeal followed.

The Court of Appeals, after examining the laws at issue, explained that whether the taxpayer was a statutory resident depends on whether he maintained a permanent place of abode in New York. The tax law does not define 'permanent place of abode', the court explained, but regulations

define it as ‘a dwelling place of a permanent nature maintained by the taxpayer, whether or not owned by such taxpayer...’ The court noted that the tax tribunal interpreted ‘maintains a permanent place of abode’ to mean that a taxpayer need not reside in the dwelling but only maintain it to qualify as a statutory resident. The court found that “there is no rational basis for that interpretation.” “The legislative history of the statute, to

prevent tax evasion by New York residents...supports the view that in order for a taxpayer to have maintained a permanent place of abode in New York, the taxpayer must, himself, have a residential interest in the property,” said the court.

### ***The takeaway***

Regardless of this decision, New York State most likely will continue to be

aggressive with its statutory residency audits. Taxpayers who are domiciled outside of New York State, but who are undergoing a New York statutory residency audit, should immediately consult with their tax advisors. The *Gaied* decision provides taxpayers with additional arguments to the state's statutory residency claims especially when the taxpayer is not utilizing the abode as their own dwelling.

### ***Let's talk***

For a deeper discussion of how this issue might affect you, please contact:

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