



## New York State Residency / Domicile Audits

With tax revenues falling, and state expenses going up, governments everywhere are aggressively looking for revenue sources. New York is among the most active states in pursuing residency audits. Residents of a state are taxed by the state they live in on all of their income, unless another state has a claim to it. Nonresidents are only taxed on income earned within that nonresident state. That is why people try to establish residency and domicile in a lower tax jurisdiction, such as Florida, when they move from New Jersey or New York.

New York has two criteria for determining if someone is a resident of the state:

- One is computed by the number of days spent in the state. A day spent in the state consists of **any** time spent for work, medical appointments or recreation time in New York during any day, not counting time spent solely passing through the state travelling to someplace else or days in a hospital. If you maintain a permanent residence and spend more than 183 days (half the year) in New York, you are deemed a resident for tax purposes.
- The other criterion is domicile. Domicile is defined by New York as “the place which an individual intends to be his permanent home - the place to which he intends to return.” If you are considered to be domiciled in New York, and maintain a New York residence, you are taxed as a resident no matter how many or how few days you spend in the state. Under this criterion, you may be considered a resident of more than one state, being domiciled in one state and spending more than half the year in another.

When any state audits a taxpayer, it is up to the taxpayer to prove that they did not spend more than half the year in the state, or that they are not domiciled in the state. The number of days test is where good record keeping is very important. The best record is a contemporaneously prepared calendar or appointment book showing where you were each day.

Other proof of being outside the state includes:

- Utility and phone bills
- Receipts for cash purchases
- Plane tickets, E-Z Pass statements
- Bank and credit card statements

The domicile tests try to determine where your life is actually centered. Primary determinants include:

- The nature and use of the New York and non-New York residences, including time spent in each location. Floor plans may be looked at to determine which is more of a primary residence.
- Where your business ties are.
- The location of your important papers, sentimental items, family heirlooms, and valuables, such as jewelry and collections.

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- Where your family lives (although New York looks at the first three factors before considering this).

Other, secondary factors, include:

- Reasons for a change of domicile, such as illness, relative's illness or death, divorce, retirement
- Driver's license and auto registration
- Rent stabilized apartment or homestead exemption
- Where your doctors are
- Where you say you live on Facebook and other internet sites
- Voter registration
- Correspondence addressed to you

Note that the location of your bank accounts, where your tax returns are prepared, and your charitable contributions are generally not factors in residency audits.