



New York State Supreme Court Rules That Vacation Home Does Not Automatically Make Taxpayers New York Residents for State Tax Purposes

By: Marc T. Finer

On June 30, 2022, the New York State Supreme Court ruled in [Matter of Nelson Obus](#) that the ownership of a seldom used New York State vacation home did not cause its New Jersey domiciled owners to be treated as statutory residents for New York State income tax purposes.

Under New York law, an individual who does not live in New York is deemed to be a New York resident for income tax purposes if the individual:

1. spends an aggregate of more than 183 days in New York during a calendar year, and
2. maintains a "permanent place of abode" in New York for substantially all of the year.

A "permanent place of abode" is defined in the New York regulations as "a dwelling place of a permanent nature maintained by the taxpayer . . . However, a camp or cottage, which is suitable only for vacations is not a permanent place of abode."

The determination that a taxpayer is a New York statutory resident can have a significant impact on a taxpayer's state tax liabilities because the taxpayer becomes subject to income tax as a resident of both New York and the state where the taxpayer permanently lives. As a result, a taxpayer can be required to pay personal income tax in two states on the exact same income due to the limitations on state-based residency credits. For example, both New York and Connecticut specifically exclude income from intangibles (e.g., capital gains from stock sales) from the available credit for taxes paid to other states.

In [Obus](#), the taxpayers lived in New Jersey and one of the taxpayers was employed in New York City. As a result, the 183-day statutory residency test was satisfied. The taxpayers also owned a vacation home in New York that was approximately four hours from New York City and was not suitable for commuting to work. In addition, the taxpayers used the vacation home for no more than three weeks during each of the audit years and did not keep personal effects in the home while they were not occupying the home.

The New York Tax Appeals Tribunal ("TAT") concluded that the taxpayer's vacation home satisfied the "permanent place of abode" requirement because the taxpayers owned the home, the home was suitable for year-round use and the taxpayers had the continuous right to reside in the home even though they exercised that right sparingly.

On appeal, the New York State Supreme Court reversed the TAT decision. Before considering the relevant facts, the court noted that the legislative intent underlying the "permanent place of abode" requirement is to tax individuals "who are really and for all intents and purposes residents of [New York] but have maintained voting residence elsewhere and insist on paying taxes to [New York] as nonresidents." Therefore, the court explained that in addition to meeting the physical requirements of a "permanent place of abode," there must be a showing that the taxpayers have a residential interest in the property. This means that the taxpayers must have used the dwelling as their residence. Citing several cases, the court concluded that even though the vacation home could have been used in a manner such that it could constitute a "permanent place of abode," it did not in [Obus](#) because the taxpayers did not use it in this manner. As such, it was inappropriate for the TAT to deem the taxpayers statutory residents of New York.

The Appellate Division's decision in [Obus](#) is a very helpful clarification of the definition of "permanent place of abode" as applied to vacation homes (and possibly other residency cases). While the New York tax department has historically taken the position that any vacation home is a permanent place of abode if the home meets certain physical requirements and a taxpayer owns, rents or otherwise possesses the home for substantially all of the year, the narrowing of the scope of a permanent place of abode should help taxpayers argue against this position if the vacation home is not suitable for commuting to work and the taxpayer does not keep personal effects in the home. However, the decision also affirms how highly factual statutory residency determinations are and underscores the need for thorough and careful tax planning.

If you have questions regarding the [Obus](#) decision or how it may impact your business or investments, please contact Marc T. Finer, Tax Partner, at 860-240-6096 or mfiner@murthalaw.com.

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