# Does New York’s Latest Court Decision Save You from Paying Double State Income Tax?

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A recently issued unanimous decision by the New York Appellate Division may very well change the landscape of New York State residency rules and significantly reduce the income tax exposure for certain so-called “statutory residents.” Continue reading to see if you may benefit from this ruling.

## *Background*

In general, states like New York tax their residents on, well, everything. All income of residents is typically subject to the state’s income tax. For New York purposes, determining whether one is a resident for income tax purposes is dependent on one of two tests – the domicile test and the statutory residency test. If a taxpayer meets the criteria of either of these tests, they are treated as a tax resident for the year in question. The domicile test looks at a series of factors to evaluate the intention of a taxpayer in connection with their primary location of residence. The statutory residency test considers two factors, which, if met, categorize one as a state resident even though they may be a domiciliary of another state. The two criteria for statutory residency are: (1) owning or having unfettered access to a place of abode in New York, and (2) being physically present in the state for more than 183 days in a tax year.

## *The Facts*

The facts of the Appellate Division's ruling focused on the statutory residency test. In the case, a New Jersey domiciliary owned a vacation home in upstate New York. It was a five-bedroom home available to the taxpayer and his family for year-round use. However, they only made the four-hour drive to the home a few times a year, staying there for about three weeks annually. The statutory residency issue arose because the taxpayer commuted daily from his New Jersey home to New York City for work, putting him over the 183-day physical presence threshold. These in-state work days coupled with the upstate place of abode meant that the taxpayer established New York statutory residency, effectively subjecting his income to tax in both New York and New Jersey, his state of domicile.

## *The Decision*

Despite meeting the state's objective statutory residency test criteria, the New York Court focused on the taxpayer's utilization of the home. Simply put, the home was used for vacations in the summers and winters when the family would go skiing or visit the local racetrack. Further, it was clearly not a suitable location for the taxpayer to commute to and from his office in New York City. Based on these facts, the Court said ***it is inappropriate to treat the taxpayer as a statutory resident.***

## *Takeaway*

This ruling represents a potentially seismic shift in the New York residency landscape. It breaks the hard and steadfast rules of statutory residency for a more reasoned approach based on a taxpayer's usage of an in-state abode. For taxpayers who live out of state, but who own New York vacation homes and also commute into the state for work reasons, this may be a major victory in their plight against paying double state income taxes. Of course, this decision by the Appellate Division's Third Department is not from the state's highest court and is only binding on the lower courts within its department and other departments unless there is contrary authority from the respective Appellate Division of that department.

To find out more information on this important ruling or to discuss how you might benefit from this new interpretation of New York's statutory residency laws, please contact Alan Goldenberg, Principal and Leader of the State and Local Taxation and Tax Controversy groups, or your Anchin Relationship Partner.