

Is it Possible to Remain a New York Domiciliary Without Paying New York Income Tax?

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Understanding New York State Nonresident Income Tax

One of the major lessons the U.S. workforce learned from the COVID-19 pandemic is that people can work from anywhere. With a simple internet connection, many employees can do their jobs from virtually any location in the world – a vacation home, a medieval European city or even a tropical paradise. For New York residents, telecommuting from a different location often offers little change in their state tax obligations. New York’s sweeping tax laws apply to all income earned by residents regardless of their remote working status. In fact, New York’s wide tax net employs two separate tests – the statutory residency test and the domicile test – to determine if a taxpayer is a resident of the state and therefore subject to state tax on all their income.

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Statutory Residency

The statutory residency test is a threshold test based on the number of days spent physically present in the state. Any taxpayer with a home in New York, who spends more than 183 days in the state, is deemed a statutory resident for the entire year. Whether or not the resident uses the New York residence is irrelevant for this test. Mere presence, even for a matter of minutes, is enough to add one day to their tally and classify them as a tax resident.

Domicile

The domicile test is less clear than the statutory residency test and considers various factors evidencing one's permanent home. All taxpayers have one location that is called home; it's the place they return to after being away and is considered the individual's domicile. New York considers a variety of factors, including business connections, location of one's spouse and minor children and others, in establishing a taxpayer's domicile. This domicile will remain in place until the taxpayer can prove with clear and convincing evidence that their New York domicile was abandoned and a new domicile has been formed elsewhere.

Of the two tests, proving non-resident status through the domicile test is much more difficult. New York's Department of Taxation and Finance aggressively audits individuals claiming to have moved out of the state. The focus of these examinations usually involves scrutinizing the factors surrounding the purported change of domicile. Without careful planning and documentation, taxpayers are often determined to not have taken the steps necessary to change their domicile and, as a result, are deemed taxpayers on the income they earned in New York.

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548-Day Rule

However, there is an often-overlooked exemption, which takes the form of the 548-day rule, that provides a taxpayer relief from New York's high burden of proof when

claiming a domicile change. If an individual meets the three criteria of the rule over the course of a year and a half (548 days), they are not subject to New York income taxes even though they remain a state domiciliary for the year in question. The rule's criteria are as follows:

1. Individual is present in a foreign country for at least 450 days during a 548-day period;
2. The individual, their spouse and any minor children spend no more than 90 days in New York during the 548-day span; and
3. For the partial calendar year(s) of the 548-day period (can be at the beginning, end or both), the individual is present in New York for no more than the following ratio: $\# \text{ of New York days} / 90 < \# \text{ of days in the partial year} / 548$

Of the rule's elements, the third criteria is the trickiest to understand. In a nutshell, the 548-day exemption will always span at least one or two partial calendar years, this is because the 548-day period can be shifted and started on any date throughout the year. Accordingly, the ratio prorates the allowable 90-day limit in New York from criteria number two to the partial years included in the 548-day period.

For those New Yorkers who are waiting out the pandemic outside the U.S., or for those anticipating a large financial windfall that may result in a high New York state tax obligation, the 548-day rule is a valuable tool to eliminate their New York income tax liability in its totality, even if they ultimately return to the state. If they meet the rule's requirements, the New York domiciliary does not owe any income tax to New York and can continue to not owe these taxes for as long as they abide by the elements of the exemption.

Caution

A note of caution for those considering this opportunity: be aware of the interplay between New York's 183-day statutory residency rule and the partial calendar year(s) within the 548-day period, as this could torpedo the exclusion's protection. By way of example, if the 548-day period ends on February 1st and the taxpayer returns to New York for the remainder of that year, they will end up exceeding the

183-day statutory residency threshold, thereby subjecting all income earned in that calendar year to New York income tax. Any income earned in the prior year, however, which is encompassed by a full-year portion of the 548-day exemption, will remain exempt from the state's tax.

Also note that the foreign country where the taxpayer is living likely will have its own residency rule, regardless of legal visa status. Therefore, taxpayers considering taking advantage of this exemption must plan ahead to ensure that they are not subject to taxes in the foreign jurisdiction that might negate any benefit of staying out of New York. Coordination of advice with your U.S. and foreign tax advisors is critical to confirm compliance with the various rule interactions.

The 548-day exemption is a strategy frequently overlooked by many New York taxpayers. If you've been living outside the U.S. for an extended period of time or expect to receive significant income, you may not have to answer to the state's tax regime. The rules are intricate and documentation is vital, but the potential savings can be very substantial. For more information on the 548-day rule and its applicability, please contact [Alan Goldenberg](#), Principal and Leader of Anchin's Tax Controversy and State and Local Tax groups, [Gwayne Lai](#), Anchin's International Services Group Tax Director, or your Anchin Relationship Partner.

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