



MULTISTATE INCOME/FRANCHISE TAX

New York Appellate Court reverses Tax Appeals Tribunal in statutory resident case Tax Alert

Overview

On June 30, 2022, the New York Supreme Court, Appellate Division, Third Department (“Appellate Division”) issued its opinion in [Matter of Nelson Obus et al., v. New York State Tax Appeals Tribunal et al.](#), ruling that an individual domiciled in New Jersey who, due to his employment, spent more than 183 days in New York during each year at issue and owned a vacation home in upstate New York that was determined to be a permanent place of abode was not a statutory resident for New York State personal income tax purposes. Reversing a 2021 New York Tax Appeals Tribunal (“Tribunal”) decision (DTA No. 827736), the court reasoned that the couple at issue did not utilize the New York vacation home in a manner which demonstrated that they had a residential interest in the property as required by the New York Court of Appeals in *Matter of Gaied v New York State Tax Appeals Trib.*, 22 NY3d 592 (“*Gaied*”).

This Tax Alert summarizes this recent New York decision. Unless otherwise noted, quotations included in this Alert are from the Appellate Division decision.

Background facts

For the tax years at issue (2012 and 2013) the Taxpayers (Nelson Obus and Eve Coulson) were domiciled in New Jersey and owned a vacation home in Northville, New York (the “Northville home”). Mr. Obus worked in New York City, spending over 183 days in New York during each of the years at issue.

The Northville home was not within a reasonable commuting distance to Mr. Obus’s New York City employment (i.e., it was over a four-hour drive each way) and was only used by the Taxpayers at most, three weeks during each year at issue.

The Northville home was furnished with five bedrooms and three bathrooms, and the Taxpayers paid for year-round utility services. The Taxpayers had “free and continuous access” to the Northville home. The Taxpayers did not leave

personal items at the home. A year-round tenant occupied an attached apartment, whom Mr. Obus would inform of his presence prior to his arrival.

The Tribunal determined that the Northville home was a permanent place of abode, and as such, the Taxpayers were considered statutory residents.

New York Appellate Division analysis

The Appellate Division reversed the Tribunal's decision based on the following:

- The legislative intent of the law determining that a nondomiciliary may be considered a New York resident for income tax purposes if he or she maintains a permanent place of abode in New York and spends in excess of 183 days of the year in New York is to tax "individuals who are really and for all intents and purposes residents of the state but have maintained a voting residence elsewhere and insist on paying taxes to [New York] as nonresidents." (*Gaied*, at 597).
- The Taxpayer must have a residential interest in the property and have utilized the dwelling as a residence. (*Gaied*, at 598).
- The Taxpayers were not in the "purview of the target class of taxpayers who were intended to qualify as statutory residents." (*Gaied*, at 597).
- The New York regulation stating that "a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode" [20 NYCRR 105.20(e)] is just one example of where a dwelling will not constitute a permanent place of abode.
- The Appellate Division stated, "[I]t was unreasonable for the Tribunal to focus solely on the Northville home's objective characteristics."

The Appellate Division determined that the Tribunal's decision did not have a rational basis and must be annulled.

Considerations

This decision sets an important precedent because unlike in *Gaied*, the permanent place of abode in this case was a vacation home. Although the vacation home was suitable for year-round use, the Appellate Division held that was insufficient to satisfy the residential interest requirement to classify the home as a permanent place of abode, and to categorize the Taxpayers as statutory residents during the audit period. It appears that this holding was very much informed by the Taxpayer's facts, such as the length of time spent each year at the Northville residence and its considerable distance from Mr. Obus's New York City employment. Taxpayers anticipating a residency change or residency audit should consult with their tax advisors and be prepared to substantiate all the facts that may be evaluated in determining whether they have a residential interest in their New York home, consistent with this decision.

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