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Beware of the tax trap: Suburban residents may be hit with state and/or city resident's tax

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Due to a strange contortion of the New York State and City tax codes, and overzealous tax auditors, certain people may be hit with an unexpected 4% New York City residency tax and/or 7% New York State residency tax. How can this be? If you live in a home in the suburbs of New York City and maintain a residence in one of the boroughs of New York City, you could be deemed a statutory resident of New York City, thus subject to the 4% income tax that city residents pay. Or, if you live in Connecticut or N.J., but maintain a residence in New York State - a country house in upstate New York or a home in the Hamptons - you could be classified as a New York State resident for tax purposes. This would be in addition to the potential NYC resident tax if you have access to a home located in NYC.

The key to avoid getting hit with this added tax burden is understanding the rules and taking certain steps to avoid qualification as a "resident" of the state or city of New York.

New York State and New York City taxing authorities have begun a major campaign to audit taxpayers who maintain multiple residences to determine if you should be taxed as residents. There are many suburbanites who have a New York City apartment or vacation home in the Hamptons or elsewhere in New York and are unaware of the potential tax traps. If you're under audit, New York State has access to EZ Pass & phone records, and will ask for credit card statements and information.

As a resident of New York State or New York City, you are required to pay income tax on all sources of income. Non-residents of New York State only pay tax on income from New York sources. There is no city income tax for people who are non-residents of New York City.

To be taxed as a New York State resident, a person must be either "domiciled" in N.Y. or be considered a statutory resident. A "domicile" is defined as the place which an individual intends to be his permanent home. There are two components to being classified as a statutory resident: the individual maintains a "permanent place of abode" (home/apartment) in New York; or, the individual spends more than 183 days of the year in New York. Many people are under the false impression that if they are not physically in their New York residence, it will not count towards the 183 days test. This is a common misconception. The following is an example of one scenario:

An individual owns a home (a "permanent place of abode") in Westchester, Long Island, or Florida, buys a co-op in NYC or rents an apartment to spend weekends in the Big Apple, and only physically stays in the apartment for a total of 100 days of the year. This appears to pass Part Two of the test, as it is less than 183 days. However, this person also owns a company that operates in New York City where he commutes on a daily basis. The 183 days test includes each and every day that an individual spends time in NYC. Therefore, in our example, the 183 days test would include all the days the person commutes to work in New York City and/or the days he spends at his New York

City co-op. In this particular situation, the person would be considered a statutory New York State and New York City resident and his entire income would be New York City income, taxed at approximately 4%.

Having a residence owned by your corporation may not avoid this issue. If a corporation leases an apartment for the use of a company executive and the apartment was principally available to that executive, the executive would be considered as maintaining a permanent place of abode in New York, even though other people might use the apartment. Even if the apartment is only in one spouse's name, one spouse's apartment can be imputed to the other spouse if either one has a key and unrestricted access to the apartment. It does not matter that you occupy it for less than 183 days.

An individual who lives outside of New York, but is considered a New York statutory resident, may be required to pay personal income tax on his entire income, and may not receive credit for taxes paid to his domiciliary state of residence on intangible assets (i.e. dividends, interest, etc.). This would be equivalent to one of the most dreaded concepts to accountants and taxpayers; double taxation.

As you can see, this is a very complex issue. There are many convoluted rules and definitions that one must be aware of in order to avoid having to pay personal resident income taxes to two states. In addition, there are numerous cases that both support and hinder taxpayers who maintain two residences. Over the past couple of years, the New York State Tax Department has increasingly focused its energy on the issue of residency. If you already have or are planning to acquire a second residence within New York State or New York City and you are a resident of another state or current non-resident of NYC, you need to keep this "taxing" issue in mind.

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