



## Working and Vacationing in New York – Unsuspecting Tax Consequences May Have Gotten Easier to Address

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Many people that live in New Jersey or Connecticut commute to New York City for work. Inevitably, many of those same people end up acquiring a vacation home in New York State. For those educated about it, there is a fear of New York State tax obligations and being treated as a resident of New York that have traditionally come with owning such a dwelling.

However, there may be some good news! In an unusual win for taxpayers, the New York State Supreme Court, Appellate Division found in favor of the taxpayer by finding that he was not a resident of New York for tax purposes (*Matter of Nelson Obus et al., v New York State Tax Appeals Tribunal*).

### New York Residency and Taxation - Brief Overview

New York State has two concepts which cause a taxpayer to be considered a “resident” for tax purposes: domicile and statutory. A domiciled resident is one that has their primary residence in New York. A statutory resident is a person that passes a two-point test:

- 1) more than 183 days in New York State, and
- 2) has a “permanent place of abode” in the state.

Historically, New York has taken the position that a vacation house would be a permanent place of abode. For many people that commute daily to New York City for work - the 183 days is easily met.

Whether a person is a non-resident or considered a statutory resident has a major impact on a taxpayer’s tax obligation. Non-residents are only taxed on income from New York sources, while residents are taxed on all their income. This can lead to multiple, complex state tax issues for the taxpayer.

### Obus to the Rescue...Potentially

In the case of *Obus*, the taxpayer lived in New Jersey and worked in New York City, and as such, spent more than 183 days in New York. Therefore, point one of the statutory resident test was not in contention. The taxpayer also owned a vacation property in upstate New York, approximately 200 miles from his office. Looking to the second test of a statutory resident, the main issue of the case became whether or not the vacation home constituted a permanent place of abode.

The Appellate Court, using the precedent previously set in the case of *Gaied*, reasoned that a taxpayer must have a “residential interest” in a property before it can be considered a permanent place of abode. As such, the characteristics and length of the taxpayer’s use of the property must be examined.



In *Obus*, the taxpayer was able to show he did not have a “residential interest” in the home, and as such, it was not a permanent place of abode. The taxpayer only used the house a few weeks a year for recreational purposes and did not maintain any personal belongings there. The house was also 200 miles away from the taxpayer’s office - as such it was not realistic to commute back and forth from. Finally, there was a tenant that lived in an attached apartment that the taxpayer notified before visits. Victory came to the taxpayer with regard to not being a statutory resident of New York State.

### **Where do we go from here?**

The case should give hope that New York will be less aggressive in classifying any New York vacation home as a permanent place of abode. This result should be taken with a grain of salt as residency matters are highly fact specific and there needs to be circumstances which show no “residential interest” exists. Perhaps with remote working / working from home, there are less concerns about residency due to number of days spent in New York, however, perhaps on the flip side, there are more individuals working from vacation locations which contribute to the day count. Since this case expands on one area of guidance there may still be uncertainty based upon slightly different facts and circumstance, however, this is still an excellent result in favor of the taxpayer. Should you have any questions, please consult with your SKP tax advisor.