What You Need to Know About Changes to the New York 2021 Nonresident Audit Guidelines

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New York residents must pay taxes to the state on all of their income regardless of where it is earned. Non-residents only pay taxes on income earned in New York, such as wages. As a result of the potential lost revenue, New York aggressively enforces its residency rules, closely examining situations where a taxpayer claims a change in residency to another state as well as those taxpayers domiciled in another state yet having a permanent place of abode in New York. In December 2021, New York amended its Nonresident Audit Guidelines. Attorneys must understand the impact of those changes for clients, especially those who have multiple homes inside and outside the state.

Residency Tests

There are two tests for residency. The Domicile Test looks at several factors to determine where the taxpayer's true home lies. These include a comparison of the taxpayer's homes and lives in different states (such as the size and use of the respective residences), lifestyle pattern, location of family members and items of sentimental or monetary value, business activities, and time spent in both states, among other factors.

Alternatively, taxpayers may be deemed to be state residents even if they are not domiciled in New York. The Statutory Residency Test provides that a taxpayer will be treated as a resident of New York if he or she maintains a permanent place of abode in New York for substantially all of the year and spends more than 183 days of the tax year in New York.

Changes to the Nonresident Audit Guidelines

Starting in 2022, the definition of "substantially all of the year" has changed. Previously, the phrase meant a period exceeding 11 months. Now, it generally means a period exceeding 10 months. This "10-month rule" will be applied in tax years where a taxpayer either acquires or disposes of their residence.

As an example, the Guidelines state: "a taxpayer who works in New York City throughout the year and initially begins renting an apartment in New York City in March generally will not be deemed a statutory resident on account of spending more than 183 days in New York in that year because it occurred in the year of acquisition."

Notably, the Guidelines also clarify that even if a taxpayer successfully changed domicile during the year, he or she may still qualify as a statutory resident.

Impact on Taxpayers

While the change seems small, this shortened period may lead to more individuals treated as statutory residents. In particular, taxpayers may want to accelerate or delay a purchase or sale of a home based on this new definition in order to avoid being identified as a statutory resident. However, taxpayers should also be aware that the "substantial part of a year" rule is a general rule rather than an absolute rule. As a result, the Audit Division may find against them in certain circumstances even if they meet the strict definition.

In summary, a determination of residency is complex and fact-sensitive. Therefore, get experienced advice if your client is planning to move out of state or already facing an audit.

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