

Income/Franchise:

New York Appellate Court Reverses Tax Appeals Tribunal in Statutory Resident Case

Case No. 533310, N.Y. App. Div. (6/30/22). The New York Appellate Division, Third Department (Court), reversed a 2021 New York Tax Appeals Tribunal decision [see *Decision DTA No. 827736*, N.Y. Tax App. Trib. (1/25/21) for details on the earlier ruling] to hold that an individual domiciled in New Jersey who worked primarily in New York City (*i.e.*, due to his employment, he spent more than 183 days in New York during each of the years at issue) and owned a vacation home in upstate New York that was determined to be a permanent place of abode (where he spent, at most, three weeks for each of the years at issue) was *not* a statutory resident for New York State personal income tax purposes under the facts. In doing so, the Court reasoned that the couple at issue did not utilize the in-state vacation home in a manner which demonstrates that they had a residential interest in the property as required by the New York Court of Appeals in *Gaied*. Citing *Gaied*, the Court stated that “[t]he taxpayer must have utilized the dwelling as his or her residence; maintaining a dwelling that could be a permanent place of abode is not enough to establish status as a statutory resident,” which is a fact-intensive inquiry.

[URL: https://decisions.courts.state.ny.us/ad3/Decisions/2022/533310.pdf](https://decisions.courts.state.ny.us/ad3/Decisions/2022/533310.pdf)

[URL: https://www.dta.ny.gov/pdf/decisions/827736.dec.pdf](https://www.dta.ny.gov/pdf/decisions/827736.dec.pdf)

See forthcoming Multistate Tax Alert for more details on this ruling, including some related taxpayer considerations, and please contact us with any questions in the meantime.

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