

State Tax Residency – A Primer & Hot Topics

Estate Planning Council of Northern New Jersey

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Presented by:

Lance E. Rothenberg, Esq.
Rothenberg Tax Law, LLC
Tax Controversy | State & Local Tax



Lance@rothenbergtaxlaw.com

Phone: 646-693-3635

Fax: 646-626-6385

***.rothenbergtaxlaw.com

13 ½ James Street, 3rd Floor
Morristown, NJ 07960

Rothenberg Tax Law, LLC

- Expertise
 - Tax Controversy – Federal and State Tax Disputes
 - State & Local Tax Consulting
- Local
 - Located 13 ½ James Street, 3rd Floor in Morristown
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 - } Trust Fund Taxation
 - } Liens & Levy Defense
 - } Worker Classification
 - } Cannabis Taxation
 - } Employe Retention Credit Audit Defense
 - } Advisor Opinions
 - } Routine Tax Notices



Presentation Overview

- COVID-19 WFH Telework and Tax Migration Update
- State Tax Residency
- New York Residency Overview
- Tri-State Residency Overview
- State Tax Residency Developments
 - Vacation Homes
 - Convenience of the Employer Rules
- Questions & Answers

“Wall street A-listers fled to Florida. Many now eye a return.”
– Bloomberg Wealth (03.10.2021)
 (“The main problem with moving to Florida is that you have to live in Florida”).

CV19 Tax Migration Telework & Remote Work

“NY, I can't seem to quit you. (As my tax domicile).”
– Law360 (03.26.2018)

CV19 Telework, Tax Migration, & Remote Work Still In the News!

“New York City’s mayor just conceded defeat to remote work—and declared war on the housing crisis.”

– Fortune (08.17.23)

“[Nebraska] Governor orders end to remote work, directs state workers back to offices” – ABC (11.14.23)

“Over 545,000 New Yorkers left the state in 2022 —headed for Florida, Texas and farther”
– NY Post (10.24.23)

“Why the golden age of remote work may be coming to an end”

– CNBC (11.10.23)

“Zoom CEO Says Employees Need to Be in the Office Because It's Hard to Build Trust Over Zoom”

– Yahoo! Life (08.24.2023)

This is the No. 1 State for Digital Nomads in 2023, According to a New Study” – Traveling Lifestyle (11.07.23)

“Companies With Flexible Remote Work Policies Outperform On Revenue Growth.”

– Forbes (11.13.23)

“Remote work is harder to come by as companies push for return to office” m

– NPR (09.01.23)

“Tax Credits Could Mitigate Surge In Office Vacancies”
– Law360 (11.13.23)

“San Francisco CEO says return-to-work push is ‘fighting a losing war’” – Fortune (11.14.23)

“Is Remote Work Accelerating Out-Migration From High-Tax States?” – TaxNotes (11.13.23)

“Labor Day return-to-office mandates fell flat because workers (still) value flexibility over money, says Harvard future of work professor” – Fortune (11.12.23)

Virtual Workforce – “Nexus” ...In One Slide

- Before a state can tax an out-of-state business, that business must first have “**nexus**” with the taxing state.
- Nexus refers to the nature and frequency of contacts that an out-of-state business must establish in a state before the state may subject that business to taxation.
- **Telecommuting employees** can create nexus on behalf of a foreign corporation for income tax purposes. *See, e.g., Telebright Corp. v. Director, 38 A.3d 604 (NJ Sup. Ct., App. Div.) (2012).*
- **Implications for Sales Tax, Corporate Income Tax, Payroll Tax, Other Taxes**

Nexus:
Minimum Contacts

Due Process Clause
= minimum connection

Commerce Clause
= substantial presence

“Tax Officials Warn Against Underestimating Impact of Telework”
– TaxNotes (03.01.2023)

“Elon Musk blasts the work-from-home crowd, saying they are 'detached from reality'”
–Business Insider (10.18.23)

“The CEO of Dropbox has a 90/10 rule for remote work” – Business Insider (10.16.23)

State Tax Residency

“NY, I can't seem to quit you. (As my tax domicile).”
– Law360 (03.26.2018)

Residency -- Two Tests

Domicile

- True home
- Leave & land
- Can only have one domicile at a time
- NY Five primary factors
- More than just changing a driver license!

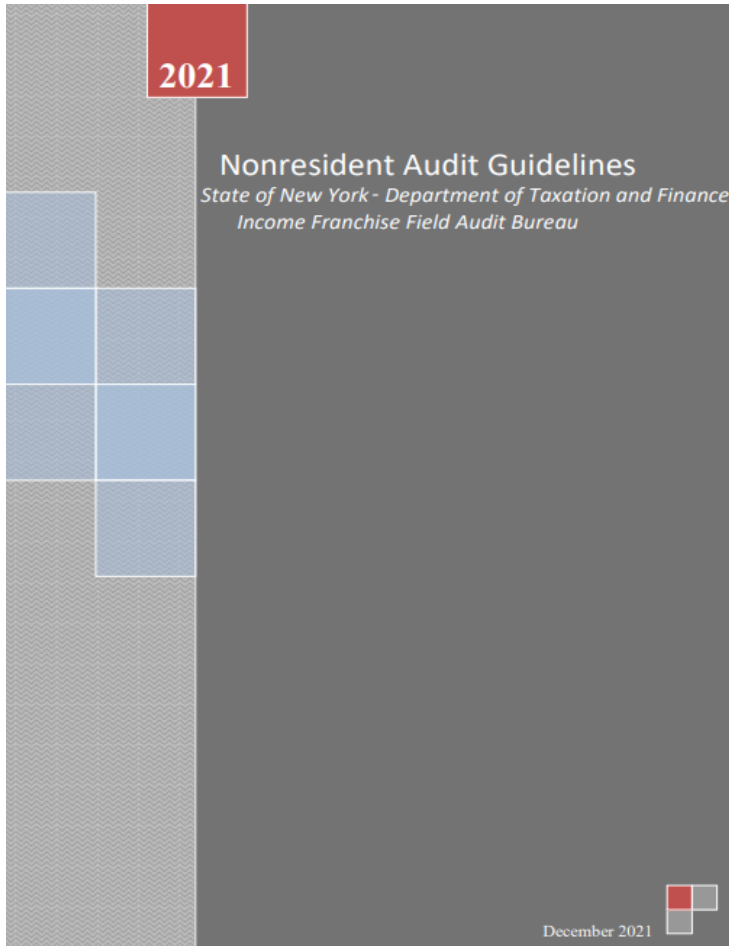
Statutory Residency

- Alternative test
- Maintain a permanent place of abode
 - Residential interest
 - Unfettered access
- Greater than 183 days in the jurisdiction

Nonresident Concerns

- Employer Withholding
- Personal Income Tax Sourcing
- Nonresident Allocation
- Resident Credit for Taxes Paid

New York Residency Audits



- Difficult and intrusive
- Very fact intensive
- Detailed review of voluminous records
- Facts and circumstances
- Routinely require review of:
 - Cell phone records
 - Calendars
 - Bank and credit card statements
 - EZPass and commute records
 - Employment history
 - Family affairs
 - Business and leisure travel
 - Spending habits
 - Insurance policies
 - Social media
- Burden of proof = clear/convincing evidence

“Wall Streeters fleeing NYC pack elite Palm Beach private schools to capacity”
– NY Post (09.07.2022)

Residency Audit Traps

Myth 1: I use cash when I travel, so I'm safely off the digital grid.

Reality: Burden of proof is on the taxpayer to prove they were not in jurisdiction. Using cash can actually hurt your case during an audit, as other items may nevertheless indicate presence

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Myth 2: I was only in State A for several hours for a meeting and did not stay over; I was there for a vacation stay and did not conduct any business on that trip.

Reality: Any part of a day constitutes a day for day count purposes.

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Myth 3: I just need to stay out of State A for the majority of the year.

Reality: Domicile and Statutory Residency each have a different day count test.

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Myth 4: If I don't own a residence in State A, I can't be considered a resident there.

Reality: All that is required is unfettered access and a residential interest, not legal ownership or even a lease.

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Myth 5: I historically live in State A, but since March 2020, I have spent the significant time at my vacation home in State B, so I can stop paying State A's personal income tax.

Reality: It's just not that simple.

“Living Abroad for a While? Shakira Case Shows Taxes Matter — Wherever,”
– Kiplinger (07.21.2023)

- “Colombian pop star Shakira is facing a second investigation for alleged tax fraud in Spain in a case that shows how residency and living in another country can affect your tax bill.”

Domicile – An Overview

- ♣ True, fixed, permanent home
- ♣ The place you return to after having been absent
- ♣ Requires both a subjective intention and physical presence
- ♣ Once established, a domicile continues until the taxpayer can demonstrate
 - abandoned old domicile; and
 - established a new domicile outside of the state
- ♣ Supported by evidence that is clear and convincing.
- ♣ Burden of proof rests with the party asserting the change.
- ♣ “Leave” and “Land”

Five Primary Factors

1. Time
2. Business Activities
3. Homes
4. Near/Dear Belongings
5. Family

Secondary/Other Factors

- ♣ Driver license
- ♣ Auto registration
- ♣ Voter registration
- ♣ Library card

Domicile

Matter of Estate of Newcomb, 192 NY 238 (1908) (estate tax):

- Whether a taxpayer was domiciled in New Orleans, LA or New York at the time of death (died in NYC)
- “Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one’s domicile.”

Matter of Estate of Trowbridge, 266 NY 282 (1935) (estate tax):

- Whether a taxpayer was domiciled in Connecticut or New York at the time of death (died in NY)
- Court of Appeals held that the facts favoring New York were essentially declarations made by the taxpayer in various documents, including his will and voter registration. Of more importance to the Court, however, was that the taxpayer’s life was centered around his mansion in Connecticut where he lived with his family
 - Actions speak louder than words...

Domicile – Five Factors

Five Primary Factors

1. Time
2. Business Activities
3. Homes
4. Near/Dear Belongings
5. Family

Secondary/Other Factors

- ♣ Driver license
- ♣ Auto registration
- ♣ Voter registration
- ♣ Library card

“New York Blitzes \$100,000 Earners With Remote-Worker Tax Audits.”
– Bloomberg Wealth (08.11.2021)

Domicile

Domicile exceptions

- See Tax Law Section 605(b)(1)(A); 20 NYCRR 105.20(b)
- **30-Day Rule**
 - Taxpayer maintains no permanent place of abode in New York State during the year;
 - Taxpayer maintains a permanent place of abode outside New York State during the entire year; and
 - Taxpayer spends not more than 30 days of the taxable year in New York State
- **548 Day Rule**
 - Withing any period of 548 consecutive days, taxpayer must be present in foreign country(s) for at least 450 days
 - During that same 548-day period, neither the taxpayer, nor spouse (unless legally separated) or minor children can be present in New York for more than 90 days; and
 - During any portion of the 548-day period that is less than a full year (short period), the ratio of the number of days taxpayer is present in NY (x) over 90 days must not exceed the ratio of the total number of days in that short period (y) over 548 days. **$x/90 < y/548$**

Statutory Residency

- ♣ General Concept: Your domicile is somewhere else, but you're in New York enough to be taxed as a "resident" anyway!
- ♣ Two-pronged test

Maintain a Permanent Place of Abode

- Does the dwelling exhibit physical characteristics for year-round habitation?
- Does the taxpayer have a legal right to occupy the dwelling?
- If the taxpayer does not, does she nevertheless have access to and use of the dwelling?
- If she has a legal right, has she exercised that right by enjoying her residential interest in it?
- Maintained for substantially all of year? (i.e., 10 months)

Statutory Residency

Daycount

- A “day” in New York -- a minute is a day
- Two exceptions:
 - Travel Days
 - Medical Days (admitted in patient)
- Burden of proof on the taxpayer
- The importance of record keeping
- Trap: Taxpayers only count overnights or only count days spent at PPA
- No exceptions for shopping or dining out

Nonresidents – Filing & Allocation Issues Overview

Nonresident Allocation & Filings

- Nonresidents owe income tax on “sourced” income
- Typical: Resident in State A, but work in State B earning wages. Need to file nonresident income tax return in State B.
- Complex: Domiciled in State A, treated as statutory resident in State B, have rental income in State C, and have other sourced income in States D and E
- Reciprocity Agreements

Resident Credit for Taxes Paid

- Individuals can, generally, claim a credit in their home state for taxes paid to another state.
- Dual residency scenarios
- Claiming a revised credit after residency audits
- There can be “double taxation”
- C/O/E scenarios

“The Exodus from New York due to COVID-19
Income Tax Residency Considerations,”
– CPA Journal (05.2021)

Tri-State Residency – Brief Overview

- New Jersey
- Connecticut
- Pennsylvania

New Jersey Residency Rules - Overview

GIT-6: Part-Year Residents and Nonresidents Understanding Income Tax (01.2022)

- Determining Residency
 - Your residency is determined by where you were domiciled during the tax year.
 - If you moved into or out of New Jersey for part of the year, you are a part-year resident and may need to file a resident tax return to report the income received for the period you resided here.
 - If you are not domiciled in New Jersey, but receive income here, you may need to file a nonresident tax return.
- Domicile is the place and state you consider your permanent home
 - The place where you intend to return after a period of absence (e.g., vacation, business assignment, educational leave).
 - *You have only one domicile*, although you may have more than one place to live. Your domicile continues until you establish a new permanent home elsewhere
- Permanent Home means a residence that you maintain permanently as your principal residence (main home), whether or not you own it.
 - Your home is not considered permanent if you maintain it only during a temporary period of time to accomplish a specific purpose (e.g., temporary job assignment).

The Division considers many factors when determining if NJ is your domicile, including:

- Your **intent**;
- Where you register to **vote**;
- Your **driver's license** and vehicle registration;
- Where you have **family ties**;
- Whether your **federal tax return** lists NJ as a home address;
- Location of **bank accounts**;
- Whether you claimed a Homestead Benefit, etc.

New Jersey Residency Rules - Overview

In re Estate of Lyon, 60 NJ 259 (NJ 1972)

- Whether taxpayer was domiciled in Maryland or New Jersey (died in Maryland)
- “Here we have an 83 year old lady whose husband's death left her alone in their Pompton Plains home. Although not an invalid, she did have a heart condition and the physical infirmities associated with her age, and it was reasonable to believe that she could not remain alone in the house. Dr. Lyon, her only son and his wife and children, to whom she was greatly attached, resided in Baltimore and wanted her to live with them. Attractive physical accommodations had been prepared for her through an addition to the son's home, and his capacity as a physician provided additional security. The opportunity to take advantage of such an affectionate, comfortable and secure atmosphere would be likely in any case, and certainly in this one, to stimulate an affirmative response. It is difficult to think of a more natural tendency. On the proof here, we regard as irresistible the conclusion that long before Mrs. Lyon died her intention to abandon her New Jersey home and to spend the rest of her life with her son in Baltimore, except for an annual visit to Pompton Plains to see any surviving friends and to visit her husband's grave, had come to full fruition. Under the circumstances she had acquired a domicil in Maryland”

NJ Domicile exception

- **30-Day Rule**
 - Taxpayer does not maintain a permanent home in New Jersey;
 - Taxpayer maintains a permanent home outside New Jersey; and
 - Taxpayer did not spend more than 30 days in New Jersey
 - See GIT-6 (01.2023)

Connecticut Residency Rules - Overview

28-Factors To Determine “Domicile” - Conn. Agencies Regs. 12-701(a)(1)-1

- (A) location of domicile for prior years;
- (B) where the individual votes or is registered to vote (casting an illegal vote does not establish domicile for income tax purposes);
- (C) status as a student;
- (D) location of employment;
- (E) classification of employment as temporary or permanent;
- (F) location of newly acquired living quarters, whether owned or rented;
- (G) present status of former living quarters, i.e., whether it was sold, offered for sale, rented or available for rent to another;
- (H) whether a Connecticut veteran's exemption for real or personal property tax has been claimed;
- (I) ownership of other real property;
- (J) jurisdiction in which a valid driver's license was issued and type of license;
- (K) jurisdiction from which any **professional licenses** were issued;
- (L) location of the individual's **union membership**;
- (M) jurisdiction from which any motor vehicle registration was issued and the actual physical location of the vehicles;
- (N) whether resident or nonresident **fishing or hunting licenses** were purchased;
- (O) whether an income tax return has been filed, as a resident or nonresident, with Connecticut or another jurisdiction;
- (P) whether the individual has fulfilled the tax obligations required of a resident;
- (Q) location of any bank accounts, especially the location of the most active checking account;
- (R) location of other transactions with financial institutions, including rental of a safe deposit box;
- (S) location of the **place of worship** at which the individual is a member;
- (T) location of business relationships and the place where business is transacted;
- (U) location of social, fraternal or athletic organizations or clubs, or a lodge or county club, in which the individual is a member;
- (V) address where mail is received;
- (W) percentage of time (excluding hours of employment) that the individual is physically present in Connecticut and the percentage of time (excluding hours of employment) that the individual is physically present in each jurisdiction other than Connecticut;
- (X) location of jurisdiction from which **unemployment compensation** benefits are received;
- (Y) location of schools at which the individual or the individual's immediate family attend classes, and whether resident or nonresident tuition was charged;
- (Z) statements made to any insurance company concerning the individual's residence, on which the insurance is based;
- (AA) location of most professional contacts of the individual and his or her immediate family (e.g., physicians, attorneys); and
- (BB) location where **pets are licensed**.

Pennsylvania Residency rules - Overview

Publication DFO-02 (2020) – Personal Income Tax Preparation Guide:

Some factors to consider in determining an individual's place of domicile are:

1. Where does the taxpayer spend the greatest amount of time during the taxable year;
2. Where does the taxpayer support his or her spouse and children;
3. Where does the taxpayer **purchase the necessities of life**;
4. Where does the taxpayer have **doctors, lawyers, and accountants**;
5. Where does the taxpayer house **his or her pets**;
6. Where does the taxpayer have active banking accounts;
7. Where does the taxpayer worship regularly;
8. Where does the taxpayer participate in social, fraternal, or athletic organizations, lodges, or country clubs;
9. Where does the taxpayer have **works of art, expensive furniture, family portraits, or heirlooms**;
10. Where does the taxpayer fulfill local tax obligations;
11. Where is the taxpayer employed;
12. Where does the taxpayer own real estate fit for year-round living;
13. Where does the taxpayer maintain a **driver's license** and vehicle registration;
14. Where does the taxpayer maintain **professional licenses**;
15. Where does the taxpayer maintain union membership;
16. Where does the taxpayer declare residency for fishing or hunting licenses, income tax returns, or school tuition;
17. Where does the taxpayer conduct his business;
18. Where does the **taxpayer receive mail**;
19. Where does the taxpayer receive unemployment income;
20. Where does the taxpayer record his or her address for insurance policies, deeds, mortgages, leases, passport, federal and local tax returns, etc;
- 21. Where was the taxpayer domiciled at birth;**
22. Where does the taxpayer maintain safe deposit boxes;
23. Where does the taxpayer own a cemetery plot;
24. Where has the taxpayer applied for and received a homestead exemption;
25. Where is the taxpayer listed in the telephone directory;
26. Where has the taxpayer obtained a homestead exemption (Note: The homestead exemption may not be claimed by nonresidents for any residence maintained in Pennsylvania.);
27. Where does the taxpayer **gather for family and social events**;
28. Where does the **taxpayer maintain TV or Internet connections**; and/or
29. Where is the taxpayer registered to vote?

Vacation Homes

NY Statutory Residency – Vacation Homes

“NY Appeals Court Holds Taxpayer’s Vacation Home Did Not Qualify as PPA”

– CPA Journal (July/August 2022)

Obus v. N.Y. Tax App. Trib., Dkt. No. 533310 (N.Y. S.Ct., App. Div., 3d Dept.) (06/30/2022)

- Whether vacation home can trigger statutory residency
- Taxpayer was a domiciled resident of New Jersey who worked in New York City and owned a vacation property in the Adirondacks in upstate New York. Conceded that he spent greater than 183 days in New York.
- Below, Tribunal reasoned that Mr. Obus had the right to reside in the house, he did maintain living arrangements there, and he exercised those rights, albeit infrequently, during the years in issue. Accordingly, Tribunal concluded that Mr. Obus maintained a permanent place of abode in New York and therefore was a New York statutory resident
- Appellate Division disagreed. Legislative history behind the statutory residency rules was to prevent tax evasion by New York residents. Court of Appeals has previously concluded that it must be demonstrated as a factual matter that a taxpayer has a “residential interest” in a dwelling before it can constitute a permanent place of abode (*In re Gaied v N.Y. Tax App. Trib.*, 22 NY3d 592 (2014))
- New York argued Taxpayer maintained vacation dwelling for his own use, thus satisfying the residential interest requirement. Taxpayer, though, argued that his residence is located in New Jersey and that his vacation home is more than 200 miles from his office in Manhattan
- Finding of a residential interest requires that there must be some basis to demonstrate the dwelling was, in fact, utilized as a residence. The inquiry must go beyond the mere objective characteristics of the house and must evaluate the nature and duration of the taxpayer’s subjective use of the property
 - Mr. Obus used the property at most for three weeks during the year for vacation purposes; for skiing or visiting the Saratoga Springs racetrack.
 - House was not suitable for regular commuting to Mr. Obus’s job in New York City, which was over four hours away (each way)
 - Taxpayer did not keep personal items at the property, and brought such items with him each time he visited
 - Year-round tenant resided in an attached property, whom Mr. Obus would notify of his visits before his arrival
- Facts supported the taxpayer’s use of the dwelling as a vacation property, not as a residence

Border Battles and Convenience of the Employer Rules

“Convenience of Employer” Rules

- C/O/E Rules: Nonresident Wage Income Sourcing
- State of residence can tax 100% of income
- Nonresident state can tax income from activities within its borders
- State of residence, generally, provides a resident credit
- Most states tax services (source the income) where they are performed
- Some states tax services (source the income) where the ER is located regardless of EE location if for EE convenience – C/O/E rule
- Leads to issues/questions of double taxation, application of the resident credit, questions about the proper sourcing of income, and about constitutionality and fairness

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-M-06(5)I
Income Tax
May 15, 2006

New York Tax Treatment of Nonresidents and Part-Year Residents Application of the *Convenience of the Employer* Test to Telecommuters and Others

This memorandum explains the Tax Department’s revised position concerning the application of the *convenience of the employer* test. The memorandum addresses situations where a nonresident or part-year resident employee whose assigned or primary work location is in New York State performs services for an employer at that location and at a home office located outside of New York State.

New York State nonresident individuals

Section 601(e) of the New York State Tax Law imposes a personal income tax on a nonresident individual’s taxable income that is derived from New York sources. The tax is equal to the tax computed as if the individual were a New York State resident for the entire year, reduced by certain credits, multiplied by the income percentage.

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|----------------|-----------------|
| 1. Arkansas | 5. New York |
| 2. Connecticut | 6. New Jersey |
| 3. Delaware | 7. Pennsylvania |
| 4. Nebraska | 8. Others? |

Border Battle(s) – NY vs Neighbors

- New York – notorious for application of C/O/E rule to nonresident commuters
- ***In re Zelinsky, 1 NY3d 85 (NY 2003)*** – Cardozo Law Prof, worked 3 days NYC, 2 days home CT, wanted to allocate his income (1994 and 1995), but lost and held all NY source under C/O/E
 - C/O/E originally adopted to prevent abuse from commuters who spent 1 hour working from home on Sat and Sun from claiming 2/7 of their workdays, and therefore 2/7 total income, were non-NY
 - Source of the disputed income is the law school located in NYC, and the law school receives the benefits and protections from NY daily affording the opportunity for employment and salary)
- ***In re Huckaby, 796 NYS2d 312 (NY 2005)*** – IT professional, TN resident, employed by NY company, agreed he would work primarily from TN home and travel to NY only as needed. From 1994 and 1995, he spent ~25% of his workdays in NY and ~75% of his workdays in TN. Wanted to allocate, but lost and held all NY source under C/O/E
 - “Petitioner criticizes the convenience test as unfair and unsound as a matter of tax policy and a discouragement to telecommuting. Maybe so. We do not view it as our role, however, to upset the Legislature's and the Commissioner's considered judgments”

Border Battle(s) – NY vs Neighbors

New York COVID19 Pandemic Nexus Guidance: C/O/E Rule!!

Frequently Asked Questions about Filing Requirements, Residency, and Telecommuting for New York State Personal Income Tax (updated 06.30.2021) *****[.tax.ny.gov/pit/file/nonresident-faqs.htm#telecommuting](https://www.tax.ny.gov/pit/file/nonresident-faqs.htm#telecommuting)

- My primary office is inside New York State, but I am telecommuting from outside of the state due to the COVID-19 pandemic. Do I owe New York taxes on the income I earn while telecommuting?
- **If you are a nonresident whose primary office is in New York State, your days telecommuting during the pandemic are considered days worked in the state unless your employer has established a bona fide employer office at your telecommuting location.**
- There are a number of factors that determine whether your employer has established a bona fide employer office at your telecommuting location. In general, unless your employer specifically acted to establish a bona fide employer office at your telecommuting location, you will continue to owe New York State income tax on income earned while telecommuting.

Border Battle(s) – NH v. MA Litigation

- Massachusetts Imposes Temporary Tax on Nonresident Telecommuters
- Petition filed with U.S. Supreme Court (10.19.2020)
 - *“Massachusetts has launched a direct attack on a defining feature of the State of New Hampshire’s sovereignty. For decades, New Hampshire has made the deliberate policy choice to reject a broad-based personal earned income tax or a general sales tax.”*
- Amicus Brief (12.21.2020)
 - Filed by: Ohio, Arkansas, Indiana, Kentucky, Louisiana, Missouri, Nebraska, Oklahoma, Texas, And Utah in Support of New Hampshire’s right to have the case heard
- Amicus Brief (12.22.2020)
 - Filed by: New Jersey, Connecticut, Hawaii, and Iowa in Support of New Hampshire on the merits
 - *“When a State unconstitutionally taxes nonresidents working from home, it forces amici States to choose between losing billions of dollars of revenue by allowing credits to offset such taxes, or double taxing their residents.”*
- U.S. Acting Solicitor General Amicus Brief (05.25.2021)
 - U.S. weighs in against Supreme Court taking the case – case should percolate among states
- Motion for Leave to File Bill of Complaint **Denied** (06.28.2021)
 - Supreme Court decides **not** to hear case

CV19 Nexus Safe Harbors Expired – NY vs Neighbors

New Jersey

Teleworking – End of COVID-19 Temporary Suspension Period for Nexus and Withholding Purposes (08.03.2021)

*****.state.nj.us/treasury/taxation/covid19-payroll.shtml

- Waiver of **Corporation Business Tax** nexus for employees working in this State as a result of the pandemic no longer applies on and after **October 1, 2021**.
- Waiver of **Sales Tax** nexus for employees working in this State as a result of the pandemic no longer applies on and after **October 1, 2021**.
- The temporary relief period with regard to **Employer Withholding Tax** for teleworking employees will end on **October 1, 2021**. As of that date, employers should cease sourcing income in accordance with the employer's jurisdiction. As required under the long-standing pre-pandemic rules, beginning on and after October 1, 2021, employers should resume *sourcing income based on where the service or employment is performed* and withhold New Jersey Gross Income Tax from such wages.

Pennsylvania

Teleworking Guidance

*****.revenue.pa.gov/COVID19/Telework/Pages/default.aspx

- As of **June 30, 2021** (“End Date”) the temporary guidance will no longer be applicable and existing tax law will govern.
- **Corporate Net Income Tax:** A corporation is considered to have nexus in Pennsylvania for CNIT purposes when it has one or more employees conducting business activities on its behalf in Pennsylvania. Therefore, a non-filing out of state corporation which continues to have a Pennsylvania resident working at home in 2021 after the “End Date” has nexus for 2021 and future years based solely on the activities of that employee
- **Sales Tax:** A company which continues to have a Pennsylvania resident working at home in 2021 after the “End Date” may have nexus for 2021 and future years based solely on the activities of that employee.
- **Employer Withholding Tax:** A Pennsylvania resident who is required to telework full-time from home in Pennsylvania rather than the employer's location outside of the state should treat his compensation as Pennsylvania source income. Pennsylvania does not allow a taxpayer to claim a resident credit on Pennsylvania source income. Consequently, a Pennsylvania resident who is employed by an out of state employer but who is required to telework from his home in Pennsylvania cannot claim the Pennsylvania resident credit on his Pennsylvania tax return even if the state where his employer is located taxes his compensation.

Zelinsky 2 Litigation

- Zelinsky, DTA 830517, 830681 (pending case)
 - Cardozo Law Prof back for round 2 litigating to challenge C/O/E
 - First, from 03.15.20 – 12.31.20, during lockdown, he could not work within NYC, so how could his work from home in CT have been for his “convenience” and not for ER necessity?
 - Second, C/O/E is unconstitutional under as applied to his facts
 - Third, original Zelinsky case was wrongly decided then, but even if not, the world has dramatically changed, especially in light of CV19 remote work, and the facts no longer justify
- Other cases pending or in the works?

“Prof Looks to Fight Off NY Tax For Telework During Lockdown” -- Law360 (06.14.23)

New Jersey Enacts Convenience Rule

- 07.21.2023 NJ enacted C/O/E rule for nonresident income sourcing.
 - NJ Nonresident employee compensation from a NJ employer sourced to employer's location (NJ) if the employee works out-of-state (at home) for their own convenience (vs employer necessity)
 - NJ C/O/E applies only to employees who are residents of states imposing a similar rule (AL, DE, NE, NY)
 - Does not apply to PA residents who work in NJ, because NJ/PA Reciprocal Agreement controls
 - Does not apply to CT residents who work in NJ, because CT C/O/E rule does not apply NJ residents who work in CT. NJ intends to further coordinate with CT and will issue guidance.
 - New law retroactive to 01.01.2023. Affected taxpayers must begin withholding or making estimated tax payments ASAP and are required to have proper tax paid by 04.15.2024.
 - NJ will waive penalties and interest as long as a taxpayer begins complying as of 09.15.2023
- NJ law also provide tax incentives for NY employers to establish NJ offices
 - NJ Law provides tax incentives for NJ residents who mount successful legal challenges against NY
 - NJ also challenging NY's congestion tolling on motorists in Manhattan below 60th Street

THANK YOU

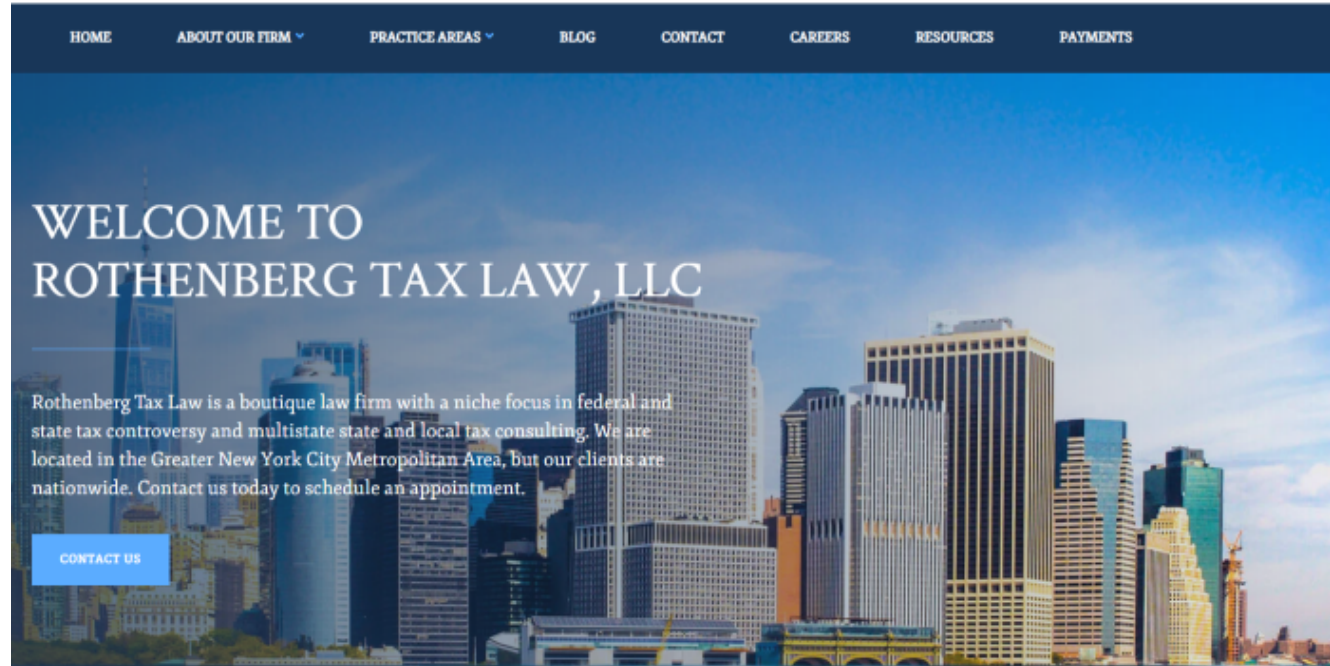
Lance E. Rothenberg, Esq.
Rothenberg Tax Law, LLC
Tax Controversy | State & Local Tax

lance@rothenbergtaxlaw.com
Office: 646-693-3635
Fax: 646-626-6385

***.rothenbergtaxlaw.com
13 ½ James Street, 3rd Floor
Morristown, NJ 07960



CONTACT US FOR A FREE CONSULTATION
646-693-3635



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Please note/remember:
This is merely an outline for informational purposes.
It cannot be relied upon for actual legal or tax advice.
Limited time does not allow for a technical analysis of an actual situation.
Please consult your tax advisor or
feel free to reach out.
We would be glad to chat.