

# 10 Ways COVID-19 Can Change New York State Tax Residency

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A surprising impact of COVID-19 may be state tax problems related to residency. Due to COVID-19, many taxpayers left one home for another home or were unable to change locations because of limitations on travel and shelter-in-place orders. Either situation could have affected their residency for state tax purposes. As a result, taxpayers may be in for a big surprise come next tax season.

## **New York State residency rules**

New York State taxes its residents on all of their worldwide income, not just on New York source income. To be considered a resident of New York for tax purposes, an individual must meet either the domicile test or the statutory residency test.

The domicile test focuses on five primary factors and several secondary factors to determine whether an individual is domiciled in New York. These factors are: home, active business involvement, time and items near and dear, as well as family connections.

An individual who is not domiciled in New York can still be a resident under the statutory residency test, which applies where a taxpayer spends more than 183 days in New York and has a permanent place of abode in New York for substantially all of the year.

## **The Impact of COVID-19 on residency**

The COVID-19 epidemic raises several issues related to the residency rules, which may result in a significant increase in residency audits. Here are issues likely to impact the domicile and/or statutory residency test.

1. Time spent in New York. Under the domicile test, the amount of time the taxpayer spent in New York is weighed against the amount of time they spent outside of the state. For the statutory residency test, the state looks at whether the taxpayer spent more than 183 days in New York. In both cases, the state may not care whether COVID-19 was the underlying reason for the taxpayer to remain in the state longer than anticipated.

2. Move outside New York City. The residency tests are also used to determine if a taxpayer is a New York City resident because of separate city taxes. Many New York City residents decided to move to a second home owned or rented outside the city. While some may now decide to spend most of the year outside the city, the two residency tests will apply to determine whether they remain New York City residents subject to city taxes.

3. Active business involvement in a New York business. If a taxpayer domiciled outside New York spends more time actively involved in and/or managing a New York business as a result of COVID-19, it could be relevant under the domicile test as an indication of return or intent to return to a New York domicile. Again, we hope that the state will recognize that the increased level of involvement is only in response to the epidemic.

4. Selling a New York home. If a taxpayer was trying to sell a home before the crisis in order to change domicile, how much effort must he or she have put in during the COVID epidemic to survive scrutiny under a residency audit? Ideally, the state will not expect any effort to be exerted on selling the New York home during this time.

5. COVID-19 illness. Normally, any portion of a day spent in New York counts as a full day towards the 183-day count. However, in some instances, time in New York may be excused. For example, if a taxpayer contracts the virus and then needs to be hospitalized, those days will not count for statutory residency purposes. However, those days may be counted for a spouse in the state to care for the sick spouse.

6. Children's "attendance" at school. Generally, New York State auditors will treat the location where taxpayer's school-aged children attend school as dispositive of taxpayer's domicile. With schools closed, parents may be educating their children at an out-of-state home for a majority

of the year and could argue change of domicile. However, since audits will occur in 2021 and beyond, the auditor will be able to examine where the children returned to school after the epidemic.

7. Repairs to home on hold. The Statutory Residency test requires the taxpayer have a Permanent Place Of Abode (PPA) in New York for substantially all of the year. If the PPA becomes uninhabitable and cannot be repaired due to shutdown orders because of the pandemic, the residence is likely no longer a PPA.

8. Foreign travel. Under the domicile test, a taxpayer will not be taxed as a resident for personal income tax purposes, even though domiciled in New York if the taxpayers (1) is in a foreign country for at least 450 days of any 548 consecutive day period and (2) neither he/she nor his/her family spends more than 90 days in New York. In the case of COVID-19, some taxpayers may have returned to the U.S. and then been unable to return to the foreign country because other countries closed their borders to people from the U.S.

9. Telecommuting. If a nonresident employee works both within and outside of New York, his or her wages are taxed in proportion to the number of days worked in New York. However, days worked from home are treated as New York work days unless the nonresident employee worked outside the state by necessity, not as a matter of convenience. If an employee is now forced to work for their New York employer from an out-of-state home, one might try to make an argument that the employee is working out of necessity because the governor's orders have closed the New York workplace, but a different result is not guaranteed.

10. Leaving New York due to COVID-19. Taxpayers seeking to change their domicile from New York to another state need to show an intent to change domicile. Usually, there is a triggering event such as a marriage, divorce, health issue, new job, etc. Now, COVID-19 can be added to the repertoire, along with the federal cap on the state and local tax deduction. However, New York will be questioning whether the taxpayer's move is permanent or temporary and will be looking at the move and subsequent taxpayer actions in 2021 and beyond.

The information provided is solely for educational purposes. It is not intended to provide and does not constitute legal advice. Laws are subject to constant change. Every client should consult a qualified professional to discuss its, his or her rights, obligations and unique circumstances.

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