

NEW YORK STATE & CITY RESIDENCE TESTS

New York is a 'Domicile State' and as such has two separate residence tests, one for a New York domiciled individual and one for a New York non-domiciled individual. New York State and New York City's residency and domicile tests mirror one another. Thus, if you are considered domiciled and/or resident at the State level and you live in New York City then you will be considered domiciled and/or resident of New York City also. For the avoidance of any doubt, New York City encompasses the following boroughs; Manhattan, Bronx, Brooklyn (Kings), Queens, & Staten Island.

New York State and City tax their residents on worldwide income and gains; whereas New York State tax non-residents on New York State sourced income only; and New York City only subjects its residents to income tax, so if you are non-resident of New York City then New York City taxes will not apply.

When outlining the rules below we will simply use the term 'New York'.

NEW YORK DOMICILE

New York defines domicile as where you have your true, fixed, permanent home. It is the principal establishment to which you intend to return whenever absent. Once established, your domicile will continue to be in New York until you abandon it and move to a new location with the bona fide intention of making the new location your fixed and permanent home, with the right to remain there permanently.

For example, a US citizen, or green card holder, moving to New York has the right to remain in New York permanently from their date of arrival, however an individual who is purely based in New York on a conditional work visa does not. Likewise, a US citizen, or green card holder, moving from New York to the UK does not necessarily have the right to remain in the UK permanently from their date of arrival, examples of how they would have this right are: having 'Indefinite Leave to Remain' stamped in their passport, or having British citizenship.

New York will primarily use the following factors in evaluating your domicile:

1. Where your physical home (property) is. (Where there are properties in both jurisdictions New York will look at: comparable size of the properties; functionality of the properties and nature of use, i.e. summer home, vs use all year round; and comparable use of the property; i.e. more time spent)
2. Where you are actively performing employment/business,
3. How much time spent in New York vs. elsewhere,
4. Where "Near and Dear" items are situated, and
5. Where family connections are.

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Whether or not you are domiciled in New York will impact which test is used to determine your residency position.

NEW YORK RESIDENCY TEST

Not Domiciled:

If you are not domiciled in New York you are subject to the Statutory Residency Test. This test is based on a day count; any part of any day is considered 1 day for this purpose. The test is as follows:

- If you maintain a permanent place of abode in New York for more than 11 months of the year and spend 184 days or more in New York during the taxable year you will be considered New York resident.

Note that 'permanent place of abode' has been the subject of much recent case law, and you may wish to seek further advice on this subject.

Domiciled:

If you become domiciled in New York then from that point you will be considered resident in New York automatically, unless all of the conditions in one of the following two groups are passed:

Group A Conditions:

1. You did not maintain a permanent place of abode in New York during the year, and
2. You maintained a permanent place of abode outside New York during the entire taxable year, and
3. You spent 30 days or less in New York during the taxable year.

Group B Conditions:

1. You were in a foreign country for at least 450 days during any period of 548 consecutive days, and
2. You spent 90 days or less in New York during the 548 day period, and your spouse and minor children spent 90 days or less in New York during the 548 day period in a permanent place of abode maintained outside New York.

In the calendar year of departure from, or return to, New York the number of days allowed in New York (90) is prorated as follows:

- $\text{Number of days in non-resident portion of the year} / 548 \times 90$

New York State & City are fairly notorious for their aggressive stance on residency and domicile claims, so we would encourage you seek advice on the subject, and err on the side of caution when determining your residency position. It is advisable to ensure you keep good records of your days spent in the state, i.e. passport stamps, e-tickets for flights, and/or 'frequent flyer' breakdowns and EZ passes, as these would be requested as evidence in the event of a New York Residency audit.

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GAINS...**

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