

# CLIENT ALERT

ATTORNEYS AT LAW | 437 MADISON AVENUE | NEW YORK, NY 10022 | 212 907 7300 | WWW.GOLENBOCK.COM

## **New York Appeals Court Clarifies Statutory Residence Test**

To Our Clients and Friends:

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In a decision certain to provide welcome relief to affected taxpayers, New York State's highest court recently ruled that an individual who owns residential property within the State but does not himself use the property as a residence cannot be taxed as a New York resident, even if he spends more than 183 days during the year in the State.

New York State and New York City impose personal income taxes on State and City "resident individuals." Under the applicable statutes, an individual is taxable as a "resident" if either (1) he or she is "domiciled" in New York (generally meaning his or her permanent and primary home is in New York) or (2) the individual is not domiciled in New York "but maintains a permanent place of abode" in New York and spends more than 183 days of the year in New York

(the "statutory residence test"). Historically, the State taxing authority has taken the position that a taxpayer who is present in the State for more than 183 days and who maintains a permanent place of abode here qualifies as a statutory resident even if he or she does not actually dwell in the property. New York City has taken the same position.

In *Matter of John Gaied v. N.Y.*, the New York Court of Appeals considered whether an individual, domiciled in New Jersey who purchased a multi-family apartment building on Staten Island, was a statutory resident of New York. The taxpayer's parents lived in a first-floor apartment and the other apartments were rented out to unrelated tenants. The parents relied on the taxpayer for their support. The taxpayer paid the electric and gas bills for the

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apartment and maintained a phone line for the apartment in his name. However, he did not live at the apartment and did not keep any clothing or other personal effects there; nor did he have sleeping accommodations at the apartment. While he had keys to the apartment he stayed there only occasionally at his parents' request to attend to their medical needs. On those occasions, he would sleep on a couch.

The taxpayer conceded that he was in New York City more than 183 days during each year at issue but challenged the determination that he maintained a permanent place of abode at the Staten Island apartment. Therefore the issue for the Court was whether a person can be considered to "maintain a permanent place of abode" in New York if that person does not personally use the property as a residence. Based on its review of the meaning and intent of the statutes involved, the Court found there was no rational basis for that interpretation at law.

The Court concluded that "in order for a taxpayer to have maintained a permanent place of abode in New York, the taxpayer must, himself, have a residential interest in the property."

Based on this decision, individuals who reside outside of New York but who work in the State and maintain an apartment or other dwelling in the State for use by others (e.g., their children or parents) may no longer be subject to tax as a New York resident.

If you would like more information about New York residency issues please contact:

Jeffrey S. Berger: 212-907-7393  
[jberger@golenbock.com](mailto:jberger@golenbock.com)

Ian Shane: 212-907-7331  
[ishane@golenbock.com](mailto:ishane@golenbock.com)

Heath Martin: 212-907-7389  
[hmartin@golenbock.com](mailto:hmartin@golenbock.com)

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