

# Preparing Responsibly for a Change in Residency

## Overview

The easy to understand rule most individuals recite when asked what it takes to change your residency is the 183-day rule – also known as the statutory residency rule. This rule simply states that any person who spends 183 days or more in New York State (“NYS”) is considered a resident for tax purposes. The costly mistake that stems from this simple rule is that people assume the inverse is true, when unfortunately, it is not. To avoid the substantial NYS tax burden, you must spend less than 183 days in NYS and change your domicile – the latter of which is substantially more difficult to accomplish and understand.

It’s no secret that NYS makes hundreds of millions of dollars a year off residency audits. They boast of the hundreds of auditors they employ across NYS focused solely on residency audits and publish their victories over NYS residents caught misrepresenting their domicile. The reality is that much of the hundreds of millions paid to NYS each year from residency audits comes from people who misunderstood, not misrepresented, the residency laws. If you are considering moving out of NYS, it is imperative that you have a comprehensive understanding of the law, and how that law applies to your facts and circumstances.

Lippes Mathias LLP is a law firm focused on representing taxpayers before the IRS and state taxing authorities. We have extensive experience defending taxpayers under NYS residency audit. Our experience in these matters has taught us that (a) residency changes are ripe for audit selection; and (b) the best way to prevail in a residency audit is to have a comprehensive plan prior to your move, and ensure that plan is executed and well-documented. Our team has developed a cost-effective service for individuals considering moving out of NYS that will save massive amounts of time, money and stress when that audit letter comes.

## Initial Meeting

We first conduct a detailed interview with you to examine your current facts and circumstances, and your thoughts on when and how you would like to execute the move. We determine if our service is right for you based on your particular situation. In this meeting we will discuss a general overview of how NYS determines residency, discuss how income sourcing rules may apply to you, and review the five primary factors NYS looks at in determining your domicile. We will also review with you the expected cost of our service based upon your specific set of circumstances, and outline what you can expect throughout the engagement.

## The Plan

After our initial meeting, we will develop a personalized report for you. This report contains dozens of factors previously identified as relevant in residency audits by NYS and the Division of Tax Appeals, and identifies all of the factors currently connecting you to NYS. We then highlight which of those factors you have the desire and ability to change, and layout a tailored plan for you to execute. The plan may include specific dates and deadlines that must be met in order to keep your plan on track.

## Execution

As you execute the plan, we will assist you in compiling the necessary documentation you will need to substantiate your new facts and circumstances. We will accumulate all your information into a residency organizer. This organizer will be kept at the firm and will contain copies of all necessary documentation that supports your position in response to a future NYS residency audit. We will also review your plan periodically to ensure that the steps we outlined for you are being properly and timely executed. We have found that this is the most crucial part of audit defense. When taxpayers have their position substantiated with the correct documentation, and their facts are laid out in an orderly, concise fashion, their odds of succeeding at audit are greatly enhanced.

## The Audit

The last step in the process is of course the Audit. Once a NYS nonresident tax return is filed and a change in residency is indicated, your return will be flagged, which increases the likelihood of an ensuing audit. When you receive an audit letter from NYS, we will be prepared with the response package to immediately put the issue to rest. Taxpayers that are able to respond timely to a residency audit with the correct facts laid out and substantiated have a high likelihood of immediate success, which could save tens of thousands of dollars if not substantially more.

## Summary

Subjecting yourself to a residency audit without the benefit of in-depth preparation and the support of experienced professionals well versed in the nuance of these audits is a recipe for disaster. Our team at Lippes Mathias LLP works proactively with taxpayers changing their domicile, providing strategies and insights to make the planning and execution processes easy, efficient, and reliable. Clients that engage our firm for proactive residency planning dramatically increase their likelihood for success against future audits.

## Bio



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Justin is a Partner at Lippes Mathias where he focuses his practice on individual and corporate tax controversy and criminal litigation. He represents clients against the Internal Revenue Service and New York State Department of Taxation and Finance in matters relating to criminal and civil investigations, audits and collection. He has litigated federal cases in the Western District of New York, the United States Tax Court, and the Second Circuit Court of Appeals. He has also litigated state issues before the NYS Tax Tribunal, NYS Supreme Court, and the Fourth Department Appellate Division.

Justin's audit defense work includes providing representation for individuals and businesses under examination for income tax, sales tax, payroll tax, and residency issues. He works directly with clients and their accountants to facilitate compliance and cooperation throughout the audit process, while ensuring attorney-client privilege and confidentiality is maintained and the client's constitutional rights are protected. He has assisted hundreds of clients in reducing their liabilities and achieving penalty abatements.

Justin's collection practice includes representation of clients with substantial IRS and/or NYS tax liabilities, penalties and interest. He works with both individuals and businesses to preserve their rights, and protect them from burdensome collection actions such as liens, levies, revocation of licenses or passports, wage garnishments, etc. He assists them in navigating through the collection process and determining the most lucrative collection alternative, considering the benefits of utilizing options such as Offers in Compromise.

Justin's primary practice is representation of clients under criminal investigation for alleged federal or state tax crimes and Bank Secrecy Act violations. Justin's experience in all aspects of tax controversy bolsters his ability to provide comprehensive representation for his clients, advising on key decisions understanding the criminal, civil and collection ramifications down the road.

Justin received his J.D. from SUNY Buffalo Law School, where he concentrated in tax taking courses including Federal Income Tax I & II, Tax Policy, State & Local Taxation, Corporate Taxation, and a tax-focused independent study.