



# TaxNewsFlash

## United States



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## New York State: Appeals court holds vacation home is not permanent place of abode

The New York State Supreme Court, Appellate Division, Third Department, on June 30, 2022, held that two individuals domiciled in New Jersey, who owned a vacation home in New York, were not residents of New York for state income tax purposes.

The case is: *Matter of Nelson Obus v. New York State Tax Appeals Tribunal*, No. 533310 (N.Y. App. Div. June 30, 2022). Read the [decision](#) [PDF 88 KB]

### Summary

Under New York law, a non-domiciliary may be considered a New York resident for income tax purposes if such individual maintains a permanent place of abode in New York and spends in excess of 183 days of the year in the state.

The taxpayers were domiciled in New Jersey but owned a vacation home in New York State. One of the taxpayers spent more than 183 days in New York due to his employment in New York City. The lower court determined that the vacation home constituted a “permanent place of abode” because the individuals had the right to reside in the home and exercised that right at times during the tax years at issue, albeit sparingly. The lower court thus found that the individuals were New York residents for individual (personal) income tax purposes.

The Supreme Court held on appeal that the lower court’s decision did not have a rational basis. The court reasoned that the purpose of the statute adopting the permanent place of abode test was to discourage tax evasion by New York residents who maintained a voting residence elsewhere but were “for all intents and purposes” residents of New York state. Although the law did not define “permanent place of abode,” regulations defined it as a dwelling place of a permanent nature maintained by the taxpayer. The court noted that to constitute a permanent place of abode there must be a showing that a taxpayer used a dwelling as his or her residence. It is not sufficient to show that a dwelling could be a permanent place of abode.

In its decision, the lower court focused on the fact that the vacation home was technically suitable for year-round use, and the taxpayers had continuous access to the property for their use. However, the taxpayers used the home for about three weeks each year, and the home was not suitable to commute to New York City for

employment because it was a four-hour drive each way. Based on these facts, the court concluded that the taxpayers had not utilized the home in a manner that demonstrated a residential interest in the property. In the court's view, it was inappropriate for the lower court to deem the taxpayers statutory residents and to do so would be inconsistent with the legislative intent of the statutory residency rules set forth under N.Y. Tax Law Sec. 605(b)(1)(B).

The state has 30 days to make a motion for leave to appeal to the state's highest court, the New York State Court of Appeals.

### **KPMG observation**

In this case, the facts established that the vacation home was not used as a permanent dwelling. It was not convenient to the place of employment for one of the owners, the owners did not store personal belongings in the home, and the home was not used often. In future disputes, these facts may not be as clear if, for example, the vacation or second home is used by the owner while in New York for business purposes.

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