

Practice Update

The Impact of Hurricanes Irma and Harvey on Snowbirds and Residency Requirements

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Snowbirds need to be concerned about their residency status for income tax purposes in light of Hurricanes Harvey and Irma. Clients who retreated to New York or clients who had planned to travel from New York to Florida but could not find transportation, need to know the effect of spending more time in New York. While domicile may not be an issue with their residency status, the statutory residence test – i.e., the “183 day rule” – could be.

Generally, an individual is a resident of New York if he or she is domiciled in New York (the substantive test) or is a statutory resident (the objective test). A person’s intention is key to determining domicile. To assist in determining a person’s intent, tax auditors will examine five factors deemed indicative of intent. These factors are: (i) the size, value, and function of homes; (ii) active business connections in the state; (iii) time spent in the state; (iv) the location of “near and dear” items; and (v) the location of immediate family members.

A person can be domiciled in Florida but still be taxed as a “statutory resident” of New York. When a person maintains a permanent place of abode in New York and spends more than 183 days in the state he or she is deemed a statutory resident. It is therefore critical to understand how a “day” is defined under this objective test.

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Under the 183 day rule any part of a day spent in New York State for business or pleasure would count as a day spent in New York, even if the person arrives and leaves on the same day. Moreover, the person does not have to use the New York residence while in New York for purposes of this analysis.

There are two instances where presence does not count as a day in New York. First, being in New York will not count if the presence is solely for the purpose of boarding a plane, ship, train or bus while merely passing through New York for travel. Secondly, confinement to a medical institution in New York does not constitute a day spent in New York (outpatient days are treated as New York days). There is no precedent for any hurricane or natural disaster related issues. Being in New York due to a mandatory evacuation from a home in Florida or elsewhere still counts as a New York day.

Residents pay income tax to New York on only one thing – everything. Nonresidents are taxed only on New York source income. It is therefore imperative that affected clients be precise when counting days spent in New York to avoid becoming a statutory resident.

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