

# IN THE MATTER OF *JOHN GAIED* – NEW YORK STATE’S HIGHEST COURT PUSHES BACK NEW YORK TAXING AUTHORITIES

## Authors

Nina Krauthamer

## Tags

State and Local Tax  
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New York State will tax as a “resident” of New York: a domiciliary of the State and a person treated as a “statutory resident.” A domiciliary is generally a person whose permanent and primary home is located in New York. A statutory resident is a person who is not a domiciliary, but maintains a permanent place of abode in this state and spends in the aggregate more than 183 days of the taxable year in New York. In other words, to be a statutory resident for New York tax purposes, the person must be present in New York for more than 183 days (in the aggregate) AND maintain a permanent place of abode in New York.

New York’s highest court was asked to determine what it means to “maintain” a permanent place of abode in New York. The New York State taxing authority’s position is that a person can have a permanent place of abode, which he or she does not necessarily have to own or lease, if the person can stay there whenever he or she wants, even if he or she stays there occasionally or not at all. Special rules apply to corporate apartments, college students, and the military.<sup>25</sup>

The facts of the case, as stated in the opinion, are as follows: For the tax years in question, Mr. Gaied was domiciled in New Jersey. He owned an automotive service and repair business on Staten Island, New York and commuted daily to work, a distance of about 28 miles. He purchased a multi-family apartment building on Staten Island, located in the same neighborhood as his business, leased two units to tenants, and used one unit for his aged parents, who relied upon Mr. Gaied for their support. He paid the electric and gas bills for the apartment and maintained a telephone number for the apartment in his name. Mr. Gaied asserted, however, that he never lived 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 claimed that he did not have unrestricted access to the apartment, only staying there (sleeping on the couch) at his parents’ occasional request to attend to their medical needs.

The facts in the case were in dispute, particularly as to whether Mr. Gaied had unfettered access to the apartment. He, in fact, listed the address under his

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See New York State Tax Bulletin TB-IT-690 (December 15, 2011) and New York State 2012 nonresident audit guidelines.

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name for the utility and telephone bills and listed the address as his on the other apartment leases. The Court of Appeals was not asked to address the factual issues in dispute but only the legal interpretation adopted by a lower court (the “Tax Tribunal”) that a taxpayer need not “reside” in the dwelling, but only maintain it, to qualify as “statutory resident.” The Tax Tribunal court opinion caused some consternation among New York lawyers, who felt the decision represented an expansion of the New York State taxing authority’s ability to tax out of state residents. In any event, the Court of Appeals disagreed with the lower courts, stating that the taxpayer must have a “residential interest in the property.” Mr. Gaied won this round.

*In the Matter of John Gaied* demonstrates that there are limits to the New York State taxing authority’s ability to tax nonresidents of the State. It stands for the proposition that occasional use of a family member’s apartment - at the family member’s request - may not be sufficient to cause the other family member to have a permanent place of abode, even if the other family member is subsidizing the apartment. For example, if a parent, who lives in New Jersey but works in New York, subsidizes an adult child’s rental or purchase of an apartment and stays at the apartment at the request of the child (e.g., to babysit the grandchild), the apartment should not be treated as a permanent place of abode of the parent. If the parent uses the apartment when convenient for the parent, such as a late night at the theater, the result may be different.

Ruchelman P.L.L.C. regularly advised its clients on their New York State tax obligations and would be pleased to answer any questions concerning this article.

