

# New York Tribunal Finds Vacation Home Causes Statutory Residency

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By Andrea Muse

The New York Tax Appeals Tribunal has ruled that a New Jersey hedge fund founder who works primarily in New York City and owns a vacation home in upstate New York is a statutory resident for income tax purposes.

The tribunal held January 25 in [Matter of Obus and Coulson](#) that the home Nelson Obus and his wife, Eve Coulson, bought near the Adirondack Mountains was a permanent place of abode in New York because it has physical characteristics making it suitable for year-round use, and that the taxpayers exercised their residential interest in the property by using it as a vacation home.

Timothy Noonan of Hodgson Russ LLP, who filed an amicus brief in support of the taxpayers, told *Tax Notes* that one of the points he tried to make in his brief was that a previous tribunal decision finding that a vacation home constituted a permanent place of abode, [Matter of Barker](#), was based on a flawed premise, which the New York Court of Appeals made clear in its 2014 decision in [Matter of Gaied](#).

The court held in *Gaied* that mere maintenance of a dwelling was not sufficient for it to qualify as a permanent place of abode and that the taxpayer must have a residential interest in the property, ruling that a taxpayer domiciled in New Jersey who occasionally stayed with his parents in an apartment he provided to them in a building he owned in New York did not have a permanent place of abode in the state.

Noonan said the tribunal in this case admitted “that conclusions in their prior decisions (and specifically in *Barker*) were abrogated by the Court’s holding in *Gaied*,” adding that he “had long held the position that the *Barker* case was wrongly decided, so it was good to see the Tribunal recognizing this as well.”

Noonan said that although the tribunal held that the taxpayer in this case had enough of a residential interest in his vacation home to satisfy the test outlined in *Gaied*, “this is not likely to end the debate about whether vacation homes can trigger New York statutory residency issues.”

“As in *Gaied*, I expect that the New York courts will have the last word on the matter,” Noonan said. “The taxpayer has the right to appeal the decision to the Appellate Division, and I suspect that he will.”

Taxpayers are residents under New York law if they are either domiciled in New York or are considered statutory residents, meaning they maintain a permanent abode and spend more than 183 days in the state during the year.

Though Obus and his wife are domiciled in New Jersey, he worked primarily out of his office in New York City as chief investment officer of Wynnefield Capital, which he co-founded in 1992, and was present in New York for more than 183 days per year during 2012 and 2013. The couple purchased a home in Northville, New York — more than 200 miles from his office — in December 2011, which they used for vacation purposes for no more than two or three weeks during the relevant years.

Obus and his wife filed joint nonresident income tax returns for 2012 and 2013. After conducting an audit, the division of taxation concluded that the couple were statutory residents and owed additional tax of \$526,868 plus interest and penalties for the years at issue. Obus challenged the assessment.

A Division of Tax Appeals administrative law judge ruled in an [August 2019 decision](#) that the vacation home was maintained by the taxpayers for their own use, rejecting the taxpayers' argument that the property was maintained for the use of another because a tenant lived in the house. The ALJ noted that the tenant had fully separate living quarters in the dwelling from the taxpayers.

The ALJ also concluded that the home did not meet the exception under the division's regulations for "a mere camp or cottage, which is suitable and used only for vacations," finding that the physical characteristics of the home made it suitable for year-round use.

The tribunal agreed that the vacation home was a permanent place of abode, finding that the "vacation home had physical characteristics that enabled it to be used year-round, including heat, full kitchen, hot water and other amenities."

Holding that the taxpayers had a residential interest in the vacation home sufficient to uphold the determination that the property was a permanent place of abode, the tribunal concluded that the taxpayers "had the right to reside in and maintained living arrangements at their Northville home and exercised that right, albeit sparingly, during the years at issue."

The tribunal stated that the taxpayers' position that their infrequent stays in the home were not enough for the property to be considered a permanent place of abode focused on the first part of the term "residential interest" to the exclusion of the second part of the term — "interest."

The taxpayers in *Matter of Obus and Coulson* (DTA No. 827736) were represented by attorneys from Greenberg Traurig LLP.