Income Tax Update

Domicile, Residency and Mobile Workforce

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Panelists: Pennsylvania: Karen Sutsko

New York: Michelle Helm & Francis Leo

Connecticut: Michael Romeo

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Mystic, Connecticut

Topics

- Residency Rules in Connecticut, New York and Pennsylvania
- State Tax Issues for the Mobile Workforce
- Hot Topics
- Revisiting the NESTOA Agreement: 20 Years Later

Connecticut

- "Resident" Definitions:
  - Domicile
  - Statutory Residency: (i) not domiciled in CT; (ii) permanent place of abode (PPA); and (iii) › 183 days in CT
  - Includes "30-day rule" and "548-day rule" exceptions
- Mobile Workforce
  - Work day allocation based on physical presence
  - Does not employ any "convenience of employer" rule
- Resident Credits
  - Credit for taxes paid to other states on "sourced" income
  - Extra time to claim credit if based on other-state audit

Connecticut

- Hot Topics
  - <u>Resident Credit Issues</u>
    - Convenience of the Employer Test
    - Statutory Residency in other states
  - <u>Nonresident Sourcing/Deferred Income</u>
    - Recent legislation

New York

- "Resident" Definitions:
  - Domicile
  - Statutory Residency: (i) not domiciled in NY; (ii) permanent place of abode (PPA); and (iii) › 183 days in NY
  - Includes "30-day rule" and "548-day rule" exceptions
- Mobile Workforce
  - Work day allocation based on physical presence, AND
  - "Convenience of employer" rule
- Resident Credits
  - Credit for taxes paid to other states on "sourced income"
  - No extension beyond 3 year SOL to claim credit

New York

- Hot Topics
  - *Gaied v. NY*: What is a "PPA"?
  - *Sobotka*: Statutory residency in a change of domicile year; is it a 3-part test?
  - *Zanetti*: Any part of a day = a day
  - Foreign Domicile Changes
    - Recent edits to NY Nonresident Audit Guidelines

Pennsylvania

- "Resident" Definitions:
  - Domicile
  - Statutory Residency: (i) not domiciled in PA; (ii) permanent place of abode (PPA); and (iii) › 183 days in PA
  - Includes a "30-day rule" exception
- Mobile Workforce
  - Work day allocation based on physical presence
  - Follows NY's "convenience rule," though not published in any regulations or statute. See PIT-03-031(2003).
- Resident Credits
  - Credit for taxes paid to other states on "sourced income"
  - No extension beyond 3 year SOL to claim credit

Pennsylvania

- Hot Topics
  - <u>Recent Residency Cases</u>
    - *Hvizdak v. Commonwealth*
    - *Kania* (local tax)
    - Other Board of Finance and Revenue cases
  - <u>Resident Credit Issues</u>
    - Effect of different income classes

Revisiting the 1996 NESTOA Agreement

- Cooperative Agreement on Determination of Domicile (October 1, 1996)
  - Signed by all 12 state tax commissioners
  - Copy attached
- Key Terms
  - Uniform Criteria for Determination of Domicile
    - Creation of 5-factor domicile test
  - Situs of Income
    - Sourced income = where earned
    - "Non-sourced" income = where taxpayer domiciled

Revisiting the 1996 NESTOA Agreement

- Key Terms *(con't)*
  - Fixing Resident Credit Problem for Dual Residents
    - "Statutory Residency State" should give credit for tax paid to state of domicile
    - Agencies agreed to "make every reasonable effort to see legislative or regulatory change to accomplish this
  - Process for resolving disputed cases
    - Formalized process in "dueling-domicile" cases

Revisiting the 1996 NESTOA Agreement

- So … how did we do?
  - Uniform domicile tests?
  - Resident Credit Issue?
    - See attached article
  - Uniform Resolution Process?
- Are these goals still worth pursuing, 20 years later?
- Are there other goals worth pursuing to increase uniformity?