NYS Reacts to Unprecedented Population Declines with Audit Campaign Targeting Nonresidents

By Justin J. Andreozzi , Ethan R. Reger

April 1, 2024 | **ARTICLES**

The COVID-19 pandemic changed the mentalities of employers, employees, and taxing authorities across the country; none more so than in New York State. Employers are adapting and evolving their business strategies, employees are continuing to enjoy the benefits of remote work, and New York State is reacting to unprecedented population declines substantially reducing their tax base.

The reasons for leaving New York State are not always solely driven by tax savings. Some people are simply seeking a warmer climate where they can play golf or be on the water all year. Regardless of the rationale, U.S. Census Bureau statistics show that approximately 25% of the people who leave NYS establish residency in Florida. The Sunshine State boasted four out of five of the “Fastest-Growing U.S. Metro areas from July 1, 2022- July 1, 2023.” Roughly 50% of the people leaving NYS move to a no income tax state, the most popular of which are Florida, Texas, Arizona, and Nevada.

The Census Bureau has estimated NYS population receded by approximately 533,494 people from 2020-2023.

The NYS Comptroller issued a report on the loss of personal income tax base due to COVID-19 and other factors. The report states:

> The personal income tax (PIT) is New York's largest revenue source; roughly 10.9 million PIT payers had nearly $60 billion in tax liability in 2021. Those subject to the PIT are not only people who call New York home, but those who commute from other states for work or relocate into or out of the State. Nearly 87 percent of New York's PIT payers were residents in 2021; 10 percent were non-residents who only pay New York PIT on income received from work, businesses or other income sources located in New York; and 3 percent were part-year resident filers.

In an attempt to offset declining tax revenues, NYS has taken a volume-driven approach to targeting and auditing former residents. Former residents of NYS that changed their residency are receiving automatically generated residency audit letters; some within weeks of filing their first nonresident tax form. For taxpayers who didn't proactively consult with a professional to ensure they sufficiently documented their transition in the prior year, the time and costs associated with retroactively compiling the requisite documentation to meet their burden of proof are substantial. More important, the likelihood of successfully defending a residency transition is much lower for those who failed to pre-plan and contemporaneously document their move.

So, should you decide to reduce your income tax burden and trade your snowbrush in for sunscreen, it's imperative that you do so with a plan, so you don't get caught out in the cold. If you're moving out of NYS, you're directly in their crosshairs. Be mindful of over-simplified strategies, especially if they seem too good to be true. The tests applied by DTF and the courts to determine whether a taxpayer has met their burden of proof are not intuitive, so a lack of preparation can result in a substantial tax bill enhanced by debilitating penalties and interest.

Our residency team at Lippes Mathias LLP focuses on assisting clients with their residency transition and/or defending them against NYS in the event of an audit. Whether you have already moved, are planning to move, or are consider whether you're able to change your residency based on your facts and circumstances, we are here to provide you with experienced, competent counsel.

For more information and a free consultation, please contact the firm's Residency & Domicile Team leader, Justin J. Andreozzi, via email at jandreozzi@lippes.com, or via telephone at 716-565-1100 x1837. For additional information on the services we provide, check out our residency brochure.