With all the focus on Millennials today, people often forget about the much larger population of Baby Boomers. As that generation prepares for retirement, one of the biggest questions they're contemplating is where to spend those "golden years." While many factors play a role in those decisions, taxes will be a huge consideration, especially for those currently living in higher-tax states.

Of course, it's not only retirees who may be thinking of changing their residence for tax reasons. Whether you're a Baby Boomer, a hedge fund manager, or business owner with operations in multiple states, establishing residency in a new low- or no-state tax jurisdiction requires careful advance planning and meticulous

recordkeeping to avoid adverse tax consequences that will be difficult to reverse once

in Manhattan and a vacation house in the Hamptons. Or maybe you're a snowbird spending half your time in New York and the other half in Florida. Second homes offer convenience and luxury. Unfortunately, they can also cause significant tax problems if you don't know the rules.

That's because if you have a primary residence outside of New York State, but also own or use residential property in New York State, you may be subject to a New York residency audit. The issue of whether or not you are a New York resident for income tax purposes is complex. Even though you may reside outside New York most of the time and only have a second home in New York, you could still be considered a New York resident and be taxed accordingly.

Q: How do states such as New York determine whether you've established residency in another jurisdiction?

A: There are two tests for residency in New York:

1. **Where is your domicile—the one place you intend to have as your permanent home?**

Let's say you have a home in Connecticut, but you work in New York City and so you have an apartment there for convenience to stay in during the week. Which of these residences is your "domicile," or the one place you intend to have as your permanent home? Auditors will look at a number of factors to determine your domicile. They will want to know information such as:

– What is the use, maintenance, value, and size of the New York State home as compared to that of the non-New York State home?

– Where do you conduct your business activities?

– Where is your family residing?

domicile?

2. **If your domicile is not in New York, do you maintain a permanent place of abode and spend more than 183 days of the year in New York?**

For example, let's say you retired and moved to Florida, but your family is still in New York and you kept your house here so you can visit frequently. Are you a New York resident for income tax purposes? New York defines a "permanent place of abode" as a residence (building or structure in which a person can live) that is maintained by the taxpayer and is suitable for year-round use. Even if others are using the place (relatives, renters, etc.), it could still be considered your abode under certain circumstances. For example, buying an apartment for your child could cause a residency audit if not handled appropriately.

Q: Are there any other factors that might play a role in determining how an auditor might view your move out of state?

A: What matters to auditors is whether you have unfettered access to the place, that it's suitable for use year-around, and it is habitable and being maintained for more than 11 months of the year. In addition, the New York Court of Appeals has held that there must be some basis to conclude that the dwelling was used as the taxpayer's residence.

Furthermore, when it comes to counting the number of days you spent in New York, generally the rule is that a partial day counts as a full day, with some limited travel and medical exceptions. So if you've just come to New York for a few hours for a business meeting or to go to dinner and attend a Broadway show with friends, that counts as a full day.

Q: Do all states count "taxable days" as strictly as New

require that the taxpayer stay overnight before the day counts as a taxable day.

Q: How much documentation is generally needed to prove your case?

A: In the case of New York State, a residency audit is very document-intensive and personally invasive. You have the burden to prove your whereabouts. This means you must prove a negative: that you were not in New York. And auditors can look at your appointment calendars, credit cards, passports, phone bills, and other documents, as well as smart phone applications that track and record your location, to determine whether you have met either of the tests for New York residency.

So if you're balancing your life between two or more states, and you're not careful about how much time you spend in the state, you could inadvertently lose out on the tax and other benefits of living outside New York.

If you've received a residency questionnaire or are being audited, there are a number of options available for resolving your tax dispute. Contact a qualified attorney to assist you.

———

Jonathan D. Mariner is Founder and President of TaxDay LLC (www.taxdayapp.com), which has developed the TaxDay™ travel-tracking app for individuals who maintain residences in more than one U.S. state, or travel frequently and do business in multiple states.

Karen Tenenbaum, Esq. is Founder and Partner of Tenenbaum Law, P.C. (www.litaxattorney.com), a tax law firm in Melville, N.Y., which has focused its practice on

the resolution of IRS and New York State tax controversies for over 20 years.

CPA Practice Advisor is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors.