

Updates on New York State & New York City Audits – Roundtable



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Topics



1. Current Audit Trends
2. Responding to Audit Notices
3. Common New York State & City Audit Documents
4. Common Audit Response Mistakes
5. Future of New York Audit Programs

Don't be shy, ask questions along the way—this presentation is intended to be a conversation!



1. Current Audit Trends



New York Audit Initiatives

Tax Audit Report - Personal Income Tax (Article 22 and 23) Desk Audits

Fiscal Year	Number of FTE Auditors	Number of Audits
2018	203	647,566
2019	217	616,572
2020	220	548,183
2021	216	494,341
2022	201	771,104

For New York, It's HUGE Tax Dollars...

Taxing non-New Yorkers is big money for New York



\$1 Billion

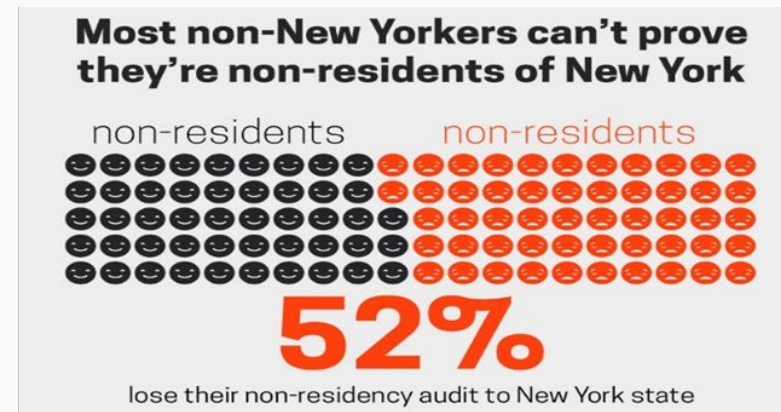
collected from non-residency audits over the last five years

Source: Secured by Monaeo, Inc. via a FOIA request from the NYS Department of Taxation and Finance



NYS Residency Audit Statistics

1-IN-2 TAXPAYERS WHO ARE AUDITED LOSE!



Source: Secured by Monaeo, Inc. via a FOIA request from the NYS Department of Taxation and Finance



2. Responding to Audit Notices

IDR 1 – Residency & Nonresident Allocation



- Audit response strategy and initial considerations:
 - Be responsive & try to avoid assessments
 - Who will respond?
 - How to respond (in writing, in person, mail vs. secure email, etc.)
 - Communication regarding extensions, and confirming communication
 - Contact with auditor, supervisor, etc.
 - Taxpayer expectations

IDR 1 – Entity Audits



- Audit response strategy and initial considerations:
 - Content of initial audit inquiries vs. income tax audits, from sales tax presentation + examples to follow
 - Who possesses these documents, how quickly can they be assembled?
 - Be responsive & try to avoid assessments
 - Who will respond?
 - How to respond (in writing, in person, mail vs. secure email, etc.)
 - Communication regarding extensions, and confirming communication
 - Contact with auditor, supervisor, etc.
 - Taxpayer expectations



3. Common New York State & City Audit Documents

IDR 1 – Starting Small



<i>Description of documents and information requested:</i>	<i>Date(s) Provided</i>
1. If a representative will appear or contact us on your behalf, go to www.tax.ny.gov/poa to complete and submit Form POA-1, Power of Attorney	
2. Complete and return the enclosed Nonresident Questionnaire. The questionnaire will enable us to better focus on specific audit issues with the goal of reducing the request for records and time necessary to complete this examination. Therefore, it is important that it be completed as thoroughly as possible.	
3. Your federal audit history, including information about ongoing audits. If any are recently completed, include a copy of the Consolidated Federal Revenue Agent Reports (RAR). If these changes were reported to NYS, provide a copy of the document filed and proof of payment	
4. Provide a workpaper showing the breakdown of reported New York Source Schedule E income and provide federal K-1 and New York IT-201-IP for all entities from which you report New York source income or loss.	
5. Form 1040, U.S. Individual Tax Return with all attachments, schedules, and worksheets	
6. Complete and return the enclosed Audit Contact Form	

IDR 1 – The Kitchen Sink



<i>Description of documents and information requested:</i>	<i>Date(s) Provided</i>
1. Complete and return the enclosed Nonresident Questionnaire	
2. Your federal audit history, including information about ongoing audits. If any are recently completed, include a copy of the Consolidated Federal Revenue Agent Reports (RAR) . If these changes were reported to NYS, provide a copy of the document filed and proof of payment .	
3. For each partnership/LLP/LLC/S corporation in which you have an interest, provide copy of Schedule K-1 (federal and New York State equivalent) issued to you.	
4. Copy of Form 1040, U.S. Individual Tax Return, with all the schedules and Attachments	
5. Chronological history of your residence and employment from 2010 to present	
6. Copy of closing agreement or lease agreement for the following addresses: a. b.	
7. Discuss your relationship with the following New York addresses: a. b.	
8. Copy of moving bill(s) and the list of items that were moved from New York to Florida	
9. Do you have possession of any items that are of sentimental value to you? What are they? Where were these items held prior to and after the move?	
10. Specific listing of days spent in and outside of New York [City and State] during the audit period. Please identify the days as working or nonworking days. Also, for those days that were spent in NY, please specify them as NYS and/or NYC	
11. Copy of cell phone records with the origination information (cell locations). If the	

Taxpayers are required to make all books and records available to the auditor, and they must remain available until the audit is complete, unless the auditor indicates that the records are no longer needed. An entry in the right column does not necessarily indicate that this portion of the request has been fully satisfied.

IDR 1 – The Kitchen Sink, Continued



carrier is either AT & T or Verizon Wireless, we are able to subpoena the information for you. In this case, we will need the name of carrier and the cell phone number	
12. Copy of building swipe records	
13. Copy of travel information such as the airline tickets, boarding passes, hotel bills etc.	
14. Copy of employee expense reports with the supporting document	
15. Copy of all credit card statements (corporate and personal)	
16. Copy of all bank statements	
17. Detailed breakdown of the wage income with the supporting document	
18. Documentation to show how the NY amount was determined for the wage income	
19. If a representative will be appearing or contacting us on your behalf, go to our website www.tax.ny.gov/poa/ to complete form POA-1, Power of Attorney	

Nonresident Questionnaire



New York State Department of Taxation and Finance
Nonresident Audit Questionnaire

Name(s): _____ Audit period: _____

Case #: _____ Phone #: _____

1. What was the last year a New York State Resident Personal Income Tax Return was filed by you?

2. If you were at any time a domiciliary of New York State, what was done to change your status from a resident to a nonresident? Please provide detailed information relative to your intentions. Attach additional sheets, if necessary.

3. For the audit period indicated above, give your employer's name and address, or if self-employed, the name and address where you carry on your business, trade, profession, or occupation.

Name: _____

Address: _____

City: _____ State: _____ ZIP code: _____

Employer ID (EIN): _____

Nonresident Questionnaire

4. Were you associated with any other business activities conducted in New York State (e.g., partnerships, LLCs, S corps, etc.) during the audit period? If Yes, provide the information below. Attach additional sheets, if necessary.

Yes () No ()

Name: _____

Address: _____

City: _____ State: _____ ZIP code: _____

Nature of the activity: _____

Employer ID (EIN): _____

5. For the above audit period, did you maintain living quarters in New York State (owned or rented) or otherwise had living quarters provided for you by another individual or your employer?

Yes () No ()

If Yes, please provide the following information about them:

Address: _____

City: _____ ZIP code: _____

Telephone number: _____

Provide inclusive dates that such living quarters were maintained:

6. If you answered Yes to question 5, please check any of the following that applied to your living quarters:

Rent Controlled	Yes ()	No ()
Rent Stabilized	Yes ()	No ()
STAR Exemption	Yes ()	No ()
Manhattan Parking Exemption	Yes ()	No ()

7. If you do not maintain living quarters in New York State, where do you regularly stay while in New York State?

8. For each year of the audit period, how many days or part days were you physically present in New York State for work purposes?

9. For each year of the audit period, how many days or part days were you physically present in New York State for nonworking days such as weekends, vacations, holidays, illness and any other nonworking days during each year?

10. Use this space for any additional information you may wish to provide.

Taxpayer certification:

I declare that the above statements are true, correct, and complete to the best of my knowledge and belief.

Your signature _____ Date _____ Date of birth _____

Spouse's signature _____ Date _____ Date of birth _____
(if filed jointly)

IDR 2 - ? : Following Up



- Rare to see a New York residency / nonresident / entity audit wrap up with a single IDR 1 response.
 - More likely with the “kitchen sink” initial request
- Subsequent IDRs may be planned requests from the outset, or requests driven by the IDR 1 response and contact with the auditor
- Prepare the taxpayer for a lengthy and detailed process
- Planning for an audit, and steps after an audit if needed, should begin well in advance of the audit notice arriving

IDR 1 – Entity Audits



- Depending on the tax type, entity audits may begin around specific, targeted issues
- Entity audits often connected to ongoing tax audits of owners, members, partners, etc.
- Coordination within the audit team of entity & related individual audits
- With an entity audit underway, is there a reason to use the Tax Department's Voluntary Disclosure program?
- With an entity audit underway, should other states / locations be reviewed?

Typical Sales Tax IDR



New York State Department of Taxation and Finance
 www.tax.ny.gov
 Transaction Field Audit Bureau
 Long Island Regional Office
 NYS Office Building, 250 Veterans Memorial Highway, Hauppauge, NY
 11788-0599
 Phone: (631) 595-4203 Fax: (516) 435-8564

IDR
#01

Information Document Request

Taxpayer name: [REDACTED]	Audit years: 03/01/2020 - 02/28/2023
Identification number: [REDACTED]	Case ID: [REDACTED]
Auditor: Mrs. Kenichia Osbourne	Article(s): 28 & 29
Requested of: [REDACTED]	Date requested: March 22, 2023

Date(s) Provided column completed by:

Your response is due by: 04/05/2023

Description of documents and information requested:	Name	Date(s) Provided
1. Sales tax returns, worksheets, and canceled checks showing taxes paid		
2. Federal income tax returns (Forms 1120, 1065, or 1040)		
3. New York State corporation tax returns		
4. General ledger		
5. Year-end trial balance		
6. Year-end financial statements		
7. General journal and closing entries		
8. Sales invoices		
9. All exemption documents supporting non-taxable sales, including: <ul style="list-style-type: none"> • resale, exempt use, exempt organization, and capital improvement certificates • any other documentation necessary to prove non-taxable sales 		
10. Chart of accounts		
11. Fixed asset purchase/sales invoices		
12. Expense purchase invoices		
13. Merchandise purchase invoices		

Taxpayers are required to make all books and records available to the auditor, and they must remain available until the audit is complete, unless the auditor indicates that the records are no longer needed. An entry in the right column does not necessarily indicate that this portion of the request has been fully satisfied.

[REDACTED]

Audit Period 03/01/2020 - 02/28/2023

14. Bank statements, canceled checks, and deposit slips for all accounts	
15. Cash receipts journal -- including sales journal, if applicable	
16. Cash disbursement journal -- including purchase journal, if applicable	
17. The corporate book, including minutes, board of directors, and articles of Incorporation	
18. Depreciation schedules	
19. Lease/Rental Agreements	

Typical UBT IDR



1. Please provide a signed copy of partnership agreement(s), including the amendments pertaining to the audit periods.
2. Please provide audited or unaudited Financial Statements, including footnotes.
3. Explain in writing the nature of taxpayer's business that is being conducted, including an organizational chart.
4. Please provide year-end general ledger (including account, date, amounts, and & description), trial balance, balance sheet, income statement, and workpapers or schedules used in the preparation of tax returns.
5. Please provide NYC-204 returns and Federal Form 1065 returns, including all accompanying schedules and attachments.
6. In reference to the NYC- 204 return, please include a written explanation of methodology used to determine each category of NYC Receipts factor.
7. In reference to Federal Form 1065, Line 1, please provide a breakdown of revenue by category of receipts, including the payor's name and amounts.
8. In reference to Federal Form 1065, Line 4, please provide a breakdown of Ordinary Income from other partnerships. Please include Schedule K-1s issued to the taxpayer, including a summary schedule of all flow-through income.
9. In reference to Federal Form 1065, Line 9, please provide copies of W-2s, W-3, and the NYS- 45- ATT MN return. If there are any foreign offices, please provide a breakdown of foreign wages by employees' names and amounts.
10. In reference to Federal Form 1065, please provide a breakdown of the following items (information must include payor/payee's name and amount):
 - Other Deductions, Line 20:
 -
11. Please identify any periods that are currently or have been audited by another taxing authority (federal or state).

Unless otherwise specified, the information requested is for and/or relevant to the period(s) under audit. Additional information/documentation may be requested as necessary.

LLC & S Corp IDRs – Often Target an Issue, or Cast a Wide Net



- Adjustments typically flow through to members / shareholders
- Specific issue identified at the outset, and sometimes more in the nature of a fishing expedition to see if there's anything useful for the related audit case
- Be mindful of statute of limitations issues at the entity and individual levels

Desk Audits – Substantial Area of NYS & NYC Audit Focus



 **Department of Taxation and Finance**
Audit Division-Income/Franchise Desk
W A Harriman Campus, Albany NY 12227



Request for Information

Notice date: [REDACTED]/2021
Tax type: Personal Income Tax
DLN: PH [REDACTED]
Case ID: X [REDACTED]
Tax year: 2020
Form number: IT-203

What must you do?

1. You must complete the enclosed Nonresident Audit Questionnaire (Form AU-262.3) to explain your residency status in New York City and/or New York State.

You must support your residency status claimed on your 2020 personal income tax return by providing the following information, as applicable:

- A copy of your ending lease agreement (with lease termination letter, if applicable) or home sale documents.
- A copy of your new lease or home purchase agreement.
- Copies of any moving receipts or other records to support your move.

You must also verify your income allocation by providing the following (for each taxpayer if a joint return):

- A copy of your federal W-2, *Wage and Tax Statement*, for each employer;
- A completed *Income Allocation Questionnaire* (Form AU-262.55, enclosed) for each employer; and
- A full description of the composition of your wages (base compensation, bonuses, stock options, sick pay, vacation pay, severance pay, gambling income, unemployment compensation, etc.).

How do you send this back to us?

The best way is online. It is easy to start an account at www.tax.ny.gov/online. From there, you can attach images and files of supporting documentation. Please include an image of this letter in your response. Responding online is also:

- Safe, secure, and confidential. Your information and privacy are protected.
- Quick. Your information will be instantly delivered to us.
- User-friendly. It is easy to navigate.
- Economical. It is the least expensive way to respond.

What if you cannot get online?

You can also send us the information by fax, U.S. Mail, or by a private delivery service (see Publication 55, *Designated Private Delivery Services*). Please include a copy of this letter in your response.

- **Fax:** 518-435-8518
- **U.S. Mail:** NYS Tax Department, Audit Division-Income/Franchise Desk, P.O. Box 15270, Albany, NY 12212-5270
- **Private delivery service:** NYS Tax Department, RPC-PIT, 90 Cohoes Avenue, Green Island, NY 12183.

What happens after you send in the required information?

We will attach the information you provide to the return you already submitted, then we will continue processing your return. There may still be other changes to your return. If we need additional information to continue processing your return, would you like us to contact you by phone? If so, please include a daytime phone number:

Daytime phone number _____ Taxpayer name _____

What happens if you do not send all the information we need by December [REDACTED] 2021?

We will process your return without this information. That may reduce your refund or increase the amount of tax you owe.

Who do you contact if you have questions?

We need more information by December 1, 2021 about your 2020 New York State income tax return.

Why did you get this letter?

We need to verify your residency status.

If you either: (A) are domiciled in New York State, OR (B) maintained a permanent place of abode AND spent 184 days or more in New York State, you must file a resident tax return, Form IT-201, regardless of the location where you may have been working or telecommuting from in 2020.

We need to verify the amount of income you allocated to New York State, as reported in the *New York State amount* column of your return.

If you are a nonresident or part-year resident whose assigned primary work location is in New York State, days you worked at a location outside New York State may be considered New York State work days. In particular, days you telecommuted from a location outside New York State are considered New York State work days unless your employer has established a bona fide employer office at your telecommuting location.

Additional information about residency and telecommuting can be found on our website at www.tax.ny.gov (search: telecommuting).



Responding to 2020-2021 Desk Audit Notices

- Each “Request for Information” requires a tailored and prompt response. Extensions of due dates are permitted, but, again, desk audits are less flexible than field audits here.
- Who should respond? Taxpayer? Accountant? Attorney?
- Be accurate and answer the question(s) asked – and only the question(s) asked.
- The responses should generally match the return that was filed a few weeks or months before the “Request” was issued – if the response will not match the filed return, let’s talk.
- Responding through the taxpayer’s online account is generally easiest and most efficient route.



4. Common Return Mistakes, Addressing in the Context of an Audit

Top 10



1. **Nobody moves on January 1**
2. **Statutory residence trumps domicile**
3. **The “Living Quarters” box**
4. **Consistency!**
5. **Husbands and wives usually share a domicile**
6. **Correct W-2s, 1099s and K-1s with old address**
7. **Don’t let client “chat” with auditors**
8. **Credits for taxes paid elsewhere**
9. **Understand the burden of proof**
10. **Never amend a return under audit**



5. Future of NY Audit Programs



Considerations & Issues

- Reliance on computer and technology-based audit candidates and methods
- Balance between desk and field audits?
- Will more (alleged) IRS audit activity generate more NY revenue and audit activity?
- Focus on flow-through audits instead of individual audits?
- Audit production—will we return to in-person audit meetings?

Questions?



ALBANY + BUFFALO + GREENSBORO + HACKENSACK + NEW YORK + PALM BEACH + ROCHESTER + SARATOGA SPRINGS + TORONTO

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