

Changing Your "Home" For State Tax Purposes *NOT SO EASY*



legally speaking

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It's February, the middle of winter, and many of us are longing for warmer weather. Some with second homes in Florida or Arizona and the like start thinking about changing their primary resi-

dence for state income and estate tax purposes. Despite "cocktail party talk," changing your residence for tax purposes is not so easy; and, if you do desire to do so, you must become familiar with, and adhere to, the residency and domicile rules.

While New York imposes state income tax on a New York resident's worldwide income, as well as state estate tax on taxable estates exceeding \$4,187,500 (increasing each April 1 to eventually equal the federal estate tax exemption), Florida, for example, imposes no state income or estate tax upon its residents. A taxpayer is a New York resident if she is domiciled in New York, or if she is a "statutory resident," which means spending 183 days or more per year in New York State and maintaining a permanent place of abode in New York State. Even if the taxpayer spent more than 183 days in Florida for that year, she still may have too many connections with New York that will lead to a determination that she has not changed her residency and is still a New York resident for New York tax purposes. In order to successfully change one's residence for tax purposes, many ties with one's former home state must be loosened or broken; and the important elements of one's life must be centered in the new state.

There are generally five factors which the tax authorities will look to in determining whether someone has changed their residency, frequently referred to synonymously as one's "domicile" for tax purposes: (1) physical presence, (2) home, (3) family and business activities, (4) personal property of significance to the taxpayer, and (5) documentary evidence.

Physical Presence. It is important to spend as much time as possible in your new state. Keep track of the days spent in both the old and new states, especially for the first year or two after the change in domicile. Stay at least 183 days of the year in the new state, but the more the better.



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Home. The taxpayer must have “abandoned” her old home. Ways to show abandonment of an old home are to buy a bigger, nicer house in the new state, rent the old house out to a third party and/or put the old house on the market for sale. Remove any property exemptions on the old house that are tied to it being a “primary” residence, like the STAR exemption.

Family and Business Activities. The taxpayer should have her family visit her in her new home state for important occasions, or, better yet, have other family members move to the new state, too. The more family activities in the new state, the stronger the evidence that the new state is really the taxpayer’s new domicile. Be careful of supporting a spouse or children located in the taxpayer’s old state, which could be used as evidence against the taxpayer.

Active business involvement in the taxpayer’s old state is evidence that there has been no change in domicile. Work as much as possible in the new state, and set up a “real” office in the new state, not just a home office. If the taxpayer owns the business, consider moving the principal place of business to the new state and withdrawing any business registration in the old state. Consider reorganizing the business entity in the new state.

Personal Property of Significance. Move items of personal or sentimental value to the taxpayer’s new home. This includes photos, trophies, yearbooks, collections, and the like. Funeral and burial arrangements should be made in the new state.

Documentary Evidence. While not enough alone, changing one’s residence on documents adds evidence to the fact that the taxpayer has, indeed, changed her domicile. Change the address on all accounts to the new address, including U.S. post office, social security, Medicare, credit card companies, tax authorities, phone companies, banks and financial institutions, doctors, social and religious organizations. Obtain a driver’s license in the new state and change voter registration.

One factor will not control the determination of a taxpayer’s change of domicile. If you are considering a change of domicile to another state for tax purposes, make sure you are ready to satisfy all of the factors to prove your change of “home”; and discuss your plans with your tax advisor.

If there is a trusts and estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com and I will do my best to cover it in a future column. My previous columns are available on www.farrellfritz.com.

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