



## IF I MOVE TO A NEW STATE THAT HAS LOWER INCOME AND ESTATE TAXES, WHAT SHOULD I DO TO ESTABLISH MY "RESIDENCE" FOR INCOME TAX PURPOSES AND MY "DOMICILE" FOR ESTATE TAX PURPOSES?

The concept of "residence" and "domicile" are similar and are easily confused. While frequently the state of one's domicile is also the state of one's residence, this does not hold true for everyone. While a person may have a number of different residences or be a resident of a number of different states, he or she may only have one domicile at any given time. Residence determines where one pays income tax. Domicile determines where one's estate will pay estate tax on assets other than real estate.

The concept of "residence" is based upon objective factors. Like domicile, a person's residence is dependent upon a finding of physical presence within the particular state. Whether a person is a resident of a state may be determined, for example, based on the number of days spent within the state or the ownership of property within the state. Reference must be made to each state's laws to determine the tax and legal consequences of being a resident of that state. However, no finding of intent is required for a person to be deemed a resident of a particular state. Thus, depending upon the laws of the particular jurisdiction, a person may be deemed a resident of more than one state and a domiciliary of yet another.

The choice of residence carries with it different legal consequences. For most states, a strict days present test will determine whether or not you are an income tax resident in that state even if you are domiciled in a different state. Some states have harsh rules that treat even a partial day physically present in that state as a day present in that state especially if you maintain real estate in the jurisdiction. As with estate taxes, it is important to avoid income taxation in two different states.

A person's "domicile" is his or her permanent home, to which he or she always intends to return. "Domicile" is often defined as (i) actual residence within a particular state, combined with (ii) the intention of making that state one's permanent home. Actual residence in a state without the intention to live in that state permanently does not suffice. Since domicile is a question of intent, courts often look to a person's overall manner of living to determine whether there has been a change of domicile.

The choice of domicile carries with it various legal consequences. It often determines (i) jurisdiction to assess state income and death taxes; (ii) primary jurisdiction to probate wills and administer estates; and (iii) judicial jurisdiction over an individual. Domicile also determines whether and where a person may exercise various legal rights and privileges, such as voting.

Generally, you will be subject to death taxes only in your state of domicile. However, if you die owning real property in another state, that state may impose its own death taxes on the value of the real property located in

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that non-domiciliary state.

Federal courts have allowed two or more states each to make an independent determination of domicile and each to assess its own estate and inheritance taxes on that basis. The United States Supreme Court has held that such double taxation is constitutional. In one infamous case, New Jersey and Pennsylvania both claimed an heir to the Campbell Soup fortune as a domiciliary and each state collected \$17 million in state inheritance taxes from the estate. Since a determination that you are domiciled in more than one state could have extremely adverse and costly consequences, it is imperative to take all the steps necessary not only to establish your new domicile, but also to revoke your prior domicile.

If you wish to change your domicile to another state but retain a home in your original state, you should take steps consistent with this change of domicile that manifest your intention to abandon your original domicile.

Court cases deciding the issue of domicile indicate that no one factor conclusively establishes domicile. As mentioned above, the determination of one's domicile is a matter of one's intent, therefore, courts often look to a variety of factors in determining whether there has been a change of domicile. A person's declarations as to what he considers to be his home, residence or domicile may be used as evidence of intent. Such declarations often are found in formal legal documents as well as in other written instruments, such as letters, hotel registrations and the like. To make your choice of domicile clear, you should take as many of the following steps as are possible in view of your particular circumstances:

## **In your state of desired domicile:**

- Execute a new Will or a Codicil which recites your new domicile and which complies with all the legal requirements of your new state of domicile.
- Execute new Durable Powers of Attorney, Living Wills and Health Care Proxies which recite your new domicile and which comply with the legal requirements of your new state of domicile.
- File a Declaration of Domicile, if available.
- Purchase and furnish a home to be used as your primary residence.
- Register as a voter and vote.
- File your federal income tax return with the appropriate IRS regional service center and show your state of desired domicile as your residence address.
- Pay state and local taxes as a resident.
- Obtain a driver's license.
- Register your automobile.
- File for any applicable tax exemptions on residential property.
- Be physically present within the state as large a part of each year as is practicable, especially during the initial year. Some individuals may wish to keep a diary of trips out of state and of nights spent in and out of state.
- Maintain a major portion of your bank accounts and brokerage accounts.
- Open a safe deposit box for your jewelry and other valuable property.
- Pay health insurance premiums.
- Conduct your business or profession in state to the extent possible.
- Join clubs, religious and social organizations.

## **In your former state of Domicile:**

- If you have filed a Declaration of Domicile in another state, mail a copy to the tax authorities of the non-domiciliary state.

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- Have your name removed from the voting rolls.
- Surrender your driver's license.
- Pay any taxes due as a nonresident. Mark your last return as a resident "FINAL," using your new address.
- Spend as little time as practicable in the state.
- Close brokerage and bank accounts in the state.
- Change club, religious and social memberships to "nonresident" status.

## **In addition, you should:**

- Describe yourself as a resident of your domiciliary state in all legal documents that require a recital of residence, such as passports, real estate deeds, contracts, leases and credit applications.
- When traveling, use your new address as your residence when registering at hotels, motels, etc.
- Send a change of address to all business entities with which you deal, including those that presently owe you money or that may owe you money in the future, e.g., credit card companies, insurance companies or former employers that provide pension plans or death benefits.
- Consider transferring title to any residential real estate situated in your state of former residence to other family members, or to trusts for their benefit, but only after considering the estate planning consequences of such a transfer.
- Above all, *pursue a consistent course of conduct indicating an intention to abandon your former domicile and establish a home in the new state.*