



## NEW YORK EMPHASIZES "SUBSTANCE OVER FORM" IN DETERMINING DOMICILE FOR INCOME TAX PURPOSES

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The determination of domicile can be critical for state tax planning because states which have state level income and/or estate taxes generally impose those taxes on a person domiciled in the state more than on a non-resident.

A person's "domicile" is his or her permanent home, to which he or she always intends to return. As domicile is a question of *intent*, state courts often look to a person's overall manner of living to determine whether there has been a change of domicile. Under New York law, a person claiming to have changed their domicile New York to another state has the burden to prove by *clear and convincing* evidence that they have abandoned their New York domicile and established a new domicile outside New York State.

In New York, the factors used to determine domicile are divided into two general categories: Primary Factors and Other Factors. The Primary Factors are the location of (i) home, (ii) active business involvement, (iii) time spent, (iv) items near and dear and (v) family connections. The Other Factors include (i) primary mailing address, (ii) state identified for voter registration, driver's license, and estate planning documents, and (iii) affidavit of domicile. In analyzing domicile under New York law, the Other Factors are subordinate to the Primary Factors and are typically considered only if an analysis of the Primary Factors does not present "clear and convincing" evidence relating to a person's domicile.

In a recent decision in *Matter of John J. Hoff & Kathleen Ocorr-Hoff*, DTA No. 850209 (N.Y. Tax Appeals Trib. October 9, 2025), the New York Tax Appeals Tribunal held that the taxpayers did not prove by "clear and convincing" evidence that they gave up their New York domicile and acquired a new domicile as their fixed and permanent home in Florida in 2018 or 2019.

In the case, the taxpayers took the formal steps of registering to vote in Florida, obtaining Florida driver's licenses, filing Florida declarations of domicile and updating their estate planning documents to list their Florida address and indicate that they were to be administered, construed and governed by Florida law. However, the facts also indicated that during the 2018 and 2019 years, (i) the taxpayers maintained homes in both New York and Florida but spent more time in New York than Florida, (ii) owned multiple rental properties in New York, (iii) the taxpayers' children and the wife's parents lived in New York, they had no family in Florida and the taxpayers spent major holidays in New York, (iv) the husband was the president and sole shareholder of a New York business from which he earned a significant salary, (v) there was no evidence that the taxpayers relocated their "near and dear" items to Florida, (vi) the taxpayers used a New York accountant and (vii) the taxpayers did not provide evidence of when they began using Florida medical providers or changed their New York country club membership.

Based on the evidence, the Tribunal determined that the taxpayers planned to make Florida their permanent home at some point but that they had not proven by clear and convincing evidence that they had accomplished this change in either 2018 or 2019. Because the Primary Factors remained present in New York, the Tribunal gave little weight to the Other Factors that purported to support the taxpayers' contention that Florida was their new domicile.

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The *Hoff* decision makes it clear that taking formal steps, such as updating documentation and registrations (i.e., the “checklist items”), will not be sufficient on their own to prove a change of domicile and that substance over form (i.e., actual facts and circumstances) will be dispositive when determining if a change of domicile has occurred.

If you own homes in more than one state, have recently relocated, or are contemplating relocating or purchasing a new residence, you should carefully consider your actual domicile and the state tax consequences of a change of domicile. If you are considering a move from New York or Connecticut or have any questions regarding this alert, please contact your Cummings & Lockwood private clients attorney.