

Changing Your Residence for Estate Tax Purposes Is Complicated

By Patricia C. Marcin

It has been a long, cold winter, and many of us are yearning for warmer weather. With New York's fiscal crisis due to the pandemic, and the prospect of higher taxes, many are thinking about changing their primary residence to a warmer and "friendlier" taxing jurisdiction. While an easy topic of cocktail party talk, changing your residence for tax purposes is difficult, and New York is particularly aggressive when it comes to residency audits and the prospect of losing tax dollars.

Although New York imposes an income tax on New York residents' worldwide income, as well as an estate tax on taxable estates exceeding about \$6 million in 2022, Florida, for example, imposes no state income or estate tax upon its residents. New York's tax authorities consider a taxpayer a resident if she is domiciled in New York, or if she is a "statutory resident," which means spending 183 days or more per year and maintaining a permanent place of abode in New York. Even if the taxpayer spent more than 183 days in Florida for that year, she still may have too many New York connections that will lead to a determination that she has not changed her residency and is still a New York resident for state tax purposes. 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.

The tax authorities will look to five factors to determine 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. Track 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.

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 by itself, changing one's residence on documents adds evidence that the taxpayer has, indeed, changed her domicile. Change the address on all accounts to the new address, including alerting the U.S. Post Office, Social Security, Medicare, credit card companies, tax authorities, phone companies, banks and financial institutions, doctors, and social and religious organizations. Obtain a driver's license in the new state and change voter registration.

One factor alone will not determine 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.



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