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If You Love Me Let Me Go: Tips on Establishing Florida Domicile

Make the move to Florida more appealing and less appealable.

By **Daniel A. Kaskel** | July 10, 2019



Florida, with its moderate real estate tax rate and no personal income tax, has long been a welcoming, safe harbor for those fleeing from higher-taxed states such as New York, New Jersey, Illinois and Connecticut. In late 2017, Congress enacted the Tax Cuts and Jobs Act, which limits the deductibility of state and local taxes (SALT) on federal returns to \$10,000. The SALT cap served to increase the number of wealthy refugees fleeing these states seeking to establish primary residency in Florida to minimize federal income tax exposure.

But many higher tax states do not make it easy to simply renounce residency.

CNBC recently reported that between 2010 and 2017 New York conducted 3,000 “non-residency” audits, the result of which was \$1 billion in tax revenue. Of those audited between 2015 and 2017, more than half lost their cases, with an average collection by the state of \$144,270 per audit. There is real money to be recouped by the higher tax state in contesting domicile changes, and clients should be forearmed.

High net worth clients should be made aware that the likelihood of an audit following change of domicile is significant. The purpose of this article is to share tips to help document a change in domicile, making the move to Florida more appealing and less appealable.

The Basics

Most states, like New York, tax its residents (i.e., those domiciled) on all income, regardless of where it is earned. If a new domiciliary is challenged, the burden is on the taxpayer to prove by clear and convincing evidence that the individual has met the threshold whereby a domicile was in fact changed. A mere change in driver’s license and voter registration alone are inadequate to effectuate a domicile change.

Think in terms of parity. One domicile must be abandoned and a new one assumed. One residence disregarded in favor of a new one. This is ultimately a question of fact, and the taxpayer's intent plays a key role. However intent without action and planning could fall short of effectuating a legal change in domicile.

New York considers five primary factors in determining domicile:

- Location of home(s),
- Location of business,
- Where/how is time spent,
- Where are favorite possessions (the "Teddy Bear Test"), and
- Location of family.

Additionally, one can become a statutory resident of New York for tax purposes if they maintain an abode in New York and spend more than 183 days of the taxable year in New York.

The Strategy

State auditors have become increasingly savvy and sophisticated in their methodology. From reviewing cellphone records and social media, to questioning doormen and checking refrigerators, their job is to find the weaknesses in a taxpayer's establishment of a new domicile, with the taxpayer bearing the burden of proof. The following suggestions should be integrated in an overall plan, in consultation with both legal counsel and tax professionals, to properly effectuate a change of domicile to the Sunshine State, particular if more than one residence is maintained. Remain mindful of the notion of parity—what is done in one state, often the converse is undertaken in the other state.

- Any New York STAR real estate tax exemption should be waived.

- Apply for Florida homestead status with county property appraiser. (Form DR-501).
- File a Declaration of Domicile with clerk of circuit court, in accordance with Florida Statute §222.17.
- File a Declaration of Non-Domicile in New York.
- Obtain a Florida driver's license.
- Register to vote and actually vote in Florida.
- Have a new will and estate planning documents prepared in Florida.
- While Florida home ownership is not necessarily required, a lease should be for at least 12 months.
- Cars should be registered in Florida.
- Taxpayer should affirmatively be removed from New York voting rolls.
- In furtherance of the Teddy Bear Test: Open bank accounts and safe deposit boxes in Florida; bring photo albums, the good china never used and family heirlooms to Florida; pets should be in Florida; make Florida the default address for Amazon and other online shopping.
- Physicians, accountants and particularly masseuses, dentists and veterinarians should be in Florida. (It is uncommon to travel out of state for the latter.)
- Use a Florida kennel for pets while traveling.
- Mailing address for all accounts, credit cards, catalogues should be Florida.
- Consult with tax preparer regarding filing any required New York tax returns as a non-resident.
- For federal tax returns, use Florida address and file at IRS location required of Florida residents.
- Join Florida religious, social and civic organizations and clubs and library, resigning or becoming a non-resident affiliate from same in New York.

- Maintain travel log, moving records, closing documents.
- Factors that an administrative law judge will consider include: a taxpayer's "general habit of life," where free time is spent, where holidays are celebrated, where parties are hosted and attended.

Conclusion

Determination of change of domicile is a question of fact, viewed through the lens of recognized standards and guidelines. An existing domicile will continue until a new one is legally established, which requires an actual change of residence coupled with an intention to abandon the old domicile and acquire a new one. Preparing a thorough and comprehensive change of domicile plan is a necessary, worthy investment.

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