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C O U N S E L L O R S A T L A W

Moving from the northeast is typically done for a variety of reasons. People usually move due to a specific career change, job relocation, or for retirement purposes. What many people though do not plan for in relocating from the northeast to Florida is the overwhelming details associated with said change. For example, both New York and New Jersey have taken a harsh position both from an income tax and from an estate tax perspective if the taxing authorities have reason to believe that the individual/entity still has a common nexus with the taxing state.

New Jersey

Under N.J.S.A.54A:1-2, “Resident taxpayer” of the state of New Jersey means an individual:

1. “Who is domiciled in the state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spent in the aggregate no more than 30 days in the taxable year in this state; or”
2. “Who is not domiciled in this state but maintains a permanent abode in this state and spends in the aggregate more than 183 in the taxable year in this state....”

Pursuant to 54A:1-2 a “resident estate or trust” means:

1. “The estate of a decedent who at his death was domiciled in the state;
2. A trust or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domicile of the state, or
3. A trust or a portion of a trust, consisting of the property of:
 - a) A person domiciled in this state at the time such property transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and is not subsequently become irrevocable; or
 - b) A person domiciled in this state at the time such trust or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but subsequently become irrevocable”

From a tax perspective if there was to be a challenge from New Jersey based upon an individual’s Florida residency upon one’s death, it would be based upon where the State of New Jersey believed him/her to be domiciled (a resident with intent to remain indefinitely). One of the best known cases in this area came out of the New Jersey Tax Court in 2005. The case of import was Samuelsson vs. Director New Jersey of Taxation (2005), whereby a taxpayer who

was a former professional hockey player, Kjell Samuelsson and his wife, Vicky Samuelsson challenged an assessment for additional income taxes which was based on a salary that the taxpayer earned from employment while playing on a team located in Florida.

The Tax Court held that the taxpayer and his wife abandoned their New Jersey domicile and were not full year residents for income tax purposes for that year.

During 1999, the tax year in question, Samuelsson spent more than 30 but fewer than 183 days in New Jersey, (See N.J.S.A. 54A:1-2 (m)). They had a permanent place of abode in New Jersey and thus whether they were New Jersey residents prior to September 1999 turns on whether they were domiciled in that state during that period.

Under New Jersey law, domicile “is a matter of intent involving physical presence or contact with the given jurisdiction and the intention to remain in that jurisdiction or to return to that jurisdiction after leaving it.” Once established, a domicile continues until superseded by a new one. See In Re Gillmore’s Estate (App. Div. 1968).

The tax court in this matter laid out facts supporting Florida domicile and supporting New Jersey domicile.

The facts supporting Florida domicile were as follows:

1. They moved all of their furniture and belongings to Florida;
2. They listed their New Jersey house for sale;
3. They did not rent out their New Jersey house;
4. Samuelsson looked for a house to purchase in Florida;
5. They said farewell to their friends in New Jersey;
6. They enrolled their children in school in Florida;
7. They closed their New Jersey bank accounts and opened accounts in Florida; and
8. Mr. Samuelsson got a Florida driver’s license and registered his car in Florida.

The facts supporting the argument that Samuelsson never abandoned a New Jersey domicile was laid out by the Tax Court as follows:

1. They never sold their New Jersey home;
2. They returned to their New Jersey home within 1 year of moving to Florida;
3. They never purchased, but only rented a Florida home;
4. Mr. Samuelsson work in Florida for less than one year when he left New Jersey, he was working in Philadelphia, when he returned he worked in Trenton and Philadelphia;
5. Mrs. Samuelsson did not change her voter’s registration or driver’s license to Florida.

Again, the Tax Court held that the taxpayer and his wife abandoned New Jersey domicile and resumed it a year later and thus was not a full year resident for income tax purposes for tax year 1999.

Obviously, it should be clear that domicile is a fact and circumstances test analysis.

Another leading case titled Quick vs. Director Div of Taxation, 9 N.J. Tax 288 (1987) involves a taxpayer who lived and worked in Saudi Arabia and returned to the family home for only 10 days in 1984, was domiciled in New Jersey 1984, the home in New Jersey was in the joint names of the taxpayer and his wife, the taxpayer admittedly did not intend to abandon the United States as a home, and the taxpayer confirmed New Jersey domicile at the time he left the county in 1982. The taxpayer in the Quick decision was intended to be domiciled in New Jersey and was subject to taxes for that period.

In Goffredo v Director Div. of Taxation, 9 N.J. Tax 135 (1987) held that for tax purposes that when a person acquires a second residence and retains his first, his intent to adopt a new domicile must be manifested by objective facts indicated his desire to remain at the second residence will not expire when his original residence has terminated. A presumption arises when taxpayers continue to be domiciled in the state until a new domicile was acquired, so that taxpayers claiming that after a particular year that the domicile was changed to Pennsylvania had the burden to establish that they did in fact change the domicile to Pennsylvania.

There are several steps that one should take to clarify that one has become a Florida resident in case a tax return is audited by New Jersey claiming that a state of residence was not changed and that one's entire estate or gross income for a single or multiple tax years should be subject to tax in New Jersey.

I outline these steps below:

1. File a declaration of domicile/certification of change of domicile in the town's clerk office in the county of residence;
2. Register to vote in Florida and actually take the time to vote in elections;
3. Attempt to be physically present in the state of Florida for a greater amount of time than you are in the state of New Jersey;
4. Change your primary care physician and all additional physicians to the state of Florida;
5. Have all your prescriptions transferred to a pharmacy in the state of Florida;
6. Register your car in Florida and obtain a Florida driver's license and notify your insurance carrier that you are a Florida resident;
7. File income tax returns as a Florida resident (file said return with the IRS Service Center in Atlanta, Georgia using Florida address as address on tax return);
8. File a non-resident rather than a resident income tax return in the former domiciliary states;
9. Transfer all bank accounts to a Florida bank including transferring stock portfolios to that Florida branch;
10. Transfer safe deposit box contents to State of Florida; and
11. Execute a new Florida Will and refer to Florida residence in all trusts and other legal documents prepared after change of domicile to Florida

CERTIFICATION OF CHANGE OF DOMICILE

Once a retiree decides to move to the State of Florida and change his or her domicile to the State of Florida, the first step in the process should be to file a certification of change of domicile as a sworn statement with the Circuit Court of Florida for the Florida county in which the retiree is to reside.

Section 222.17 of the Florida Statutes provides for the following:

“222.17 MANIFESTING AND EVIDENCING DOMICILE TO FLORIDA.

1. Any person who shall have evidence of domicile in the state may manifest and evidence the same by filing in the office of the clerk of the Circuit Court for the county in which the said person shall reside, a sworn statement showing that he or she resides in or maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home.
2. Any person who shall have established a domicile in the State of Florida, but who shall maintain in other place or places of abode in some other state or states, may manifest and evidence his or her domicile in the state, by filing in the office of the clerk of the Circuit Court for the county in which he or she resides, a sworn statement that his or her place of abode in Florida constitutes his or her predominant and principal home, and that he or she intends to continue permanently as such place.
3. Such sworn statement shall contain, in addition to the foregoing, a declaration that the person making the same is, at the time of making such statement, a bona fide resident of the State, and shall set forth therein his or her place of residence within the state, the city, county and state wherein he or she formerly resided, and the place or places, if any, where he or she maintains another or other places of abode.
4. Any person who shall have been or who shall be domiciled in a state other than the State of Florida, and who have or who may have a place of abode within the State of Florida, who has or who may do or perform other acts within the State of Florida, which independently of the actual intention of such person respecting his or her domicile might be taken or indicate that such person is or may intend to become domiciled in the State of Florida, and if such person desires to maintain or continue his or her domicile in such state other than the State of Florida, the person may manifest an evidence of his or her permanent domicile and intention to permanently maintain and continue his or her domicile in such other state than the State of Florida, by filing in the office of the Clerk of the Circuit Court in any county in the State of Florida in which the person may have a place of abode or in which the person may have done or performed such act which independently may indicate that he or she is or may intend to become or become domiciled in the State of Florida, a sworn statement that the person's domicile in such state other than the State of Florida, as the case may be, and naming such state, where he or she is domiciled, stating that

he or she intends to permanently continue to maintain his or her domicile in such other state so named in said sworn statement.”

New York

On July 25, 1997, the New York Department of Taxation & Finance issued a revised 101-page manual to its auditors (which New Jersey thereafter followed suit), providing a number of different criteria to track down snowbirds who had failed to change their domicile from New York State.

Some of the points on a checklist to challenge New York snowbirds in the New York Department of Taxation & Finance manual include the following:

1. Did the taxpayer change its address New York State's filed income tax return from a New York address and more notably, did the envelope containing the filing of any New York State tax returns was the envelope for the filing of any New York State tax returns postmarked from a New York State location
2. Did the various W-2 and other wage and tax statements include the taxpayer's New York address rather than a Florida address
3. Does the taxpayer's tax returns indicate a substantial business involvement in New York
4. New York State auditors are advised to request from the IRS, the IRMS tape which includes a computer file on all information returns (Forms 1099, K-1, W-2, etc.), sent to a payee's New York State address
5. The auditor is also required to check out various city directories within the State of New York which provide information as to length of time a taxpayer resides at a particular location. The auditor is also advised to review the non-resident income tax returns filed by the taxpayer. Whenever there is substantial difference between the total federal income and the amount allocated to the State of New York, the auditor is advised to review the situation more carefully for possible additional New York State tax.

Possible audit of various empirical evidence. It is possible that the auditor for the northern state will request copies of canceled checks, bank statements, telephone bills, credit card statements, country club statements, auto repair statements and other documents. The purpose of examining these records is to analyze the various entries and to produce a 12-month calendar code to show the likely days that the taxpayer spent in and out of the former northern state of domicile. The New York State manual points out that access to an ATM machine should be reviewed because the information will usually disclose an exact location where the individual was on a particular day. It also points out that the auditor should scrutinize such personal expenses as groceries, hairdressers, club dues and entertainment noting the date that the checks were written. It also suggests that the auditor analyze credit card receipts to disclose attendance at various sporting events, theatrical performances, dinners, etc. to establish the actual number of days present in New York State. It also suggests that the auditor review insurance policy statements to gain insight as to whether certain works of art and other collectibles are insured in the northern state

or in Florida. It is also suggested that the auditor check utility bills and determine the usage pattern at various locations including connect and disconnect notices with TV cable companies, etc.

Time spent in and out of the State of Florida. As a threshold issue, for New York State, in order to be a nonresident of New York, the retiree must spend not more than 183 days in New York State. However, the New York State manual makes it clear that the 183 days out of the State of New York requirement does not by itself, constitute strong evidence of a change of domicile from New York.

Circular 230 Disclosure

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