CUMMINGS & LOCKWOOD LLC

SICK OF PAYING STATE INCOME TAXES?

A Private Clients Group White Paper

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Every year as clients file their income tax returns, we field questions about how to be considered a resident of another state (often a state with no state income tax) to reduce or eliminate state income taxes.

First, it's important to note that becoming a resident of one state for income tax purposes does not automatically get you out of another state's tax system. You can be a resident of more than one state at the same time.

Most states have a two pronged test to determine if a person is subject to income tax in that state. An individual can either be taxed because they are a "resident" of that state or because they are domiciled in that state. 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 be a resident of a number of different states, he or she may only have one domicile at any given time.

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.

Unlike domicile, which can be subjective, the concept of "residence" is based upon objective factors. 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. 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 still consider yet another to be their true home.

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 live in a different state. In many states, particularly if one owns a home in that state, even a partial day physically present in that state counts as a day present in that state for residency purposes.

The taxing authorities of many Northeastern states often use the domicile prong of the income tax test to argue that a taxpayer who has moved to another state but maintains a presence in the previous state is still subject to income tax in their state even after they have been a tax resident of another state. In order to change domicile to another state but retain a home in the original state, steps consistent with a change of domicile to manifest that intention should be taken.

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 a choice of domicile clear, as many of the following steps as are possible should be taken:

A. In the state of desired tax residence

- Execute a new Will or a Codicil which recites the new domicile and which complies with all the legal requirements of the new state of domicile.
- Execute new Durable Powers of Attorney, Living Wills and Health Care Proxies which recite the new domicile and which comply with the legal requirements of the new state of domicile.
- File a Declaration of Domicile, if available.
- Purchase and furnish a home to be used as the primary residence.
- Register as a voter and vote.
- File federal income tax returns with the appropriate IRS regional service center and show the state of desired domicile as the residence address.
- Pay state and local taxes as a resident.
- Obtain a driver's license.
- Register automobiles.
- 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 bank accounts and brokerage accounts.
- Open a safe deposit box for jewelry and other valuable property.
- Pay health insurance premiums.
- Conduct business or employment in state to the extent possible.
- Join clubs, religious and social organizations.

B. In the former state of tax residence

- If you have filed a Declaration of Domicile in another state, mail a copy to the tax authorities of the non-domiciliary state.
- Remove name from the voting rolls.
- Surrender driver's license.
- Pay any taxes due as a nonresident. Mark the last return as a resident "FINAL," using the 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.

C. In addition, one should

- Describe oneself as a resident of the 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 the new address as your residence when registering at hotels, motels, etc.
- Send a change of address to all business entities with which one deals, especially ones making or likely to make payments in the future, such as credit card companies, insurance companies and former employers that provide pension plans or death benefits.
- Consider transferring title to any residential real estate situated in the state of former residence to 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 the former domicile and establish a home in the new state*.

If you are considering such transition, you should consult your Cummings & Lockwood LLC Private Clients Group attorney to advise you on the steps that meet your specific situation.