

2020 FLORIDA RESIDENCY SERIES

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FEDERAL TAX REFORM IMPACT STILL FELT

- Top Federal Tax Rate decreased to 37%
- BUT...
 - SALT deduction limited to \$10,000
 - Other limitations on mortgage interest deduction, alimony, personal exemptions and most itemized deductions
- Result – BAD for many taxpayers living in high-tax states
 - No more federal tax benefit for state tax paid

RESPONSE TO THE TCJA?

- Special Workarounds: New Taxes?
 - New employer tax
 - New entity taxes
- Special Workaround: turning state taxes into charitable deductions
 - Does this really work?
- The best workaround?
 - Get. Out.

WHY DOES IT MATTER??

State	Top Income Tax Rate	Estate/Inheritance Tax
New York	8.82%	Yes
California	12.3% + 1% on income over \$1 million	No
Connecticut	6.99%	Yes + Gift Tax
Illinois	4.95%	Yes + GST
Massachusetts	5%	Yes
North Carolina	5.25%	No
New Jersey	10.75%	Yes
Ohio	4.797%	No
Pennsylvania	3.07%	Yes
Virginia	5.75%	No

IF YOU MOVE..... *NY WILL FIND YOU!*

Year of residency change — almost automatic

Substantial difference between federal and state income

Answer to “living quarters” question

Number of days in NY on return

Past audit history

Cross-check with real property records

Any STAR or NYC parking exemptions

NY addresses reported on a Form 1099 or K-1

All press is not good press

Unhappy ex-spouse

Audits of related parties, partners, etc.

Whistleblower



FOR NEW YORK, ITS HUGE TAX DOLLARS...

**Taxing non-New Yorkers is
big money for New York**



\$1 Billion

collected from non-residency
audits over the last five years

Source: Secured by Monaeo, Inc. via a FOIA request from the NYS Department of Taxation and Finance

RESIDENCY – FACTS and FIGURES

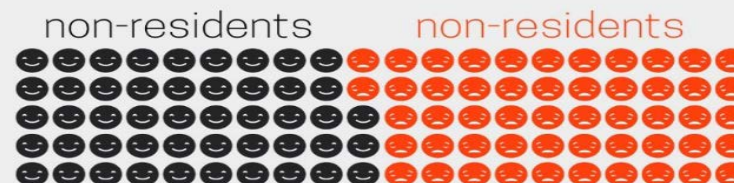
1-IN-2 TAXPAYER THAT'S AUDITED LOSES!



15,122

New York non-residency audits in the last five years

Most non-New Yorkers can't prove they're non-residents of New York



52%

lose their non-residency audit to New York state

Source: Secured by Monaeo, Inc. via a FOIA request from the NYS Department of Taxation and Finance

RESIDENCY BASICS

- Importance of Residency Status
 - Residents: The One Thing
 - Nonresidents: NY source income
 - NYC tax: All or nothing

- The Two Residency Tests
 - Domicile
 - “Statutory” Residency

- Special Rules
 - 30-Day Rule
 - 548-Day Rule

RESIDENCY – MOST OTHER STATES LOOK LIKE NY

STATE	Residency Rules
Connecticut	domicile or statutory residency
New Jersey	domicile or statutory residency
Pennsylvania	domicile or statutory residency
Massachusetts	domicile or statutory residency
California, Illinois, Michigan, Arizona	domicile or “non-temporary/transitory purpose”

DOMICILE – GENERAL PRINCIPLES

- Leave and Land” – you have to stick the landing
- Burden of Proof: “Clear and Convincing Evidence”
- Looking for a “Lifestyle Change”
- Examples:
 1. Huge Change in Time Patterns
 2. Retirement
 3. Upsizing and Downsizing
 4. Health Issues

DOMICILE – THE FACTORS

➤ The 5 Primary Domicile Factors

1. Home
2. Business
3. Time
4. Near and Dear
5. Family

➤ Other Factors?



DOMICILE – THE HOME FACTOR

➤ The HOME Factor

1. Comparing size, value, nature of use, etc.
2. Keeping the historical home?
3. Watch out for real estate tax programs (“STAR” in NYS) and IRC § 121 issues.



DOMICILE – THE BUSINESS FACTOR

➤ The BUSINESS Factor

1. What you do, not just where you do it
2. Focus on Active Business Ties
3. Consider the location of business headquarters, your office, assistant, etc.



DOMICILE – THE TIME FACTOR



➤ The TIME Factor

1. NOT the 183-day test!
2. How to count and compare
3. Consider Quality, not just Quantity

DOMICILE – THE NEAR AND DEAR FACTOR



➤ The NEAR AND DEAR Factor

1. Where's your teddy bear?
2. Use of pictures
3. Moving bills/insurance
4. Safe deposit boxes
5. Moving vans v. storage
6. Pets!

DOMICILE – THE FAMILY FACTOR

➤ The FAMILY Factor

1. The presumption
2. Separate spousal domicile
3. Minor Children can be critical



DOMICILE

- The OTHER Factors:
 1. Mailing address for bills, financial records, etc.
 2. FL Homestead/domicile declaration
 3. Safe deposit box
 4. Vehicle registrations
 5. Registering to vote (driver's license)
 6. Manhattan Parking Tax Exemption
 7. Telephone service
 8. Citations in legal documents (wills, contracts, etc.)
- Best Offense is a Good Defense
- Planning Considerations

STATUTORY RESIDENCY - OVERVIEW

➤ The Statutory Residency Test: 2 Components

1. 183 days

AND

2. A Permanent Place of Abode (“PPA”)



+



STATUTORY RESIDENCY – DAY COUNT

- The Day Count Test
 1. A “day” in New York: a minute is a day
 - Part day = full day: *Zanetti v. NYS Tax Appeals Tribunal*, 8 NYS3d 733 (3d Dept. 2015)
 2. Only two exceptions: travel & medical
 3. Burden of Proof: the importance of record keeping (see next slide)
 4. Use of testimony/statements
- Anti-Sobotka statute effective 2019 – PPA + 183 days trumps domicile.

STATUTORY RESIDENCY

DAY COUNT RECORDS

Credit card statements	ATM usage	Personal diary	Outlook calendar
Flight records (frequent flyer reports)	EZ Pass	Limo logs	Landline phone
Cell phone logs!!	Special Software (MONAEO)	Travel itineraries	Swipe Card records

STATUTORY RESIDENCY - DOCUMENTS

Inadequate process

Calendar data



Travel logs



Phone logs



CC Receipts



➤ Raising many concerns

1. Incomplete
2. Unreliable
3. Retrospective
4. Self-reported
5. Tedious
6. Costly

STATUTORY RESIDENCY - “THERE’S AN APP FOR THAT...”



STATUTORY RESIDENCY – PERMANENT PLACE OF ABODE (PPA)

- “Permanent Place of Abode”
 1. Type of dwelling
 2. The “11-month” rule
 3. Habitability issues
- The *Knight* Case
 - The Girlfriend Apartment and the Company Apartment
- The *Barker* Case
 - Really? A Vacation Home?
- The *Gaied* Case
 - NYS, Punishing the Dutiful Son.

WATCH OUT FOR NONRESIDENT TAXES!

- Salary and Wages taxed = workdays in NY
 - And look out for “Convenience Rule”
- Deferred comp and retirement income
 - Stock options and regular deferred comp taxed based on workdays in allocation period
 - “Retirement income” can be exempt
- Income from flow-through entities and NY investments
- New York’s has an “accrual rule” (a cruel rule!).

TOP TEN RESIDENCY ERRORS

1. Nobody moves on January 1
2. Statutory residence trumps domicile
3. The “Living Quarters” box
4. Consistency! – e.g. IRC § 121
5. Husbands and wives usually share a domicile
See McManus (ALJ February 7, 2019)
6. Don’t start an audit with an offer to settle
7. Don’t let client “chat” with auditors
8. Credits for taxes paid elsewhere
9. Never amend a return under audit
10. Many states have an accrual rule (a cruel rule!)

OTHER RESIDENCY ISSUES

- Workday Allocation
- Convenience Rule
- Deferred Compensation
- Board of Directors' Fees
- Flow-Through Entities

[Hodgson Russ Tax Residency Booklet](#)

CHANGE OF DOMICILE: ESTATE PLANNING CONSIDERATIONS

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NEW ESTATE TAX LANDSCAPE POST TAX CUTS AND JOBS ACT

After the Tax Cuts and Jobs Act of 2017:

- Federal estate, gift, and generation-skipping transfer tax (GST) exemption amounts are now fixed at \$10M per person, indexed for inflation (\$11.58M for 2020)
- For 2020, the annual gift tax exclusion is \$15,000 per person, per donee (\$30,000 for married couples)
- Planning opportunities?

PORTABILITY

- Allows a surviving spouse to use a decedent spouse's unused federal estate and gift tax exemption on the surviving spouse's later death
- Under current law, a married couple can essentially transfer up to approximately \$23.16 million of wealth without incurring federal estate and gift tax

PORTABILITY EXAMPLES

Portability Example One

- Husband 1 dies, having used only \$3M of his basic exclusion (\$7M remaining)
- Wife remarries and predeceases husband 2
- Wife's estate is \$13M
- Husband 1 was her "last deceased spouse," meaning that her applicable exclusion amount is \$17M (her \$10M plus husband 1's unused \$7M)

Portability Example Two

- Husband 1 dies, having used only \$3M of his basic exclusion (\$7M remaining)
- Wife remarries and survives husband 2
- Husband 2 used all his exclusion
- Wife's exclusion is back to \$10M because husband 2 was her "last deceased spouse" and he used all his exclusion

PLANNING CONSIDERATIONS

Basic Estate Planning Documents:

- Will
- Durable Power of Attorney for Property
- Living Will/Designation of Health Care Surrogate
- Revocable Living Trust (optional)

HOMESTEAD

Three Homestead situations in Florida:

➤ Homestead property tax exemption up to \$50,000 on assessed value of individual's Florida permanent residence

➤ Homestead asset protection against a judgment lien

What about exceptions?

➤ Homestead rules regarding descent and distribution

What if the homestead is not validly devised?

SELECTED TOPICS

- Tenancy by the Entirety
- Life Insurance Planning
- Charitable Planning
- Asset Protection
- Avoiding New York State Estate Tax After a Florida Move

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