

Changing Your Residency

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Summary of Topics

- Section 1: Overview of Residency Rules: Domicile
- Section 2: Overview of Residency Rules: Statutory Residency
- Section 3: Enforcement/Audit Issues: Trips and Traps

Residency - Introduction

➤ Why do we care?

- The Importance of Residency Status
 - The “One” Thing
- 16 states still impose an estate or inheritance tax
- NY’s Estate Tax
 - Top Rate: approximately 16%

Residency – The Two Tests

➤ Two Tests for Residency

1. The Domicile Test
2. The Statutory Residency Test



Section 1: Domicile

Domicile: What is it?



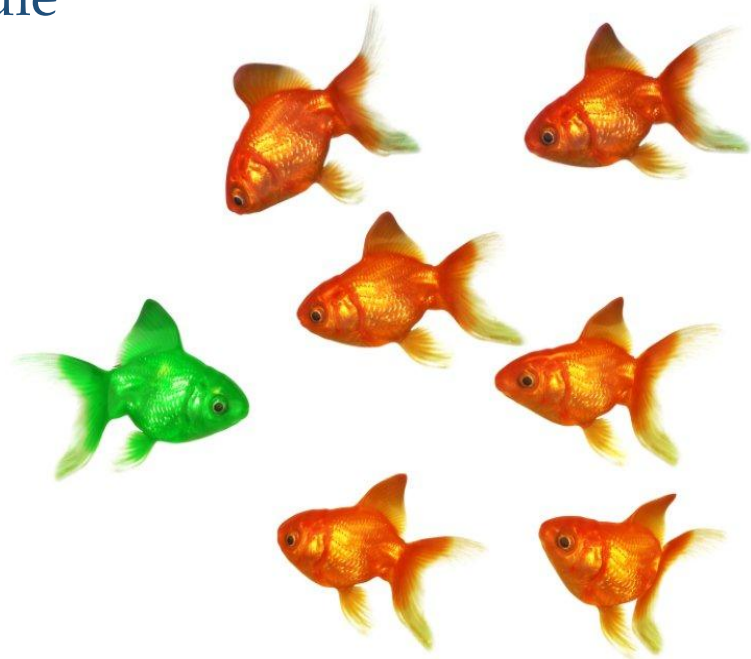
Section 1: Domicile – General Principles

- “Leave and Land” – you have to stick the landing
- Burden of Proof Issues
- Looking for a “Lifestyle Change”
- Examples:
 1. Typical Snowbird
 2. Retirement
 3. Upsizing and Downsizing
 4. Health Issues

Section 1: Domicile – Exceptions

➤ Exceptions to the Domicile Rule

1. The 30-Day Rule
2. The 548-Day Rule



Polling Question # 1

- Who bears the Burden of Proof in a domicile case in most states?
 1. The state
 2. The taxpayer
 3. The party asserting the change

Section 1: Domicile – the Factors

➤ The 5 Primary Domicile Factors

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



➤ The “Other” Factors

Section 1: 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 (e.g., “STAR” in NYS) and IRC § 121 issues.



Section 1: 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.



Section 1: Domicile – the Time Factor

➤ The TIME Factor

1. NOT the 183-day test!
2. How to count and compare
3. When does a year have more than 365 days?
4. Consider Quality, not just Quantity



Section 1: 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



Section 1: Domicile – the Family Factor

➤ The FAMILY Factor

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



Section 1: Domicile – the “Other” Factors

➤ The OTHER Factors: the three-legged table

1. Mailing address for bills, financial records, etc.
2. Safe deposit box
3. Vehicle registrations
4. Registering to vote (driver’s license)
5. Telephone service
6. Citations in legal documents (wills, contracts, etc.)

➤ Best Offense is a Good Defense

➤ Planning Considerations

Section 1: Domicile Conclusion

- Bringing it “Home”
- It’s all about “intent”
- What’s the most Important Factor?
- Focus on Big Picture and Lifestyle Factors
- Tell a compelling story

Polling Question # 2

- What is the most important domicile factor?
 1. Home
 2. Business
 3. Time
 4. Family
 5. It depends.....

Section 2: Statutory Residency

- General Concept: Your home's somewhere else, but you're here enough to be taxed as a resident!



Section 2: Statutory Residency - Overview

➤ The Statutory Residency Test: 2 Components

1. 183 days

AND

2. A Permanent Place of Abode (“PPA”)



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Section 2: Statutory Residency – Day Count

➤ Factor #1: Day Count

1. A “day” in New York: a minute is a day
2. Only two exceptions: travel & medical
3. Burden of Proof: the importance of record keeping
4. Use of testimony/statements

➤ The Julian Robertson Case

Section 2: Statutory Residency - Day Count Methodology

Inadequate process

Calendar data



Travel logs



Phone logs



CC Receipts



Raising many concerns

- Incomplete
 - Unreliable
 - Retrospective
 - Self-reported
-
- Tedious
 - Costly

Section 2: Statutory Residency - “There’s an App for That...”



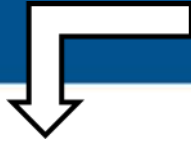
Polling Question # 3

- How long must you be physically present in a state on a given day before that day counts towards your statutory total?
 1. More than 12 hours
 2. More than 6 hours
 3. More than 4 hours
 4. A minute is a day

Section 2: Statutory Residency – Permanent Place of Abode (PPA)

- Factor #2: A “Permanent Place of Abode”
 - Type of dwelling
 - The “11-month” rule
 - 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.

PPA



1. Physical Attributes

- Suitable for year -round living
- Not mere camp or cottage



2. Relationship

- Ownership/property rights
- Maintenance
 - Monetary contributions
 - Contributions in kind to the household (furniture, food, etc.)
 - Payment of bills
- Relationship to co-inhabitants
- Registration for governmental/business services (mail, voting, car, phone)
- Personal items
- Access
 - Possession of a key
 - Use (not exclusively overnight)
 - Accommodations

Section 3: Enforcement and Audits



Polling Question # 4

- How many residency audits does NYS conduct on average per year?
 1. 500
 2. 1000
 3. 5000
 4. 7000

Section 3: Enforcement - Top 10 Tips and Traps

1. Nobody moves on January 1
2. Getting resident tax credits elsewhere
3. Statutory residency trumps domicile
4. Husbands and wives usually share a domicile
5. Be careful counting your time & consistency

Section 3: Enforcement - Top Ten Tips and Traps

6. Correct W-2s, 1099s and K-1s with old address
7. Don't let client "chat" with auditors
8. But sometimes they can make all the difference
9. Understand the burden of proof – don't be "off the grid"
10. Never start an audit with an amended return.

Section 3: Enforcement - Frequently Asked Audit Questions

➤ Frequently Asked Audit Questions

1. Should I sign a waiver of statute?
2. How will this affect my federal return?
3. Will I have to pay interest and penalties?
4. Can I refuse to provide certain records?
5. Can they collect against me if I'm out of here?



Section 3: Enforcement – Voluntary Disclosure

- Most states offer some type of voluntary disclosure program
 1. Limited look-back period
 2. No penalties
 3. Only available if you're not under audit/investigation



Polling Question #5

- Have you ever had to endure a residency audit?
 1. Yes, and it was pretty painless
 2. Yes, and it was hell on earth
 3. No, and I don't want to, which is why I'm here

Section 3: Enforcement – The Appeals Process

➤ Appeals Process

1. Informal Mediation

- “Does it make sense?”
- Conduct of conference

2. Formal Adjudication within the Tax Authority

- Continued (and often more productive) settlement talks
- Live hearing with Administrative Judge – the power of testimony
- Court of Last Resort within the Tax Authority

3. State Court

Thank You for Attending Today's Presentation

If you have further questions or if you need additional assistance,
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