



Changing Domicile

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LJW WEALTH MANAGEMENT

In order to become a resident of Florida, it will be necessary for you to change your domicile from New York to Florida. Domicile is a legal term that refers to the principal establishment to which you intend to return whenever absent. You can have many houses, but you only have one home. Once established, your domicile remains the same until you move to a new location with the intent of making such residency your fixed and permanent home. To effect a change in domicile, there must be not only an intent to make a change but also actual residence in the new location. The burden of proof as to a change in domicile will be upon you, by clear and convincing evidence.

When New York audits a change in domicile, it places primary emphasis on five factors. They are: (1) the continued use of your New York home, (2) continued business connections in New York, (3) the location of near and dear items of the taxpayer, (4) time spent in New York, and (5) family and social connections in New York.

YOUR HISTORICAL HOME

The continued use of a New York home will be reviewed to determine whether you have in fact changed your domicile. Note that the audit guidelines state that the retention of a residence in New York is not, by itself, sufficient evidence that the taxpayer did not change domicile. New York considers the retention of a New York home a strong factor to consider, but it is not determinative. Important factors associated with the continued use of a New York home are a comparison of the size and value of the home to that of the Florida home (although the value of a home becomes less significant when comparing it with property in a state whose market value of all real property is significantly higher than New York). Furthermore, the nature of the use of each home is also a primary factor when analyzing a home. How you view and use your New York home will be considered in determining whether you in fact changed your domicile.

BUSINESS CONNECTIONS

This factor will likely be reviewed considerably in your case because of your commercial property located in New York. The idea is that if a taxpayer stays active with his business or employment located in New York, he may not have changed his domicile. Managing and operating a New York business (even from outside the state) is a factor indicating a strong tie to New York and possibly that there has been no change in domicile.

NEAR AND DEAR ITEMS

New York scrutinizes the location of items that a taxpayer holds near and dear to his or her heart or items that have significant sentimental value such as family heirlooms, works of art, collections of books, stamps and coins and personal items that enhance the quality of life.

TIME SPENT IN NEW YORK

This is a factor that is reviewed separate from the 183-day test for statutory residency. The reasons for visits are important. Are the purposes of the visits to carry on business, visit friends or relatives or to attend personal affairs? Auditors review activity in New York by examining cancelled checks, credit card slips, phone bills, country club charges, utility bills and other documents.

For the first year or two, it is very important that you stay in Florida for most of the time, if not the entire time, rather than traveling to other states and/or back to New York. Auditors refer to this as “landing” and it is important to establish your Florida residency.

FAMILY AND SOCIAL CONNECTIONS

Auditors review a Taxpayer’s general habit of life, which may reveal that the taxpayer has retained deep and substantial ties with his or her children and grandchildren, thus intending to spend as much time as possible with them. This may lead to a conclusion that this quality time is a central part of the taxpayer's lifestyle and as a result there has been no change in domicile. Auditors also review a taxpayer's active involvement in clubs or organizations. Usual or passive membership should not be problematic. Active involvement such as holding an office or regular attendance at meetings might be problematic.

In summary, your New York home will be heavily scrutinized upon a residency audit to determine if you in fact changed domicile.

STEPS TO TAKE TO CHANGE DOMICILE

As discussed above, you will have to demonstrate an intent to change your permanent dwelling place from New York to Florida if you decide to change your domicile. In order to help demonstrate this intent, you should take the following steps:

- File a Florida Declaration of Domicile in the Office of the Clerk of the Circuit Court in the County you reside.
- Apply for the Homestead Exemption for your Florida residence. In order to be eligible, you must be a resident of Florida on January 1 and have owned the residence on that date as well.
- Declare in your Will that you are a resident of Florida.
- Register to vote in Florida and vote as soon as you are eligible.
- Register your automobile in Florida and obtain a Florida unrestricted driver's license. Relinquish your New York license and turn in your New York plates.
- File your federal income tax return with the appropriate IRS Center for those filing with a Florida address.
- File a Florida tangible personal property tax return, if required, and a nonresident income tax return with New York.
- State that you are a resident of Florida in all business transactions and charitable activities.
- Change your address on all credit cards, bills, passports, insurance policies and personal correspondence to your Florida address.
- Transfer safe deposit box contents to Florida.
- Remove your telephone listing from the Buffalo telephone book. You may have an unlisted number which may be given out through information.
- Open a bank account in Florida where most of your checking account activities run through.
- Transfer works of art, expensive furniture and heirlooms to Florida.
- Keep a daily journal documenting what state you are in on that day and your activities during the day. You should keep supporting documentation such as credit card charges, airline tickets, hotel receipts and so forth. As noted above, if you are in New York for a small fraction of a day, New York State considers that a full day.
- Consider having your children visit you in Florida for holidays and at other times rather than visiting them in New York.

Please note that your move to Florida should not be reported as having been made on January 1 as it may lead to questions. It is rare that a move would happen on that date. You should also have movers arrive to ship tangible personal property the day you plan to report the change.

DISCLOSURE

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