



Changing Domicile: Tech And New Social Norms Change The Steps You Should Document

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I write about charitable giving and estate planning ideas.

Changing your domicile, the place you intend to permanently live, has been an important part of the tax, estate and legal planning forever. Avoiding state income taxes by moving your domicile to a low tax state from your old home state which is a high tax state, has been the classic motivator for changing domicile. But there are many other reasons. You might wish to retire to a lower cost location to meet your financial goals for later years. You might wish to take advantages of more favorable laws in a new state that are better for you than your old home state. Perhaps the old home state you live in has an estate tax with an exemption amount lower than the federal exemption and you'd like to avoid the estate tax by moving to a new state that has no estate tax. Health issues alone might motivate or even necessitate a move.

Whatever your motive, the internet abounds with checklists of what you should do to help corroborate your change from your old home state to your new domicile in your new home state. But with the rapid changes in technology and society many new factors might be added that are not mentioned in existing law on the subject. Remember, it can take years for an audit to be concluded and years more for a case to conclude if the taxpayer and the state tax authority don't agree. So reported cases always tend to reflect older circumstances.

So you should not only rely on current law, but consider how the changes might impact that law when planning your change in domicile. For example, Groupon or Local Flavor and similar discount or coupon internet sites are a relatively recent phenomena and not likely reflected in case law. But regardless, consider how it will look if you claim to have moved from New York to Florida to save taxes but keep buying discount coupons for New York City bistros and none in Miami where you claim to live. Technology is changing and you need to be mindful of this in your planning and corroboration. Your folks may have successfully changed domicile by getting a new driver's license in Florida and registering to vote, but that is not likely to suffice (but do those things in any event).

The tax auditors in your old state might well use a variety of factors below to argue that you have not sufficiently changed your lifestyle to have constituted a change in domicile for tax purposes. So plan and document in a comprehensive manner.

New York State probably has the most robust residency audit program in the country. Among all the facts and circumstances they consider are five primary ones:

1. Home. When two or more homes are maintained, a comparison is made of the size, value and use of the two permanent homes. Likely, if the old home is the traditional family home, rather than a new smaller apartment, for example, that might suggest strong ties remaining to the old home state.

2. Active Business Involvement. The taxpayer's continued employment, or active participation in a business is a primary factor in determining domicile. If a taxpayer continues active involvement in the old state's business entities, that must be weighed against the individual's involvement in businesses at other locations when determining domicile. But what does this mean as someone retires. Retirement in the current world is quite different than years ago. Many people continue to work into retirement, many have no choice. Does continuing work on a scaled down basis at the only place you worked, your old home state, assuredly taint the decision? What does business involvement even mean in an email and internet age when many types of businesses can be run from anywhere?

3. Time. This is a critical consideration that too often people view as the sole consideration. It is not. Also, it's not only about the number of days but the quality of days as well. First, many states have a concept called "statutory residency." If you are physically in the old home state for more than a specified number of days, and continue to own a home in that state (broadly defined as anyplace you can sleep and live), you will be deemed taxed as a resident regardless of other facts. If you can avoid that tax trap then you still have to prove that you have changed your domicile from the old state to the new state. The days spent in each still matter. As to quality of days, that can be important to auditors too and logically so. If you spend every holiday in your old home state, but spend more days numerically in your new state that you claim to be home, have you really changed your domicile? Holidays tend to have more importance to most people. So, in addition to counting days, consider the importance of days too. Frankly, if you plan in spending all holidays in your old home state, in the family home you will continue to own, with family members still living in that old home state, you should really evaluate whether you can change your domicile with your tax adviser as you will face a tough road.

4. Items Near and Dear. Some call this the "teddy bear" test. Where are personal items that are so important to you kept? The location of items which you hold near and dear to your heart or have significant sentimental value is a primary factor in determining domicile. The following are some examples of items near and dear family heirlooms; works of art; stamp collections, and photo albums. Again, consider how technology and society are changing. For many people, photo albums don't physically exist and instead are all digital records in the cloud. For many people, they focus on life experience and not the tangible items that others place so much importance on. Thus, near and dear items, as all points to consider, must be evaluated in the context of your life and what is relevant to your situation.

5. Family Connections. A comparison of family connections both in your old home state and new home state may be made. If you have minor children, where do they attend school? What is the frequency of visits with children, grandchildren and other family in the old home state and your new home state? Some tax advisers simply refer to this as the "grandchildren test," and suggest that if all the grandchildren live in the old state that it will be very difficult to prove that you have moved anywhere else.

There are however, a myriad of other factors that might be relevant to your situation. And each of these may also have been affected by changes in technology and society. So for example, where you have a gym membership might be relevant. But in recent years national franchise changes like Planet Fitness, L.A. Fitness and others have blanketed the country. So, is it relevant where you joined? In the past it likely would have been a neighborhood gym or fitness facility. Now it may be a national chain with locations in both your old home state and new state. Consider what online services like Peleton have done to revolutionize home fitness that for many have obsoleted the concept of a gym. The world is changing and your analysis and corroboration of your change in domicile should be relevant in the current circumstances.

Library cards have been a traditional indication of residence, but in the current environment with so much available on line, and e-books available for quick download, how relevant is a library card? Even if you get a library card, the relevance of book borrowing history may be irrelevant.

Another historically significant factor may have been where you have mail sent. With email how relevant is mail for most people any longer? Not so much. More significant is that growing volume and value of items people buy on line. That presents new issues. What if your new home has individual mailboxes in a central public area? Most of America has seen the viral videos from Ring doorbells of thieves stealing Amazon deliveries from purchases porches. This is so common to have its own terms: “package thief” or “porch pirates.” So you might use an address other than your new home for shipments. Perhaps that should not be a negative factor in the analysis.

Telephone service had been a historically significant factor. Is this relevant in the modern age? Many people no longer have home telephones. But the relevance is actual incredibly significant, but in different ways for many people changing domicile. Do you still have a home phone in your old home in your old state? More relevant is that most people have smart phones. Tax auditors are adept and securing and interpreting records of which cell towers your calls were transmitted through. So if you moved from a high tax state to a low tax state and claim you were in the high tax state a very limited number of days after your change in domicile, if a tax auditor in your old home state finds records of your having made calls off local cell towers when you claimed to have been in a different home a thousand miles away, your claimed domicile change might be toast. And if a state tax auditor catches you in obvious brazen lies, your credibility will be zip.

But smart phones can be a boon to corroborating your change in domicile. The old-style approach was for those who moved to save airplane tickets proving the dates they flew from their new state to their old home state. But the location device on your smart phone can work with several different Apps to automatically track your location. The camera on your smart phone can be an ideal tool to document steps taken to change domicile, activities in your new home state and more. Consider setting up a folder to save pictures that show the history of increasing activities in your new home state. While there is no law on this, the technology makes it easy, and the old adage that “a picture is worth a thousand words” (especially if they are all date stamped) might just help you make your case.

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