



Determining Domicile for Domestic or International Clients

Business, social, civic, and family activities are examined when identifying an individual's place of domicile in both interstate and international contexts.

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Advancements in technology have allowed people to live and work far away from their offices, even in a different country. But this flexibility exacerbates challenges in establishing an individual's domicile and increases the importance of advisors counseling clients with homes or other assets in the U.S. and abroad to take affirmative steps to define their domicile. Whether the client is a U.S. citizen who has property in a foreign country or a non-U.S. citizen who has property in the U.S., determining the client's domicile is imperative to counsel the client on property and taxation issues, including, in part, (1) his or her property and inheritance rights, (2) the estate and inheritance taxes that may apply to the client's property, and (3) the courts with jurisdiction that will be able to oversee the disposition of that property and address any related disputes.

Fortunately, those advisors who are familiar with the factors for

determining in which U.S. state an individual is domiciled for state estate tax purposes (referred to herein as "domestic domicile") can apply this knowledge to determine whether a U.S. state or the IRS will deem an individual a domiciliary of the U.S. or a foreign country for estate tax purposes (referred to herein as "international domicile"). This article will discuss the similarities of determining domestic and international domicile with the goal of highlighting that domestic estate planning advisors who seldom delve into international estate tax issues know more than they may realize about international domicile.

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Definitions of domicile

The definitions of "domicile" for purposes of determining both domestic and international domicile are similar. Many of the U.S. states' definitions of "domicile" share common attributes with the definition from Black's Law Dictionary:

The place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.

For example, Florida defines "domicile" as, "the place where a person has fixed an abode with the present intention of making it his or her permanent home."¹ The District of Columbia defines "domicile" as, "the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning."²

Similarly, for purposes of determining international domicile, Reg. 20.0-1(b)(1) provides:

A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

Accordingly, an individual acquires a domicile for both domestic and international domicile purposes by (1) residing in the locality and (2) intending to remain there indefinitely.³

Taxpayer's burden

The latter characteristic of the definition of domicile drives the controversies with determining an individual's domicile because an individual's intent is subjective. Furthermore, the issue of the need to determine domicile only truly arises when the taxpayer or the tax authority claims a change in domicile.

For purposes of both domestic and international domicile, it is the taxpayer's burden to prove that he or she has established a new domicile. A person generally retains

his or her domicile until a new one is established. There are generally four elements to changing domicile:

1. Physical abandonment of the first domicile.
2. An intent not to return to the first domicile.
3. Physical presence in the new domicile.
4. An intent to make that one's domicile.⁴

Similar to the definition of "domicile," states vary on the exact elements required for changing domicile. Some states, such as Virginia, consider a change of domicile a two-step process: (1) a person must intend to permanently move away from one domicile, and (2) the person must acquire a new domicile where he or she intends to remain permanently or indefinitely.⁵ However, these two steps are really a consolidation of the four general elements to change domicile.

Similar to domestic domicile, the taxpayer has the burden of proving a change in international domicile by a two-step process. As noted by the U.S. Supreme Court, once an individual acquires a domicile, such domicile is presumed to continue until it is shown to have been changed.⁶ If there is any doubt as to whether domicile has been

changed, the presumption is that the domicile has not been changed.⁷

A recent case from New York,⁸ in which the judge was determining whether a taxpayer's domicile was in New York or the United Kingdom, cited New York's regulation related to domicile in the international context to distinguish between citizenship and domicile.⁹ Regardless of citizenship, an immigrant who has established his or her permanent home in New York is domiciled in New York. A U.S. citizen, however, who has moved abroad to work on an assignment for an employer will not be considered to have changed domicile, unless it is clearly demonstrated that he or she intends to remain there permanently.

Relocating to a new locality, in and of itself, is insufficient to establish a new domicile, because similar to domestic domicile, the individual must also have the subjective intent to remain in such new locality for an indefinite period.¹⁰

In determining whether this subjective intent exists, all of the facts and circumstances must be considered. A review of some of the domestic and international domicile case law reveals the various factors that the courts consider when determining the issue of domicile.

¹ Kevoloh v. Carter, 699 So.2d 285 (Fla. 5th DCA, 1997).

² D.C. v. Murphy, 314 U.S. 441 (1941).

³ See Kevoloh v. Carter, *supra* note 1; D.C. v. Murphy, *supra* note 2; Estate of Khan, TCM 1998-22; Estate of Paquette, TCM 1983-571; Estate of Nienhuys, 17 TC 1149 (1952); Estate of Fokker, 10 TC 1225 (1948).

⁴ Viking Dodge Inc. v. Hoffman, 147 Ill. App. 3d 203, 497 N.E.2d 1346 (1986).

⁵ Va. Ruling of Tax Comm'r No. 12-86 (5/24/2012).

⁶ See Mitchell v. U.S., 88 U.S. 350 (1874); see also Estate of Nienhuys, *supra* note 3; Estate of Khan, *supra* note 3.

⁷ Weis, 30 BTA 478 (1934).

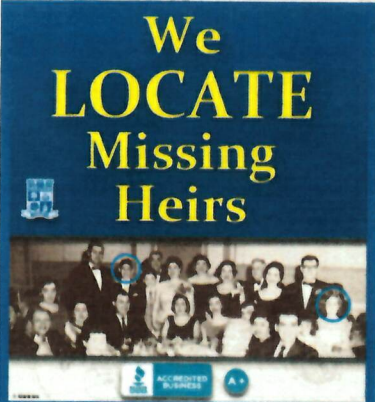
⁸ Matter of May, NYS DTA No. 825173 (1/8/2015).

⁹ See 20 NYCRR 105.20(d)(3).

¹⁰ See Williamson v. Osenton, 232 U.S. 619 (1914) (the essential fact that raises a change of abode to a change of domicile is the absence of any intention to live elsewhere); see also Rev. Rul. 80-363, 1980-2 CB 249.

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Although some of the cases concern domicile for income tax purposes, a similar, if not the same, analysis of domicile would apply for determining domicile in the estate tax context. A comparison of the cases concerning domestic and international domicile demonstrates the similarities between the analyses of the two concepts.

Domestic domicile

The initial part of determining domestic domicile is usually an examination of the documentary evidence. For determining domicile, each state looks for certain documents indicating the taxpayer's domicile, including:

- Real estate deeds.
- Leases.
- Resident property tax exemptions.
- Declarations of domicile.
- Driver's licenses.
- Vehicle registrations and insurance.
- Voter's registrations.
- State and federal tax documents.
- Day location logs.

Some states give certain documents greater weight than other documents.¹¹

Documentation as threshold. An Illinois case demonstrates that without sufficient documentary evidence, a taxpayer will not be able to establish a change of domicile.¹² The taxpayer claimed to have moved to Miami Beach, Florida, in 2002 and did not file income tax returns in Illinois for 2002 and 2003, the years in question. During those years, the taxpayer maintained a residence in Illinois and Florida and worked for an Illinois company as an independent contractor. The taxpayer claimed that he established his Florida domicile in 2002 because he had obtained

a Florida driver's license, registered to vote in Florida, opened bank accounts in Florida, rented a condominium in Florida, and used a Florida address on a Form W-2.

If there is any doubt as to whether domicile has been changed, the presumption is that the domicile has not been changed.

He did not obtain the Florida driver's license or register to vote in Florida until December 2002. The address that he used on those two documents was the address of his parents' house in Cocoa Beach, Florida, not the condominium that he claimed to have rented. Although the taxpayer did have a tax form that stated a Florida address, the taxpayer had filed his federal income tax returns for 2002 and 2003 with an Illinois address, and some W-2s used an Illinois address. Furthermore, he did not file the one Florida state tax form that would have been applicable at the time, the Florida Intangible Personal Property Tax Return. The taxpayer claimed that he lived at the condominium in Florida, which was also rented with three other individuals.

Although the taxpayer may have taken steps to paper his establishment of a Florida domicile, he did not abandon Illinois as his domicile. The taxpayer did not sign one of the most basic documents to evidence a change of domicile, a declaration of domicile, which should have been filed at his local Florida court in the public records. The taxpayer could not produce any other documentary evidence, aside from one tax form, that would have linked him to the Florida condo-

minium, such as a utility, telephone, or cable bill.

Additionally, when the taxpayer registered to vote and obtained a driver's license in Florida, he did so at the end of the first year in question and he used his parents' Cocoa Beach, Florida, address, rather than the address of his condominium.

The Illinois Department of Revenue found that the documentary evidence was insufficient and contradictory to a finding that the taxpayer established a Florida domicile. Furthermore, no record indicated that he intended to abandon his Illinois domicile. Because of the lack of convincing documentary evidence, the taxpayer's activities and affairs in Illinois and Florida were hardly addressed in this case. The court found that the taxpayer was an Illinois domiciliary. This Illinois case demonstrates that insufficient and contradictory documentary evidence for changing domicile may eliminate the need for examining social and civic activities and that documentary evidence is a threshold step to establishing a new domicile.

Geographic change in lifestyle trumps deficiencies with documentation. As documentary evidence is easily obtained, the determining factors of domestic domicile are often the location of the taxpayer's activities and affairs. A New York case demonstrates the importance of the location of the taxpayer's activities and affairs for evidencing the taxpayer's intended domicile despite

¹¹ See, e.g., Md. Income Tax Admin. Release No. 37 (2009) (where one lives and where one is registered to vote are the two most important criteria for determining domicile); Va. Ruling of Tax Comm'r No. 12-26 (3/15/2012) (obtaining or renewing a Virginia driver's license is a strong indication of intent of Virginia domicile).

¹² Dep't of Revenue of Ill. v. John Doe, IT 10-02 (2/25/2010).

¹³ In the Matter of Rantle, 2008-4585, NYLJ 1202515287643 (Surr., NY, 9/14/2011).

documentary evidence indicating a different domicile.¹³

In this New York case, the taxpayer lived for most of his life in New York, although, in 2003, he changed his domicile to Florida for tax reasons. He implemented many of the recommended steps for establishing a new domicile:

1. He bought a home in Florida.
2. He spent significant time in Florida through 2007.
3. He obtained a Florida driver's license.
4. He registered his car in Florida.
5. He voted as a Florida resident.
6. He used the homestead real property tax exemption for Florida.
7. He changed the addresses of his bank accounts to Florida.
8. He executed five wills that declared his Florida domicile.

Until 2008, the year that the taxpayer died, he was undisputedly domiciled in Florida.

In March 2008, after he was diagnosed with advanced cancer, the taxpayer never returned to Florida. In May 2008, New York required its state agencies to recognize same-sex marriages contracted outside of the state. In June 2008, the taxpayer married his partner in Montreal, Canada, and bought an apartment with him in New York. Also, the taxpayer owned concert and theater subscriptions in New York, contributed to charities in New York, and maintained all of his professional advisors in New York. The taxpayer never returned to Florida after his cancer diagnosis in 2008 and removed his assets from the jurisdiction of Florida probate by

putting his Florida home in a trust and shipping his car to New York.

Although the taxpayer never revised the declarations of his Florida domicile in various legal documents, he did execute other documents that evidenced that he changed his domicile back to New York in 2008. The taxpayer executed a Canadian will to dispose of his property located in Canada. In anticipation of his marriage, under his Canadian will, the taxpayer referred to his partner as his spouse and stated that his domicile was the address of their New York apartment. For the taxpayer's marriage, he executed three official documents stating his New York domicile, and Canada issued an official document with New York as the taxpayer's domicile.

He had other documentary evidence establishing his New York



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domicile, including using his New York address on his Social Security and Medicare applications and changing his address on all but one of his financial accounts to New York. Also, the taxpayer, with his accountant, had prepared to file New York resident tax returns using his New York address, although the returns were not filed prior to the taxpayer's death.

There is not a certain time requirement for establishing a new domicile and abandoning an old one.

Despite the taxpayer's intent, his last executed will dated 8/12/2008 stated that his domicile was Florida, but his attorney admitted this was a scrivener's error. Under the will, the taxpayer passed all of his assets to his partner and appointed his partner as executor.

If the taxpayer had intended his domicile to remain in Florida, Florida law would have prevented his partner from serving as the executor (or "personal representative") in Florida because Florida requires that individual personal representatives of a decedent be either family of the decedent or a domiciliary of Florida. His partner was not domiciled in Florida and, as Florida did not recognize same-sex marriage, his partner would not be considered the taxpayer's family. Thus, the taxpayer's partner did not meet the qualifications to be the taxpayer's personal representative in Florida.

With the attorney's admission of her error and the taxpayer's clear intent to appoint his partner as his executor, the court gave little weight to the taxpayer's declaration of

Florida domicile in his last will. The taxpayer had intended an official same-sex marriage and maintained residence in a state that would recognize his marriage—New York. The taxpayer and his partner were proudly married and took significant steps to have their marriage be official. Being a domiciliary of New York would allow the taxpayer to have his partner take care of the administration of the taxpayer's estate after his death, while Florida would have prohibited his partner's qualification as personal representative of the estate.

The court found that the taxpayer's affairs clearly evidenced his intent to re-establish New York as his domicile and abandon his Florida domicile. Accordingly, the taxpayer's estate was subject to New York's estate tax; New York had primary jurisdiction over the administration of his estate; and the taxpayer's partner was able to serve as his executor. This case demonstrates that there is not a certain time requirement for establishing a new domicile and abandoning an old one. The taxpayer in this case had been domiciled in Florida for five years, but was able to change his domicile to New York in less than nine months.

A Massachusetts case exemplifies how a taxpayer's affairs and activities can reflect establishment of a new domicile and abandonment of the old domicile.¹⁴ Often states, such as Massachusetts, use the center of the taxpayer's family, business, social, and civic activity as the primary factors for determining domicile. The taxpayers in this Massachusetts case had large homes in Massachusetts and Florida. However, they passed up opportunities to improve their Osterville, Massachusetts, home and made significant renovations to their Jupiter, Florida, home. They also owned two condominiums in Boston, Massa-

chusetts, but this fact did not have much significance in the domicile analysis because one condominium was a rental and the other was used only as a "stopover" when traveling between Osterville and Jupiter.

Furthermore, of the taxpayers' family members, only one sibling lived in Massachusetts, while two lived in Florida and one in Maryland. The taxpayers' children did not live in Massachusetts, though one may have lived there temporarily. The Massachusetts Appellate Tax Board (ATB) examined the location of the taxpayers' health-care in this case. The taxpayers had treatments in both states, which did not reveal their intentions with regard to their domicile.

The taxpayers' social and civic activities were centered in Florida, where most of their friends lived. In Florida, the taxpayers were very active in their country club, participating almost daily in the club's golf course, bridge games, and parties. Although they were members of a country club in Massachusetts, the taxpayers were not nearly as active in that club as they were in their Florida club. Additionally, they attended church in Florida, but not in Massachusetts. The taxpayers' social and civic activities were clearly centered in Florida.

The taxpayers also had documentary evidence of their new domicile, though this evidence was not a large part of the ATB's analysis of determining the taxpayers' domicile. The taxpayers registered to vote and voted in Florida. They obtained Florida driver's licenses midway through the first tax year that was being examined by the ATB. Also, they obtained the Florida real estate

¹⁴ *Mee v. Commissioner of Revenue*, Mass. App. Tax Bd., No. C287787 and C293547 (4/12/2010).

¹⁵ NYS Dep't of Taxation & Fin. Advisory Opinion No. TSB-A-06(6)I (8/28/2006).

¹⁶ Note 3, *supra*.

homestead tax exemption that is available only to Florida residents. Weight was not given to any delayed documentation to establish a Florida domicile because the taxpayers' activities and affairs were clearly centered in Florida. With the taxpayers' activities and affairs centered in Florida, the ATB found that the taxpayers had established a new domicile, while abandoning their old domicile.

Intent is paramount. A case from New York highlights that the taxpayer needs the requisite intent to change domicile and cannot be forced into changing domicile.¹⁵ In 2006, a husband petitioned New York on behalf of his wife to determine how her move to a 24-hour care facility in New York would affect the determination of her domicile. The wife's health began to decline dramatically due to her Alzheimer's disease. The husband was considering moving her full-time to a healthcare facility in New York. At the time, she was incompetent and needed constant medical supervision.

Because the taxpayer could not form the requisite intent to change her domicile, her move to the nurs-

ing home in New York would not cause her to be subject to the New York estate tax. If the taxpayer is mentally incapacitated, he or she will not be able to form the requisite intent to change domicile.

International domicile

Similar to domestic domicile, the cases for determining international domicile reveal that the geographic center of the taxpayer's activities and affairs are of the utmost importance for determining domicile. Courts examine the documentary evidence for indicating domicile, including:

- Green Cards.
- U.S. Social Security numbers.
- Visas.
- Re-entry permits.
- U.S. tax returns.
- Real estate deeds and leases.

However, the location of the taxpayer's homes, family, personal property, and the taxpayer's social, civic, and business activities are usually the determining factors of domicile.

Change in domicile despite returning to previous home. *Estate of Khan*¹⁶ involved a decedent who was born, raised, and died in Pak-

istan. In 1912, the decedent's father immigrated to the U.S. to establish farming and real estate businesses. Upon his father's death, the decedent inherited a substantial portion of his father's estate, including U.S. partnership interests and other U.S. real estate.

In 1971, the decedent made his first trip to the U.S. on a temporary visitor's visa to resolve issues related to the partnerships. The decedent returned to Pakistan on 2/4/1974. While in Pakistan, the decedent attempted to obtain a permanent resident visa, but was informed that he would not be able to do so until his son, who had immigrated to the U.S. in 1958 to attend high school and college, became a U.S. citizen. The decedent's son became a U.S. citizen in 1984, and shortly thereafter the decedent returned to the U.S. on an immigration visa and was issued a Green Card and U.S. Social Security number. The decedent's wife and daughters remained in Pakistan. While in the U.S., the decedent lived with his son, who built an additional bedroom and bathroom onto his home to accommodate the decedent.



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In 1986, the decedent returned to Pakistan to visit with family and friends and to formalize an agreement with respect to the partnerships. Prior to leaving the U.S., the decedent obtained a re-entry permit.¹⁷ While in Pakistan, the decedent's health began to deteriorate, preventing the decedent from returning to the U.S. During this time, the decedent's re-entry permit expired, which would have required the decedent to apply for a resident visa before returning to the U.S. The decedent died in Pakistan in 1991.

From 1986 through 1990, the decedent's accountant filed non-resident income tax returns for the decedent. The decedent never reviewed the returns, which were signed by the decedent's son pursuant to a power of attorney.

In its opinion, the Tax Court first held that the decedent obtained domicile in the U.S. when he returned to the U.S. in 1985. In reaching this conclusion, the Tax Court focused on several factors that were probative of the decedent's intent to reside in the U.S. for an indefinite period of time. Significantly, the court noted that:

1. Immediately upon entering the U.S. in 1985, the decedent obtained a Green Card and a U.S. Social Security number.
2. Substantially all of the decedent's assets were located in the U.S.
3. The decedent's family had a history of immigrating to the U.S. (both the decedent's father and son had immigrated to the U.S.).

Based on these facts, and notwithstanding the fact that the decedent owned a 15-acre farm in Pakistan and the decedent's wife and daughters continued to live in Pakistan, the court held that the decedent obtained domicile in the U.S.

After concluding that the decedent obtained domicile in the U.S. in 1985, the court held further that the decedent did not relinquish such domicile by returning to Pakistan because the decedent did not have the requisite intent to remain in Pakistan indefinitely. In reaching this conclusion, the court noted that:

Similar to domestic domicile cases, a taxpayer can indicate an intent of international domicile through the location of his family, friends, and property.

1. Prior to leaving the U.S., the decedent applied for a re-entry permit.
2. The decedent went to Pakistan to visit family and friends and for business.
3. The fact that the decedent filed nonresident income tax returns from 1986 through 1990 did not establish that the decedent intended to abandon his U.S. domicile.
4. The decedent continued to own substantial assets in the U.S.

The court also noted that the fact that the decedent allowed his re-entry permit to expire did not, under the circumstances, indicate an intent to abandon his U.S. domicile.

Similar to the determination of domestic domicile, the court weighs a multitude of factors for determining international domicile. The court examined the documentary evidence of the Green Card and U.S. Social Security number with the pending re-entry permit for the U.S. being an important factor. Additionally, the taxpayer's fami-

ly history of immigrating to the U.S. and the location of a substantial amount of his property in the U.S. provided an indication of the taxpayer's intent to remain a U.S. domiciliary, despite owning a farm in Pakistan and his wife and daughter living in Pakistan.

Ownership of home not always indicative of intent. *Estate of Paquette*¹⁸ involved a Canadian citizen whom the court found to have Canadian domicile despite not owning a home in Canada at the time of his death, but owning one in Florida and dying while living in Florida. The decedent was born in Canada, owned and operated a business in Canada, and owned two homes in Canada. Beginning in approximately 1950, the decedent began to spend the winter months in Florida, returning to Canada for the summer. In 1955, the decedent retired, sold his business, and sold one of his homes in Canada. A couple years later, the decedent purchased a home in Florida. From 1957 through 1971, the decedent and his wife continued to spend the winter months in Florida and the remainder of the year in Canada.

In 1971, the decedent sold his remaining house in Canada. The decedent intended to use the proceeds from the sale of the house to purchase a smaller house or to rent an apartment in Montreal. Shortly after selling the house, the decedent was diagnosed with cancer, which resulted in numerous hospitalizations and operations, substantially all of which were in Florida. Despite his health, the decedent continued to travel back

¹⁷ A re-entry permit shows that the person to whom the permit is issued is returning to the U.S. from a temporary visit abroad and relieves the person from the necessity of securing a visa from an American Counsel before returning to the U.S.

¹⁸ Note 3, *supra*.

¹⁹ Note 3, *supra*.

and forth between Florida and Canada. When in Canada he would meet with his accountant and financial advisor regarding his intent to purchase another home in Canada and discuss the management of his investments. He would also spend time with friends.

On 7/19/1974, while in Canada, the decedent executed a last will and testament in which he stated that he was a resident of Montreal. The decedent returned to Florida several months thereafter and remained there until his death on 1/21/1975. At all times prior to his death, the decedent filed Canadian income tax returns; maintained a valid Canadian driver's license and a valid Canadian passport; voted in Canada; and purchased, registered, and insured his automobile in Canada. Additionally, substantially all of the decedent's investment assets were located in Canada.

The court held that, despite the fact that the decedent purchased a home in Florida and sold both of his homes in Canada, thereby leaving the decedent no home in Canada, the decedent never intended to reside permanently in the U.S. Until his death, the decedent made annual visits to Canada, and the facts demonstrated that the decedent maintained numerous contacts with Canada, all of which, the court held, evidenced his intent to remain domiciled in Canada. The court noted that "it is not without significance that most of the decedent's assets, valued at \$556,351.76, were located in Canada," while only \$88,125.13 of the decedent's assets were located in Florida. Furthermore, the court found credible the testimony of the decedent's wife and investment advisor that the decedent intended to retain domicile in Canada.

This case demonstrates that, similar to domestic domicile cases, a taxpayer can indicate an intent of

international domicile through the location of his family, friends, and property. Despite dying while living in his only home, which was in Florida, this taxpayer died domiciled in Canada because he never relinquished his connections with his family, friends, and property located in Canada. Similar to domestic domicile, to internationally change domicile the taxpayer needs to demonstrate a change in the location of the center of his activities and affairs. Although the taxpayer vacationed in Florida, he continued with much of the same family and social activities in Canada and kept substantially all of his property in Canada.

Forced change of residence does not affect domicile. The decedent in *Estate of Nienhuys*¹⁹ was born in the Netherlands and was a citizen of the Netherlands at all times until his death. The decedent owned several homes in the Netherlands and was the president of a Netherlands corporation. In 1940, while the decedent was on a business trip abroad, Germany invaded the Netherlands, thereby preventing the decedent from returning home. As a result, the decedent obtained a visitor's visa and came to the U.S.

The decedent and his wife initially stayed with a friend and then

rented a small apartment. All of the decedent's family (other than his wife) remained in the Netherlands. There was testimony in the record that reflected the decedent's intent to return to the Netherlands as soon as it was no longer occupied by Germany. The decedent filed U.S. resident income tax returns each year that he was living in the U.S. The decedent died in 1945, before being able to return to the Netherlands.

In reaching its conclusion that the decedent was not domiciled in the U.S. for estate tax purposes, the court focused on these facts:

- The decedent was forced out of the Netherlands.
- The decedent continually expressed his desire to return to the Netherlands.
- The decedent operated a business in the Netherlands and was merely an employee in the U.S.
- The decedent owned a large home in the Netherlands but lived below his means in a small apartment in the U.S.

All of these factors, the court held, evidenced the decedent's intent to return to the Netherlands. Furthermore, the court did not give any significance to the fact that the decedent had filed U.S. resident income tax returns because the

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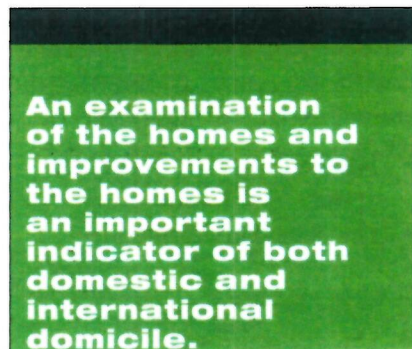
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meaning of “residence” for income tax purposes and estate tax purposes differs significantly.

Similar to domestic domicile, intent is paramount to a determination of international domicile. If an individual does not intend to change his or her domicile, but is forced out of the jurisdiction of domicile, such individual will retain the domicile of his or her old residence.



Comparison of houses may be a focal point. The decedent in *Estate of Fokker*²⁰ was a non-U.S. citizen who died while in the U.S. in 1939. From 1927 until his death, the decedent maintained a home in the U.S. (the “U.S. Property”). In 1934, the decedent purchased a home in St. Moritz, Switzerland (the “Swiss Property”), which was used for entertaining relatives, friends, business associates, potential customers, and government officials. Each of the properties was extravagant, containing many luxuries, including being staffed with servants. The decedent spent a substantial amount of time at each of the properties.

Each time the decedent left the U.S. he would apply for a re-entry permit, which required the decedent to affirm, under oath, that he was a U.S. resident. While in St. Moritz, the decedent was very active in the community and widely known among the people there.

Estate of Fokker is an instructive case due to the manner in which the court performed a detailed com-

parison of the decedent’s two properties. In comparing the properties, the court focused on the physical characteristics of the properties, the location of the properties, the time spent at each property, and the use of such time.

In evaluating these characteristics, the court made several observations:

1. The U.S. Property was larger than the Swiss Property, and the alterations made to the U.S. Property were substantially more expensive than those made to the Swiss Property.
2. The Swiss Property was located in a resort town, which appealed to international tourists, whereas the U.S. Property had no such international appeal, and, therefore, “the acquisition of such property must have had a different reason.”
3. The decedent kept both properties fully staffed at all times, but spent more time at the U.S. Property. Additionally, most of the decedent’s time spent at the Swiss Property was for business and entertaining.

These factors, in addition to the fact that decedent’s passport indicated that he was domiciled in the U.S. and that he repeatedly stated under oath (e.g., when applying for re-entry permits) that he was a resident of the U.S., led the court to conclude that the decedent was domiciled in the U.S. for estate tax purposes at the time of his death.

As in cases of determining domestic domicile, examining and comparing the houses in the potential places of domicile is also important for international domicile. The court in the *Estate of Fokker* emphasizes the demonstration of intended domicile through the decedent’s more expensive improve-

ments to the U.S. Property compared to the Swiss Property. Not surprisingly, an examination of the homes and improvements to the homes is an important indicator of both domestic and international domicile.

Location of family is important, but not dispositive. A 2015 New York income tax case²¹ reiterates that, even with a history of residing in New York and immediate family ultimately returning to New York, an individual’s location of “general habit of life” manifests true intention of domicile. The taxpayer had lived in New York with his wife, daughter, and son and worked there for many years until being fired from his job in 2005. Disgusted with New York because of his firing, the taxpayer moved to London later that year for a new job at a bank.

He and his family moved to London in 2005, obtaining five-year work visas and intending to become permanent residents of the United Kingdom upon expiration of the visas. The bank treated the taxpayer as a London-based employee, paying the taxpayer in pounds and not paying a stipend for his housing. The taxpayer leased a home in London where the taxpayer and his family would live. The family was excited for their new life in London.

That fall, however, was the beginning of the end for the taxpayer and his wife because their son could not get into the school in London that they wanted. The wife returned to New York with their children for the 2005-2006 school year to enroll their children in the Connecticut schools that they had been attending prior to their move to London.

²⁰ Note 3, *supra*.

²¹ Matter of May, NYS DTA No. 825173 (1/8/2015).

The next school year, their daughter lived with the taxpayer while attending school in London. By the spring semester, she was enrolled at her old school in Connecticut, returning to their New York home with her mom and brother. The taxpayer and his wife went from preparing the New York home for sale to down-sizing their London residence. The wife and children would continue to live in their New York home for the duration of the three years in controversy for the taxpayer, 2006, 2007, and 2008.

Meanwhile, the taxpayer's life was thriving in London: He was excelling at work and he was fully immersed in the London lifestyle. He became deeply involved in London activities, such as bicycling and joining a golf club and church. From 2006 through 2008, he spent at most 40 days in New York and at least eight months in London. He often referred to London as his permanent home, and spoke of London enthusiastically but of New York disparagingly.

Despite continual attempts to have his family join him in London, the taxpayer's family refused. The taxpayer's desertion of New York affected his family to the extent that in October 2007 his wife filed for divorce, complaining that he had abandoned her and their children. The taxpayer, seeking reconciliation in October 2008, worked remotely from Connecti-

cut for the remainder of 2008, leased a home there, but cited his London address as his home in the lease agreement. While living in the U.S., the taxpayer continued to be paid in pounds and retained his London-based employee status with the bank.

The court repeated throughout its determination of domicile the phrase "general habit of life" of the taxpayer.

Despite retaining the taxpayer's New York driver's license and car registration, and the taxpayer having conflicting New York tax returns concerning his residence, the court deemed the taxpayer to be domiciled in the United Kingdom for 2006, 2007, and 2008. The court emphasized that the taxpayer's general habit of life had been centered in London for the years in controversy, highlighting his extensive business, social, and community ties in London. Furthermore, as in many of the cases discussed above, the taxpayer's length of time spent in the two jurisdictions where he had houses was also important—mitigating the weight of documentary evidence contrary to the location of the taxpayer's activities.

The court repeated throughout its determination of domicile the phrase "general habit of life" of the taxpayer. The phrase concisely summarizes the themes of factors for determining both domestic and international domicile found throughout domicile cases. "General habit of life" encompasses an individual's social, business, and civic affairs, which, when significantly decreased in one jurisdiction and increased in another, indicates a strong intention to change domicile.

Conclusion

For both domestic and international domicile, the determination relies heavily on the facts and circumstances. On one hand, a house in a jurisdiction may be the tipping point for the domicile analysis and, on the other hand, domicile may be found in a jurisdiction where the taxpayer lacks a house. Although the courts may weigh factors of domicile differently, the themes of factors of domicile are similar in domestic and international domicile. For both types of determinations of domicile, unless forced out of a jurisdiction, the place of an individual's business, social, civic, and family affairs, or general habit of life, is the strongest indication of an intended domicile with documentary evidence serving as secondary support. ■