Proskauer

Should I Stay or Should I Go (to Florida)

A Guide on Changing Domicile: Tax, Estate Planning & Other Considerations

Every person has a domicile. This rarely-considered fact has far-reaching consequences, including where and how an individual is taxed. Our guide on how to change domicile to Florida covers the important tax and estate planning considerations when changing domicile.

The general rule is that a state may tax the worldwide income of a person domiciled in that state. While it is impossible to avoid federal tax (unless an individual expatriates and pays the applicable exit tax), many individuals want to minimize their "state" tax burdens, and to do so, they may consider changing their domicile. Some states impose higher income and estate tax than others. Some states, like Florida, impose no income or estate tax on individuals. This difference leads innumerable New Yorkers and other individuals from other "high tax" states to change their domicile to Florida.

The laws of one's domicile can also significantly affect one's estate plan. Accordingly, changing domicile may be the best way to achieve one's estate planning, asset protection and family planning goals.

Another consideration in changing domicile is the timing of the change, which can have significant tax implications. One's ability to take advantage of particular laws, such as Florida's "Homestead Exemption," may be dependent upon the timing of the domicile change.

Notwithstanding the state and local tax laws, individuals should also consider their own convenience. Work and family may be located in a state with high taxes, and moving away from those connections and severing ties to change one's domicile may not be ideal. Taking advantage of tax benefits may be appealing, but an individual's particular circumstances may make changing one's domicile impractical.

This guide on changing domicile to Florida provides an overview of the considerations and challenges that may arise.

Topics covered:

- **The Law of Domicile:** “Domicile” and “residence” are often used synonymously in modern speech. But, legally, and especially for tax purposes, these terms have very different meanings. When changing domicile, it is critical to take steps to ensure that only one state can successfully assert that the individual is domiciled in that state.
- **What to Consider in Establishing Domicile:** Most individuals rarely consider their domicile, often equating it with residence or simply where one is living. But, an individual’s domicile has important tax and non-tax consequences. The tax advantage of being a nonresident of New York is an important consideration for those considering a change of domicile from New York to Florida.
- **Changing Domicile:** Generally, there are various reasons why a particular individual may choose to change his or her domicile. The actions one takes to change one’s domicile must be “genuine.”
- **Tax Implications:** The tax advantage of being a nonresident of New York is an important consideration for those deciding to change domicile from New York to Florida. Similarly, the tax advantage of being a resident of Florida compared to being a resident of many other states is also an important consideration. The particular advantages of being a Florida resident are discussed, with a particular focus on the differences between New York’s taxation of residents and non-residents.
- **Audit Considerations:** During an audit, three issues are examined. The scope of the audit will be based on the facts involved.
- **Effects on Estate Planning:** Upon changing domicile, an individual should consult with a local attorney to ensure that the individual’s estate plan conforms to and is taking full advantage of the new domicile’s laws. Certain provisions in the individual’s estate plan may no longer be effective or may need to be updated to take advantage of the new domicile’s particular trust and estate laws.

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