

Summer 2014

Estate Planning

SNOWBIRDS BEWARE: THE PENNSYLVANIA TAX MAN WANTS TO KNOW WHERE YOUR HEART IS

In their search for revenue, states are more aggressively attempting to collect both income and inheritance tax from taxpayers who believe they have successfully become domiciled in another jurisdiction.

Many Pennsylvania residents, lured by the temperature, relaxed atmosphere and tax status of Florida, purchase homes there. Later they begin taking routine steps to prove that they are domiciled in Florida and are free of Pennsylvania taxes, notwithstanding their continuing residency in Pennsylvania. They register to vote, file tax returns in Florida, purchase a car in Florida, occupy their Florida residence for over 180 days per year and formally register as Florida residents as Florida law allows.

But is that enough? Not necessarily. Here is a cautionary tale about a Pennsylvania resident who some thought had succeeded in changing her domicile to Florida but failed to do so. A Philadelphia judge was faced with the question of where her Will should be probated: Pennsylvania or Florida. On the surface, she and her husband, a high profile Philadelphia couple, appeared to have done all the right things and checked all the right boxes over a number of years. However, closer examination of the facts, sparked by a family split, led the judge to conclude that the decedent actually was domiciled in Pennsylvania at her death. Accordingly, the judge issued an opinion in 2013 that the probate of the decedent's Will was properly in Pennsylvania rather than in Florida. Presumably, the estate also would be subject to Pennsylvania inheritance tax.

What happened? It appears the decedent had not

traveled to Florida for a few years before her death and had told a close friend she would never return. She had a son who lived in the Philadelphia area, all of her closest friends, her doctors and lawyer were in the Philadelphia area. Her husband's solid Florida connections made no difference because their marital ties had been frayed. Accordingly, the judge used the classic domicile test: Where was her permanent home to which she ultimately intended to return whenever absent? Asked another way, where was her "heart" at the time of her death? He found it was in Pennsylvania.

The decision is a reminder that we can have numerous homes throughout the United States and the world, but the law says we can only have one state of domicile. Although some states have statutes and regulations that provide guidelines or presumptions

about one's domicile, most states like Pennsylvania, hold that the domicile is where the heart is, and that state is the appropriate place for the probate and is the state

likely to have the greatest right to impose tax on the person's income and inheritance tax on the estate. In short, checking the boxes to satisfy one state's criteria for becoming domiciled or being subject to tax there, may not dissuade another state from deciding differently.

Pennsylvania also has a practice of sending a "Non-resident Affidavit of Domicile" to Pennsylvania residents who claim to be domiciled elsewhere and to the estates of those who have died but who have claimed to be domiciled elsewhere. While the questions about friends, clubs, church, business and other ties to Pennsylvania seem innocuous, they are specifically intended to determine where that person's heart truly is or was.



SOME REMINDERS ABOUT FEDERAL ESTATE AND GIFT TAX EXCLUSIONS

The annual federal gift tax exclusion per person remains at \$14,000 in 2014. However, the more significant applicable exclusion available during lifetime or at death or a combination of both has been increased to \$5,340,000.

. . . AND ABOUT IRAS

Our clients sometimes forget their IRAs. They forget to review the designated beneficiary or forget to verify that the beneficiary designation still exists and can be found. We recommend that our clients check both the designations and the availability of the designations periodically. The numerous mergers and acquisitions in the financial services field often result in lost paperwork. Another caution: When retiring or changing jobs, you can roll over the former employer's retirement plan into an IRA. However, it should be done directly from one institution to the other. Failure to follow the rules and depositing the funds in one's own account, even temporarily, can lead to paperwork and more troubles. A mandatory 20% withholding tax will result and, if the rollover is not completed within sixty days, there can be additional penalties. Finally, time and paperwork can be saved by consolidating multiple IRA accounts which can be easily done with simple rollover forms.

A CONSUMER TIP: REMEMBER TO GET YOUR FREE ANNUAL CREDIT REPORTS; EASY ACCESS TO YOUR ACTUAL CREDIT SCORE MAY BE COMING.

For about ten years, consumer-data agencies have been required by law to provide free credit reports to individuals annually. The reports issued by the three largest credit bureaus, Equifax, Experian and Trans Union, can be found at www.annualcreditreport.com.



While consumers certainly benefit by being able to study, understand and correct these reports, they cannot easily obtain the

all-important three digit credit score, known as the FICO (Fair Isaacs Corporation) score. That is the number relied upon by credit card issuers and other creditors to gauge the consumer's credit-worthiness. According to the *Inquirer's* consumer writer, Jeff Gelles, the new Consumer Financial Protection Bureau has been nudging credit card issuers to provide those scores free of charge. Barclay's, Capital One and Discover are among the companies that will furnish the scores. The flood gates may have opened.

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