legally speaking By **Patricia C. Marcin**, Esq. © 2021

WILLS, TRUSTS & ESTATES: PLAIN AND SIMPLE

Changing Your Residence For State Tax Purposes – More To It Than You May Think, PART TWO

As we continue to move closer to summer and those dreams of living in Florida or another warmer climate fade, we return to the topic of changing your residence for state tax purposes. Let's explore the five factors, which the tax authorities will look to in determining whether someone has changed their residency. This is frequently referred to synonymously as one's "domicile" for tax purposes: (1) physical presence, (2) home, (3) family and business activities, (4) personal property of significance to the taxpayer, and (5) documentary evidence.

Physical Presence. It is important to spend as much time as possible in your new state. Track the days spent in both the old and new states, especially for the first year or two after the change in domicile. Stay at least 183 days of the year in the new state, but the more the better.

Home. The taxpayer must have "abandoned" her old home. Ways to show abandonment of an old home are to buy a bigger, nicer house in the new state, rent the old house out to a third party, and/or put the old house on the market for sale. Remove any property exemptions on the old house that are tied to it being a "primary" residence, like the STAR exemption.

Family and Business Activities. The taxpayer should have her family visit her in her new home state for important occasions, or, better yet, have other family members move to the new state, too. The more family activities in the new state, the stronger the evidence that the new state is really the taxpayer's new domicile. Be careful of supporting a spouse or children located in the taxpayer's old state, which could be used as evidence against the taxpayer.

Active business involvement in the taxpayer's old state is evidence that there has been no change in domicile. Work as much as possible in the new state, and set up a "real" office in the new state, not just a home office. If the taxpayer owns the business, consider moving the principal place of business to the new state and withdrawing any business registration in the old state. Consider reorganizing the business entity in the new state.

Personal Property of Significance. Move items of personal or sentimental value to the taxpayer's new home. This includes photos, trophies, yearbooks, collections, and the like. Funeral and burial arrangements should be made in the new state.

Documentary Evidence. While not enough alone, changing one's residence on documents adds evidence to the fact that the taxpayer has, indeed, changed her domicile. Change the address on all accounts to the new address, including alerting the U.S. Post Office, Social Security, Medicare, credit card companies, tax authorities, phone companies, banks and financial institutions, doctors, and social and religious organizations. Obtain a driver's license in the new state and change voter registration.
One factor alone will not determine a taxpayer's change of domicile. If you are considering a change of domicile to another state for tax purposes, make sure you are ready to satisfy all of the factors to prove your change of "home," and discuss your plans with your tax advisor.

If there is a trusts and estates topic that you would like to know more about, please feel free to email me at patricia.marcin@rivkin.com and I will do my best to cover it in a future column.

Patricia is a partner at Rivkin Radler LLP concentrating in trusts, estates, and tax law. She has lived in Lloyd Harbor since 2005 with her husband John. They have two sons, Sam and Matt. Their faithful dog, Blizzard, still lives at home.