Declaring your State of Tax Domicile

"You may have multiple Residences, but you can have only one State of Domicile."

The Significance of Domicile. The state of your domicile can impact you and your family in a multitude of ways, including (but not limited to):

- State and local income taxes
- Differences in sales taxes
- State estate and/or inheritance taxes
- Unique issues with regard to estate administration and costs of administration
- Particular spousal benefits to a surviving spouse (e.g., a right of a second or third souse to take a share of your estate even if they were disinherited in your Will)[1]
- Increased or decreased costs of Insurance (e.g., hurricane coverage in Florida)
- Right of a Spouse to make Medical and Property decisions for their incapacitated Spouse
- Right to serve as the Estate Administrator, unless the Will provides otherwise
- The inheritable Right of Personality benefits accruing to heirs (mainly for celebrities)

> ***Dr. John T. Dorrance*** **(founder of Campbell's Soup Company) died in 1930 with a $115 million estate. The estate said that it was subject to a New Jersey inheritance tax of $12 million, but Pennsylvania imposed a $17 million inheritance tax, arguing that the deceased was a Pennsylvania resident. The US Supreme Court refused to get involved and the estate ultimately paid both states an inheritance tax.**

State of Domicile. The question of whether or not you have changed your residency is "**fact-driven**." There are no absolute assurances of the state tax treatment. It is important to remember that the law understands that you can have multiple personal residences, but you can have only one state of domicile – and the state laws vary widely on whether a change of domicile has occurred.

A number of states, such as New York, North Carolina, Connecticut and New Jersey[2] can be very aggressive in pursuing tax claims against former residents.

Beware: Even if you are no longer a local resident for in your former state of residence for income tax purposes, you may still owe **state income taxes on state-based revenue sources.**

Starting Point**:** Review with a qualified advisor the laws of your soon to be former tax domicile state and your new state of domicile. Understand the legal requirements and facts necessary to become a non-resident of your former domicile state and a tax resident of your new state.

Facts Supporting Domicile. Here are some of the facts, you can create are (and the more facts on your side, the better your case):

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[1] For example, Florida's statutes provide for strong rights and beneficial interests to a surviving spouse that are not found in many other states. Particularly in second and third marriages, at your death these Florida laws can pass assets in ways that you did not intend. Consult with a Florida attorney.

[2] The loss of a former taxable resident can matter to the former state. For example, in 2016 New Jersey lost its wealthiest resident when a hedge-fund billionaire declared himself a resident of Florida. He also moved the hedge fund's official headquarters to Florida, resulting in an estimated annual revenue loss of hundreds of millions of dollars.

______Be outside of your former state <u>at least</u> 183 FULL days in a calendar year (i.e., over half the year)[3]

- Review the laws governing residency in your soon-to-be former state of domicile before making your move to make sure you are in compliance with its rules.
- Keep a calendar and try and attach one receipt per day showing that you were outside the state for that day as evidence of being outside of the state for 183 days.
- You do not have to be in your new state for 183 days - just outside the former state for 183 days (i.e., vacations and visiting the grandchildren in other states does not work against you).

______ To support your time of residency or taxable travel in another state consider using these cell phone applications: **https://monaeo.com/** and/or **https://www.taxday.com/**

______Buy (preferably) or rent a local residence (and furnish it with furniture – empty residences don't work well); refurbish the home as a place you would live in.

______Declare a homestead exemption in your new state & terminate[4] your former homestead exemption.

______If possible, sell or transfer any real estate in your former state to family or other entities (e.g., an LLP or LLC). This is especially true of your former residence.

______If permitted by state law in your new state (e.g., Florida), go to the local Court and make a "Declaration Domicile" or similar statement in the Court records of the county of your new residency.

______If possible, have no salary or other earned income in your former state.

______Change driver's license to your new state and surrender your old license.

______Change the address on your passport to your new state.

______Change the address on your retirement plans, Social Security and Medicare to your new state.

______Change all bank accounts to your new state and do not retain any bank accounts in the former state.

______Move your only safe deposit box to your new state.

______Change vehicle registration(s) and insurance to your new state.

______Obtain a library card in your new state.

______Change gym[5], social clubs and service clubs to your new state (e.g., Kiwanis, golf club).

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[3] *<u>Beware</u>*: being outside of New York for more than half of tax year is not evidence of your non-residency status. See: NY Tax Law §605(b)(1)(A). Some other states have similar rules.

[4] For example, according to Florida Statute 196.031(5), a Florida resident is not entitled to a Florida homestead exemption if they are receiving an ad valorem tax exemption or credit in another state where the other state requires permanent residency of the property owner. Florida courts have ruled that a "family unit" cannot claim homestead exemptions in multiple states even if the properties are owned solely by each spouse.

[5] *<u>Beware</u>*: Pending a lawsuit, Michael Motamed declared himself a Florida resident with a Florida homestead.
The problem: his California gym records from California show he worked out there 300 out of 365 days. See: *Ramos v Motamed,* 245 So.3d 735 (2018).

______Serve on local Charitable Boards; shift localized charitable deductions to the new state.

______Change voter registration to your new state and terminate your former voter registration.

______Sign new wills, trusts, medical directives and powers of attorney under your new state's laws.

______Engage a local doctor, dentist and/or chiropractor; have medical records moved to your local doctor.

_____Move your religious affiliation and membership to a local group in your new state; Make local contributions.

______Have your federal tax returns go to your new state's address – never have them go to your former address or to an address in your former state of domicile (e.g., using your attorney's address in the old state)[6]

______Have credit cards, brokerage statements and other financial related mail go to your new state address.

______Have any minor children attend schools in your new state and have your spouse move to your new state of domicile.

______If you have pets, make sure the pets are located in your new state with a local vet treating the animals; have vaccinations and shots done by the local vet.[7]

______If you own an interest in any S corporations, Partnerships or LLCs that allocates you income that is taxable in the former state, determine if the former state's tax laws permit the entity to pay local based taxes for all non-residents and eliminate the requirement that the owners file a local non-resident tax return.[8]

______Focus your social, economic and other activities in the new state of residency (e.g. join the local Rotary Club).

______If possible, move your business and investment activities to the new state. [9]

[6] State and federal tax authorities often share taxpayer information, such as taxpayer addresses.
[7] See: Matter of Blatt (Determination DTA NO. 826504) where the location of the taxpayer's beloved dog was a principal reason (cited by the court) that the domicile had been changed from New York City to Dallas.
[8] For example, see Georgia statute §48-7-129(b)(1) which reads (in part): *"As an alternative to the withholding requirement imposed by subsection (a) of this Code section, the commissioner may allow the filing of composite returns by partnerships, Subchapter "S" corporations, or limited liability companies on behalf of their nonresident members and may provide for the requirements of filing composite returns by regulation. For purposes of this subsection, the term "composite return" means a return filed by a partnership, Subchapter "S" corporation, or limited liability company on behalf of all of its nonresident members which reports and remits the Georgia income tax of the nonresident members."*
[9] Even if you are a non-resident of another state, local businesses and investments can create taxable income in that state. States are increasing targeting non-residents with local taxes. For example, in 2014, New York state noted that it collected $6.2 billion in taxes from non-residents.