

Private Client Services Update

In this issue of our Private Client Services Update we will discuss the different estate planning issues raised by dual residences or relocation. This Update will also explain how to effectively change or declare domicile.

Relocation

One of the main reasons to consider relocation is to benefit from another state's tax and estate law. For example, in New Jersey, an estate is subject to both federal and state estate taxes, however, in Florida, an estate is only subject to federal estate taxes because Florida does not currently impose an estate tax. In addition, certain states, like Florida, do not impose an income tax either.

How to effectively change domicile

An estate is probated in the state where the decedent is domiciled. To ensure that your estate will benefit from a particular state's law, you must establish domicile in that state. Domicile is determined by a decedent's physical residence in that state and the decedent's intent to make that state his or her permanent domicile. Although physical residence is easy to prove, the decedent's intent is often more difficult to establish. Intent is usually determined by weighing certain factors, such as where the decedent was registered to vote and which state issued the decedent's driver's license and registration. Domicile is a very important issue for those who occupy dual residences or maintain real or personal property in a number of states or are considering relocation because estate plans are generally designed with a specific state's laws in mind so that the estate can either avoid or benefit from that particular state's tax and probate laws. If a person occupies dual residences, or relocates, or maintains real and personal property in a number of states, and his or her current estate plan has not been updated to comply with the

tax and probate laws of the new domiciliary state, the estate may not effectively avoid or benefit from that state's tax or probate laws.

If you are thinking of relocating, it is best to effectively change your domicile to your new state by taking the following steps listed below, and then consult an attorney licensed to practice in your new domicile state to review your estate plan.

Below is a checklist of the following primary steps that should be satisfied if you are considering relocation or establishing domicile in another state. It is best to strive to satisfy as many of the checklist items as possible.

- Obtain a driver's license and relinquish your previous state's driver's license
- Acquire license plates and register car in new state and relinquish your previous state's license plates
- Register to vote in your new state and actually vote
- File a nonresident, rather than a resident, income tax return if there is source income from your previous state
- File federal income tax return with the corresponding IRS service center for your new domicile state
- Transfer safe deposit box contents
- Open a bank account
- Change credit cards to your new address
- Execute new wills, powers of attorney, health care proxies and living wills
- Refer to your new state's residence in all trusts and other legal documents
- File a declaration of domicile if applicable
- File for a homestead exemption if applicable
- Affiliate with in-state clubs, houses of worship, and social and other organizations
- Where feasible, have family gatherings and social activities centered in your new state
- Consider selling business interests in your previous state
- If you intend to invest in real estate or businesses, focus on those in your new state
- Transfer works of art, expensive furniture and heirlooms to your new state

___ Consider acquiring cemetery plots in your new state

___ List your new state residence as the primary residence on all homeowners insurance

In addition to protecting the monetary value of the estate, there are other estate planning issues to consider as well if you relocate. It is crucial to check that your health care proxies, living wills and powers of attorney are in compliance with your new domiciliary state's laws.

Estate planning issues to consider if you own real or personal property in more than one state

If you do not plan on relocating to a different state, but maintain real or personal property in another state, you may wish to reconsider your estate plan and how that real and personal property is titled to ensure that your estate is not subject to additional taxes or administrative expenses. Real property and tangible personal property (such as paintings or furniture) have their "situs" (their location for legal purposes) in the state in which they are located. This means that the real and personal property will be subject to the federal estate tax, and will also be subject to the estate tax of the state where they are located, if there is one. Also, if you own real and personal property in a non-domiciliary state, the personal representative of your estate will have to conduct a so-called "ancillary probate" of your estate in the non-domiciliary state. However, intangible property, such as stocks or interests in a partnership or limited liability corporation, generally has its situs in the state where the decedent is domiciled. For example, if a decedent is domiciled in Florida and owns real property in New York titled in the decedent's name, then the real property will be subject to federal estate taxes and New York estate taxes, and the estate will have to be probated in Florida as well as New York. However, if that same decedent held the New York real property through an LLC or partnership, the New York real property would be considered intangible personal property, and would be subject only to federal estate taxes because Florida does not impose estate taxes, and the estate would only have to be probated in Florida.

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