

Clients Want to Move Out of New York? Make Sure Your Clients Know What To Do



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As the tax laws of the country have changed, with consequences at the state level, some residents of New York State are wondering if they should stay in New York or move to another state, where they would pay less tax.

Let's start with the basics. New York State has two ways of defining a NYS resident:

1. An individual who is domiciled in NYS; OR
2. An individual who is not domiciled in NYS, and:
 - a. has a permanent place of abode in NYS, AND
 - b. spends more than 183 days of the taxable year in NYS.

A taxpayer who meets the second test is a statutory resident of NYS.

Many taxpayers who are domiciled in New York and spend winters in a second home erroneously believe that if they stay out of New York for 6 months of the year, and make a few minor changes, such as obtaining a driver's license in the new state, they will no longer be subject to tax as a NYS resident. They don't realize that they may not have changed their domicile, and therefore the statutory resident test cannot be applied. Unfortunately for the taxpayer, New York State requires far more than a new driver's license to show a change of domicile.

While a taxpayer may have multiple residences, there can be only one domicile. The State evaluates several primary factors including consideration of the home, business ties, time spent in each place, location of items near and dear, and family connections. The taxpayer must show, by clear and convincing evidence, that the ties to the new place are stronger and the connections to NYS have become much weaker or been severed. While the State will place some value on minor factors such as obtaining a driver's license or registering to vote, these do not carry as much weight as the primary factors.

A recent case illustrates the elements of a successful domicile change, with the facts of a love story worthy of a Hollywood film. In **Patrick** (In re Patrick, DTA Nos 826838 & 826839, June 15, 2017; note that Administrative Law Judge decisions are not precedential) the taxpayer reconnected with his high school sweetheart and they immediately made plans to marry. The taxpayer kept his NYC apartment, but was able to show that he had established connections to his new home, and he did not maintain strong ties to New York. He and his new wife purchased a luxury apartment in Paris and renovated it extensively. Although the taxpayer spent significant time in New York during the audit years, the explanations given by the taxpayer, including necessary treatment in NY for a medical condition, were sufficient so that this factor did not weigh against a change of domicile. The ALJ reviewed the primary factors, and emphasized that the taxpayer made a drastic change of lifestyle in connection with the change of domicile, including taking early retirement from his long-term employment at Colgate, at a financial cost.

To effectively prove a change of domicile, it's important to be mindful of the State's requirements and to document the supporting factors and the time spent as much as possible. When your New York clients are considering a change to their domicile, they need to know that there's more to be done than simply making the decision to leave the cold climate of New York.

Yvonne concentrates her practice on assisting Individuals and businesses with the resolution of their IRS and NYS tax controversies. Yvonne can be reached at: ycort@cbmslaw.com or 516.931.8100 ext. 370