
The mobility in today's society increases the likelihood that, upon your death, several states may try to levy death taxes on your estate. But you can lessen the chances by taking certain steps to indicate an intent to change your "domicile."

Avoiding Multi-State Death Taxes: Steps to Establishing Your Domicile

By David M. Daly

John T. Dorrance died on September 21, 1930, domiciled—he thought—in the state of New Jersey where he had a residence and had worked since completing his college education in 1907. His estate probated his will in New Jersey.

However, Mr. Dorrance also had a residence in Pennsylvania, which he built in 1925 and which he actually occupied as his residence most of the time immediately prior to his death. The Pennsylvania courts decided that Mr. Dorrance was domiciled in Pennsylvania and collected inheritance taxes of

\$14,394,698. His estate appealed to United States Supreme Court, which refused to hear the case. Subsequently, the New Jersey courts determined that Mr. Dorrance was domiciled in New Jersey, that Pennsylvania had no jurisdiction to levy an inheritance tax, and assessed a New Jersey inheritance tax of \$12,247,333. Again the estate appealed to the U.S. Supreme Court, which refused to grant a hearing.

The upshot was that Mr. Dorrance died domiciled in two states for inheritance tax purposes, resulting in a doubling of his inheritance taxes, which totaled \$26,642,031.

The story is an old one, and most individuals even today do not have an estate of Mr. Dorrance's proportions. But, the potential problem still exists and it does not take a large estate to trigger state inheritance taxes, although the amount varies by state. In addition, the mobility of individuals in today's society increases the likelihood that upon a taxpayer's death, more than one state will claim the decedent as a "domiciliary." This is of particular concern when a taxpayer moves from one state to another, but retains a home, earns income, or spends substantial time in the first state where he was formerly a permanent resident.

Your status as a "domiciliary" is significant when it comes time for a state to levy estate taxes or inheritance taxes (death

taxes). For this purpose, tangible personal property and real estate are usually taxed in the state in which that property is located, regardless of the owner's "domicile." However, for intangible property—such as stocks, bonds, and bank accounts—death taxes are levied based on the owner's "domicile."

Generally, the term "domicile" refers to the place that an individual intends to be his or her permanent home, or the place to which he or she intends to return after an absence. It is to be distinguished from the term "residence." Although you may simultaneously have residences in many states, theoretically at least, you can have only one state of domicile at any given time. Under the laws of most states, an individual's domicile may be changed only by moving to a new state with the bona fide intention of making a fixed and permanent home there—in other words, a new domicile. The individual (but in the case of a decedent, the fiduciary of the estate) has the burden of proving that the necessary intention existed. To make matters more difficult, in many states there is a presumption that the individual did not intend to change his or her domicile.

The actual legal definition of domicile may vary from one state to another, and the question of domicile depends entirely upon the facts in each case. Needless to say, separate taxing authorities can view the same facts and reach different conclusions resulting, occasionally, in inconsistent determinations made by different states, each claiming that the deceased was domiciled within its borders. If the states involved have passed part or all of the Uniform Interstate Compromise of Death Taxes Act, the states may work out a compromise between themselves in a particular situation, but at best, the estate will pay death taxes at the rates of the highest state and, at worst, if no compromise can be reached or the states have not adopted this act, the estate could end up paying full death taxes to each state. [If a state has adopted this act or similar legislation, it will be found in the state's inheritance or estate tax statutes, but it would probably be best to check with a local trust and estate attorney.] In most cases, however, this dilemma can be avoided with careful advance planning.

Here is a list of actions that you can take as evidence of your intention to affirmatively change domicile from one state to another state. While this article is directed toward the determi-

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nation of domicile for estate tax purposes, these same factors are used by the various states to determine liability for income tax purposes, although an individual may be subject to income tax liability in a state in which he or she is not domiciled.

- **Voter registration:** Register to vote in both national and state elections in the new state and vote in as many elections as possible. A letter should be sent to the bureau in charge of voter registration in the former state explicitly requesting that your name be removed from the voter registration rolls in that state.

- **Political activity:** Any activity, including membership with local political organizations or contributions to a particular party or candidate should be centered in the new state. Political activity in the former state should be limited or terminated entirely. Again, a letter of resignation should be sent to the political organization in the former state.

- **Principal business activities:** To the extent possible, conduct all business affairs from the new state and refrain from the conduct of business in the former state. This is not as important where the change of domicile is to a state within easy commuting distance to the former state.

- **Multiple residence:** If a residence is retained in the former state, to the extent possible, such residence should be modest compared to the new home and used as a “vacation” home.

- **Principal center of social affairs:** Join a church, temple, religious organizations, social clubs, charitable organizations, etc., in the new state and send letters of resignation to such organizations in the former state. Form new social relationships in the new state and entertain socially there, particularly family celebrations, such as graduations and weddings.

- **Physical presence:** Spend a greater proportion of your time in the new domicile as opposed to the former state. For income tax purposes, presence within a state for a certain period of time in a given year may subject you to income taxes in that state if you maintain any kind of a residence in the state, even if you are not deemed domiciled in the state.

- **The location of principal possessions:** Remove a significant portion of your valuable tangible personal property such as paintings, pets, collections, family heirlooms, photo albums, antique furniture, etc., to the new state. This evidences the character of the old house, if retained, as a “second” home. It is expected that your most cherished belongings would be in your permanent domicile. The date on which the tangibles are moved to the new state will also be evidence of the date or approximate date of the change in domicile.

- **Federal tax returns:** File all federal returns, Form 1040 and any estimated tax returns, at the proper Internal Revenue Office for the new state.

- **Local taxes:** File all tax returns in the former state as that of a non-resident and file and pay all resident income taxes, tangible and intangible taxes, and any other form of local taxes in the new state.

- **Vehicles and licenses:** Re-register any automobiles, boats, planes, etc., in the new state. At the same time, terminate old registrations and surrender plates in the former state. Terminate your driver's license in the former state and secure a new

license in the new state.

- **Investment accounts:** Open bank accounts—savings, checking, and money market—in the new state and close existing accounts in the former state. If an account is used in the former state, because of business there or retention of a residence, keep the balances small compared to the balance in the new state. Brokerage accounts and relationships should be terminated in the former state and created in the new state or, for national firms, local branches in the new state should be used.

- **Mail:** Have all mail, or at least the bulk of it, delivered to the new address, especially magazines and periodicals. Notify all transfer agents, dividend agents, partnerships, etc., in which you hold any interest to remit all income, reports, and tax statements addressed to the new domicile. If a residence is maintained in the old state, direct that all electric, telephone, cable television, and other monthly bills be sent to the address in the new state. Mail out change of address forms to government agencies, friends, magazine publishers, doctors, lawyers, accountants, creditors, and debtors, and notify the post office to forward mail to the new address.

- **Consistency:** Whenever a home address is requested, give the address in the new state. The new address should be used on deeds, contracts, leases, car rental forms, hotel registrations, credit cards, applications, etc.

- **Legal documents:** New wills and trusts, to the extent possible, should be drafted showing the new state of domicile. Powers of attorney and healthcare proxies that conform with the laws of the new state should be executed. Avoid a codicil that leaves your old will stating the former state as your domicile.

- **Registration:** File any residency registration or declaration of domicile that may be available, as for example, in Florida.

- **Homestead exemption:** Take the steps necessary to qualify for and claim any homestead exemption from real estate taxes that may be available in the new state.

- **Benefits tied to principal residence:** Do not claim any local rent control status, veteran's exemption from real estate taxes, or other benefits that apply on to a principal residence in the former state of residence.

- **Safe deposit box:** Obtain a safe deposit box in the new state, and close any boxes in the former state. Any valuable jewelry, coin or stamp collections, important papers such as birth certificate, marriage certificate, stock and bonds, etc., formerly kept in a safe deposit box in the former state should be transferred to the safe deposit boxes in the new state.

- **Charge accounts:** Open charge accounts at establishments in the new state, such as department stores, service stations, and supermarkets. Terminate the account in the old state. Use the new accounts whenever possible.

- **Residences:** Purchase a home in the new state and sell your residence in the former state, if possible. If a residence in the former state is retained, it should be smaller and conservatively furnished as compared to the new home. If you lease a residence in the new state, the lease term should be for as long as practicable.

- **Insurance:** Purchase new insurance coverage through local brokers in the new state. This would include life, homeowners,

car, boat, or plane insurance and any umbrella liability policies. Where available, insurance purchased in the new state should cover assets retained in the old state.

- **Cable television:** Cancel any cable subscription to all but basic service at the residence retained in the former state and subscribe to an extended service in the new state.

- **Season ticket subscriptions:** Do not renew season ticket subscriptions for sporting events, theater, ballet, and operas in the former state. If possible, surrender the remaining tickets for a refund, or give them to a friend or charitable organization indicating in writing that you have moved to a new state.

- **Professional services:** Find and establish professional relationships with the local doctors, dental and other medical professionals, attorneys, accountants, bankers, brokers, etc., and terminate such relationships in the former state.

- **Cemetery plots:** Sell or terminate interest in cemetery plots in the former state and purchase plots or arrange for disposal of remains in the new state.

- **Education:** Children should attend schools, particularly at the primary and secondary levels, in the school district located in the new state.

The above list is by no means exhaustive, and some recommendations may be inconvenient or inappropriate to your particular situation. In the final analysis, it is the number and significance of the contacts with each state that will be weighed. Any activity that lends credence to the proposition that you consider the home in the new state to be your main base of operations (business, social, or civic) will help to establish the fact of domicile there. It is vital to remember that the burden of proving the change of domicile from the former state to the new state is on the one claiming the new domicile. For death tax

purposes, this will be the fiduciary of your estate and it is likely that he or she will be attempting to prove the change of domicile many years after the fact. Therefore, all records, letters, and other documentation that evidence the change should be kept in a safe place where they will be available to a fiduciary.

It is generally easier to prove a change in domicile if the change is done at one time or within a short period of time—for example, if the job is terminated and the home is sold in the former state and a new job started and residence purchased in the new state. It is much tougher to prove if the change is gradual over a long period of time.

Many of the factors listed herein will not of themselves prove a change of domicile and may be considered by the tax examiners as self-serving, but the failure to make some of the changes could be disastrous to a claimed change of domicile. While all of the factors are important, the six factors that the state of New York considers to be the most important are:

- Retention of "historical" home,
- Business connections,
- Location of significant tangible personal property,
- Place where time is spent,
- Family connections, and
- Social, political, civic, and religious connections.

If a change in domicile is intended, you may want to focus on these factors. If one or more factors tend heavily to the former state, compliance with the other factors becomes extremely important.

While a change of domicile, by definition, is based upon the intent of the individual, it is his or her actions that will be examined to determine that intent.



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