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Estate Planning Update July 2016 - Moving to a New State?

Many of our clients move to new states each year – for a new climate, for a new job, to be closer to friends or relatives. A new state also means a new set of rules governing your estate planning documents, as well as your income, gift and estate taxes. Coincidentally or not, the move is often to a state with a better income, gift and estate tax environment. **The Estate Planning Basics** If you are moving to a new state, you should check in with your estate planning attorney. You should have a health care proxy and living will that are consistent with the laws of your new state. Changes to wills and trusts may also be necessary. You should review the roles of fiduciaries – Florida in particular has stringent rules on who can serve as a personal representative (executor) of an estate. On a more personal level, the change in location may affect whom you want to serve as health care agent, personal representative or trustee. Your estate planner can walk you through these and other considerations. In states that our attorneys cover, including Florida, we can prepare the new documents; otherwise, we can coordinate the process with a local attorney. If you have irrevocable trusts, they should be reviewed as well. A change of domicile by the donor, beneficiary or trustee may have a significant impact on the income taxation of the trust – and may present a planning opportunity. How detailed can a domicile audit be? In a recent case, one of our clients was asked to prove where he had his dog groomed. If you have any doubts about how seriously states take changes of domicile, see this recent *New York Times* article. **Tax Planning** Florida has no income, gift or estate tax, and many people who spend part of the year in Florida want to take advantage of this favorable environment. There are significant variations between other states as well. Leaving "Old State" taxes behind is not as simple as spending a certain number of days per year in "New State." To change domicile successfully, you will have to be able to prove you "abandoned" your old domicile and adopted the new domicile. Clients often ask for checklists or rely on cocktail party conversation when changing their domicile. An overview can certainly be helpful – see our *December 2011 Estate Planning Update* for a summary. However, each situation is different, and it is important to get advice specific to your situation. The stakes are high when it comes to changing domicile. If you believe you have changed domicile from Old State to New State, but later are found still to be domiciled in Old State:

- You may be liable to Old State for *income taxes*, plus interest and penalties. Because domicile audits may involve several years, these amounts can be substantial.
- Your estate may find itself liable for an unexpected state *estate tax* after a domicile audit. In larger estates the effective increase in estate tax can be over 10 percent of the value of the estate.

For more information, see the recommended article below about the domicile planning process.