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COVID-19 May Impact State Statutory Residency Planning

You own residential property in two states, with your domicile in state A and a second home in state B. Conscious of the statutory residency rules in state B, you have carefully planned your calendar, spending time in both states, but never exceeding 183 days in state B. Unexpectedly, due to quarantines and travel bans caused by COVID-19, you are now required to stay in state B longer than you planned. Should you be concerned that your tax planning has been for naught?

In most states, statutory residency is determined by a fairly objective formula. Generally, if a taxpayer maintains a permanent place of abode in a state and spends more than 183 days there, that state will treat him or her as a resident for income tax purposes, regardless of where they are domiciled. A taxpayer should carefully document both the amount and the reason for the time spent in a state. While the test for statutory residency differs from the test for domicile, both consider time spent in their determination. In addition to substantiating the formulaic day count for determining statutory residency, appropriately documenting the reason for the time spent in the state (quarantine, travel restrictions, etc.) may still be useful when addressing the time factor in a domicile audit, which is less formulaic than the statutory residency test. Without careful planning, a taxpayer could find himself or herself subject to tax on all of his or her income in two states, either as a domiciliary or as a resident.

Most often under audit, the determination of whether a taxpayer meets a state's statutory residency test turns on the number of days spent in that state. As a general rule, both full and partial days are each counted as a day when counting the number of days spent in a state. However, a number of states have exceptions to what constitutes a day, including travel days and days spent for medical reasons, but these can be extremely limited. As an example, New York provides an exception for medical treatment, but in practice limits that further by requiring the treatment to be provided by a medical facility. While there is nothing in the state statute that requires treatment be provided in a medical facility, New York's Department of Taxation and Finance has taken the position that the exclusion applies to circumstances where the person is confined to a medical institution, such as a hospital or care facility.

So far, states have not addressed whether the travel limitations caused by COVID-19 will affect the application of state statutory residency tests. Whether such days are counted, excluded as a defined exception or disregarded by ruling or regulation remains to be determined. Absent clear guidance, affected taxpayers will need to keep these unforeseen days in mind and possibly adjust their travel plans for the remainder of the year. For more information regarding this and other tax-related concerns, please contact the attorneys at Day Pitney.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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