Winter 2019/2020

Estate Planning Update Winter 2019/2020 - Breaking Up Can Be Hard: Moving to a Lower-Tax State

This time of year, as the temperatures continue to plummet up north, Floridians receive numerous phone calls from friends and relatives inquiring about making the move south. With the increases in state income tax rates for higher-income taxpayers in many Northeastern states, and with the passage of the Tax Cuts and Jobs Act, these calls have increased significantly, as many individuals residing in high-tax states decide it is time to make the move to lower-tax states like Florida.

The benefits of potentially zeroing out your state income tax bill are pretty clear. In addition, under prior law, state and local taxes (SALT), including state income tax and real estate tax, could be deducted as itemized deductions. Under the new law, federal tax deductions for state income and real estate taxes are now limited to a total of $10,000 for a married couple filing jointly. In many states, like New York, New Jersey, Massachusetts and Connecticut, where property taxes and income taxes are significant, the limitation on this deduction will come at a significant cost. Couple the loss of the full SALT deduction with a new limitation on the mortgage interest deduction to $750,000, and taxpayers in high-tax states may be even more willing to move.

In many states, including New York, Connecticut and Massachusetts, lower state estate tax exemption thresholds continue to apply to state residents. With the increased federal exemption, many of these same taxpayers would otherwise not be affected by or have to account for the federal estate tax. This will result in estate planning strategies requiring taxpayers to part with control over assets that they would otherwise be able to maintain in order to avoid costly state estate taxes.

> Day Pitney is hosting a Domicile and Residency Series, "Breaking Up Can Be Hard." We recently held the first two seminars in Stamford and Boston. Approximately 30 attendees gathered for each program to learn about overcoming the challenges of changing domicile, maintaining multiple residences and statutory residency, and the impact on income and estate taxes, asset protection and estate planning. Please stay tuned for dates for our New York and New Jersey programs in this series. They will be announced shortly and planning is also in progress for a webinar and a Spring 2020 program in Florida.
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> If you want to ensure you are on the invitation list for the upcoming events in this series in your area, please sign up here.

The good news is that Florida is very receptive to newcomers. The weather is great, there are no personal state income or estate taxes, and creditor protection laws are considered generous. The only challenge is that many northern states have a hard time letting go. Unfortunately, going to the Department of Motor Vehicles in Florida and exchanging your New York driver's license for a Florida one is not going to cut it for most state revenue departments.

Many states (including those in the Northeast) will tax individuals on their worldwide income if they are either a "domiciliary" or a statutory resident of that state.

The domicile test focuses on a taxpayer's intent to establish a primary home in another state. One can have multiple residences and even multiple citizenships, but only one domicile. A taxpayer maintains their initial domicile until they prove by clear and convincing evidence that they have abandoned their current domicile and acquired a new domicile (the "leave and land" test).

Intent is obviously difficult for a state to assess and requires reviewing the specific facts and evidence available to arrive at a conclusion. New York auditors, for example, are instructed to review five primary factors to infer intent. Broadly, these include the location of the taxpayer's primary home, continuing business connections in New York, time spent, the location of items near and dear, and the presence of family.

The statutory residency test is more formulaic in its approach, but equally confounding. Under this test, if a taxpayer maintains a permanent place of abode and spends more than 183 days in the state, the taxpayer is treated as a resident. When determining whether a dwelling qualifies as a permanent place of abode, the type of home, usage of that home and available access are important matters that need to be considered. Likewise, proving where one was when counting the 183 days, what days in fact count toward that number and what exceptions are available create additional complexity when administering this test.

Residency audits are already very common and huge revenue raisers for states. The expected exodus of higher-earning taxpayers to low-tax states, coupled with advances in technology allowing states access to information and location not previously available, will surely result in increased attention by state revenue departments.

Taxpayers contemplating a move to another state should make sure they plan appropriately or risk an expensive and intrusive audit. Requesting assistance from counsel in positioning oneself to withstand a residency audit is highly recommended. Please contact your Day Pitney attorney if you would like to review the steps you should take in order to make your move.