

Your home, for tax purposes

When it comes to taxes, your idea of where your home is may not match the opinion of the taxing authorities.

The problem arises usually when you maintain residences in more than one state. Your choice of domicile likely would be the state with the most favorable tax climate.

For instance, if you maintain a home in Florida or Nevada, both of which have no income taxes, or New Hampshire, which taxes only dividend and interest income, that state is likely to be your choice. But, unfortunately, the other state where you have a home, or have lived previously, may not see it that way.

No home run

That's what New York Yankees captain Derek Jeter discovered recently when the State of New York claimed that, despite his assertions that Florida was his legal residence, he owed state and local income taxes as a resident of New York.

As reported by the Associated Press, the dispute involved a three-year period (2001 through 2003) during which Jeter earned \$38 million. Jeter said that Florida had been his home since 1994. New York looked at the \$13 million apartment in Trump World Tower that he owned during the three-year period, some of his public statements, and the "items near and dear to him" that he kept in New York, and decided otherwise. (Jeter settled out of court for an unknown sum.)

The issue is "domicile"

Determining your "domicile" establishes where you live for tax purposes (some state laws use the term "legal residence"). What constitutes your domicile is not governed by simple, bright line rules but, rather, is a matter of your intentions, as indicated by your actions.

The IRS puts it like this: You can have more than one residence but you can have only one domicile—a permanent home that you intend to use for an indefinite, unlimited time and to which you intend to return whenever you leave.

In addition to the matter of assessing taxes, your domicile may determine the state where you will be probated and administered, as well as such other legalities as the enforcement of judicial orders.

Death taxes

Your estate owes tax according to the laws of the state that is determined to be your domicile. (However, your estate may be responsible for paying tax on the value of any real estate or personal property located in another state.)

Currently, a little over one-half of the states impose no state death taxes. Some states require an estate to pay tax only on the amount greater than the federal estate tax exemption. Other states have their own separate death tax structures. For people of considerable means, then, a state's death tax may prove to be very important in the choosing of a domicile.

Domicile indicators

The amount of time spent in one place isn't necessarily determinative of domicile. It is just one element that the tax authorities consider. You may live for several months a year in one state, and the state still may not be considered your domicile. Conversely, you can establish a domicile in a new state from the time that you move there.

The following are a few of the factors that tax officials will look at to establish your domicile:

- Where you vote and have the right to maintain public office.
- The location of the property that you own.
- Where you maintain your driver's license and registration.
- Where you file your state tax returns and whether you file as a nonresident.
- To which regional IRS office you file your federal income tax return.
- The location of your business, community and religious affiliations.
- Where you do the majority of your banking, rent a safe-deposit box and have your credit card, investment and other financial statements mailed.
- Where you have executed legal documents such as a will, trust, power of attorney or health-care proxy.
- Where you keep your valuable assets—works of art, expensive furniture, family heirlooms and other personal property.

Severing ties

It's not only a case of establishing the proper ties to your domicile of choice, but also of eliminating the connections to the residence that you don't wish to be your domicile. Most of the connections are the inverse of the factors that help you prove where you are domiciled: surrendering your driver's license; removing your name from the voter's rolls; closing most, if not all, of your financial accounts; and changing club, church and social memberships.

Again, although it is not conclusive, spending as little time as possible in the "nondomicile" state is helpful.

Before you make a move

If you are, or will be, maintaining a residence in a second state, investigate the tax laws and then choose where you wish your domicile to be for tax purposes. Then take the steps to make certain that you can prove convincingly that your choice is valid. If you have any doubts about whether you can overcome successfully a Derek Jeter-type challenge, consider obtaining legal guidance.

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