

## Changing Your Tax Residence

by Charles E. Falk

A New York newspaper recently reported that residents of New York and New Jersey were “voting with their feet” and moving to more tax friendly states. You have probably also heard that Florida has no personal income tax, no inheritance tax and generally no cold weather. Other states like Nevada may be even better. This sounds like a deal. However, your tax preparer has probably told you that the tax authorities are suspicious of “snow birds” and will check very carefully that you have actually moved your tax residence if Florida or some other state is in your future. Changing your tax residence is not difficult so long as you actually intend to change your tax residence. Taxpayers run into problems when they try to play a “shell game” with the tax authorities. Here are some frequently asked questions:

1. When am I a “Tax Resident”: You are a tax resident if you are either “domiciled” in the state or you spend a lot of time in a state even though you are “domiciled” somewhere else. New Jersey, New York and Pennsylvania all have similar rules. The law in New Jersey provides that a person will be a tax resident:
  - Who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate no more than 30 days of the taxable year in this State; or
  - Who is not domiciled in this State but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State, unless such individual is in the Armed Forces of the United States.

Thus, a taxpayer can be a tax resident in New Jersey whether or not he is domiciled in New Jersey. To determine if a person is domiciled in New Jersey a facts and circumstances test is applied. The State of New Jersey has published the following guidance:

To determine whether a person is a resident or nonresident, it is necessary to know the person's domicile. Domicile is any place an individual regards as their permanent home. Once established, a domicile continues until the person moves to a new location with the intent to establish a fixed and permanent home there and has no intention of returning to his or her previous home. Moving to a new location, even for a long time, does not result in a change of domicile if the intent is to remain only for a limited time.

Thus the New Jersey resident who intends to return to New Jersey after living and working (for example) in an overseas location for a period, no matter how long the duration, has not given up his New Jersey domicile and must file as a New Jersey resident for the entire period...

A place of abode, whether in this State or elsewhere, is not deemed to be permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. If the dwelling is maintained for more than a temporary stay, then it will be considered permanent...

It should be noted that all the statutory conditions for nonresident taxpayer status must be satisfied by the taxpayer.

The burden of proof would be upon the individual asserting a change of domicile to show that the necessary intention existed to abandon his or her domicile in one location and to establish a fixed and permanent home in another.

If the taxpayer is domiciled in New Jersey, the taxpayer will be a resident unless he has no permanent home in New Jersey, has a home in another state and doesn't spend more than 30 days in New Jersey. This can be a bit of a problem if the taxpayer wants to see his grandchildren who live in New Jersey. If the taxpayer is treated as not domiciled in New Jersey, then the taxpayer can maintain a permanent home in New Jersey so long as the person doesn't spend more than 183 days in New Jersey.

2. If I am Not Domiciled in New Jersey, do I have to Live in Another State for at least 183 Days: No, just don't come to New Jersey for 183 days in the taxable year. In counting days, New Jersey includes stopovers at Newark Airport while travelling from Florida to Europe. Further, state taxing authorities have been known to review telephone bills, credit card statements and other evidence. The burden of proof is on the taxpayer to show that he has not been in the state 183 days. In a recent case, a New York hedge fund magnate, Julian Robertson, saved \$27 million dollars in New York City taxes by maintaining meticulous records as to his whereabouts. The Wall Street Journal made the following comment regarding Mr. Robertson's case:

A meticulous assistant kept a computer calendar so precisely that she even counted as a day in New York one evening when Mr. Robertson crossed the George Washington Bridge at 11:45 p.m. and entered the city.

Mrs. Robertson helped out by testifying that she can't stand to have Mr. Robertson around when she's packing for a trip and therefore would have banished him from Manhattan on the day before their departure on an overseas trip.

That a man who has everything would be willing to subject himself to such a trial—and to put himself under surveillance by his office staff—tells us something about the tax burdens that have become a sad fact of life in so much of America. Whether for baseball players or bond traders, New York City and surrounding locales should spend more effort encouraging people and businesses to locate here and fewer resources punishing those who do.

3. What is Meant by "Domicile": As stated above, the word "domicile" is a facts and circumstances test. It can be elusive. Professional athletes often have a difficult time. Derek Jeter may have had a tougher time with the New York State Tax Authorities than with the Boston Red Sox. In 1999, the New Jersey Tax Court in *Samuelsson v. New Jersey Division of Taxation*, determined that Kjell Samuelsson, a professional hockey player in the National Hockey League, and his wife Vicki were not domiciled in New Jersey. The Court described the facts as follows:

Up until the 1998-1999 hockey season, Kjell Samuelsson played hockey for the Philadelphia Flyers (a professional ice hockey team in the National Hockey League ("NHL")). Mr. and Mrs. Samuelsson owned a home in Voorhees, New Jersey. They also owned a seasonal (summer) home in Sweden and an investment property in South Carolina. Through 1998, the Samuelssons filed New Jersey resident income tax returns. For 1999, they filed a New Jersey resident income tax return claiming part year residence from July 1, 1999 to December 31, 1999. The Director claims that for gross income tax purposes, they were New Jersey residents for the entire year.

In October 1998, Kjell Samuelsson signed a one-year (1998-1999 seasonal) contract to play hockey for the Tampa Bay Lightning. As a result of that work obligation, the Samuelssons

rented a home in Tampa, Florida. They removed all of their furniture from the house in New Jersey and, at the expense of the Tampa Bay Lightning, moved it to their rental home in Florida, and a storage location in Florida. They listed their New Jersey home for sale. Mrs. Samuelsson testified that she looked to purchase a home in Tampa. The Samuelssons did not purchase a home in Florida because, Mrs. Samuelsson testified, they were not prepared to purchase a home in Florida before they sold their New Jersey home and they could not get an acceptable price for the New Jersey home. She also testified that a house for sale "shows better" if it is furnished, but that she had moved all of their furniture to Florida because they intended to move there.

Kjell Samuelsson, at age 41, retired from hockey at the end of the 1998-1999 season. The family spent the summer of 1999 in Sweden and returned to their New Jersey home in September 1999. In November 1999, Kjell Samuelsson was employed as an assistant coach with the Trenton (New Jersey) Titans hockey team.

The New Jersey Tax Court then described the definition of "Domicile".

Domicile is a matter of intent involving physical presence or contact with the given jurisdiction and an intention to remain in that jurisdiction or to return to that jurisdiction after leaving it. Once established, a domicile continues until superseded by a new one...No person is ever without a domicile in the eyes of the law, and a person is presumed to be domiciled in his domiciliary state until a new domicile is acquired...There can be no establishment of a new domicile unless there is proof of an intent to abandon an original domicile...Any disputed issue on the subject requires an evaluation of all the facts and circumstances of the case.

The Tax Court then framed the issue:

The issue, then, is did the Samuelssons abandon their New Jersey domicile in 1998 and resume it in the fall of 1999 or were they New Jersey domiciliaries throughout the period? To abandon their New Jersey domicile, they would have had to acquire a Florida domicile in the fall of 1998.

The Court then applied a "good and bad" factors test:

The facts supporting their acquisition of a Florida domicile and the abandonment of their New Jersey domicile revealed by the testimony of the Samuelssons and other evidence are as follows:

- (1) They moved all of their furniture and belongings to Florida.
- (2) They listed their New Jersey house for sale.
- (3) They did not rent out their New Jersey house.
- (4) Mrs. Samuelsson looked for a house to purchase in Florida.
- (5) They sadly said farewell to their friends in New Jersey.
- (6) They enrolled their children in school in Florida.
- (7) They closed their New Jersey bank accounts and opened accounts in Florida.
- (8) Mr. Samuelsson got a Florida driver's license and registered his car in Florida.

The facts supporting the argument that the Samuelssons never abandoned their New Jersey domicile are as follows:

- (1) They never sold their New Jersey home.
- (2) They returned to their New Jersey home within one year of moving to Florida.
- (3) They never purchased, but only rented, a home in Florida.
- (4) Mr. Samuelsson worked in Florida for less than one year-- when he left New Jersey, he was working in Philadelphia; when he returned he worked in Trenton and Philadelphia.
- (5) Mrs. Samuelsson did not change her voter registration or driver's license to Florida.

As in most cases the factors are never one way or the other, but the ultimate finding is based on a "gut" decision. Fortunately for Mr. Samuelsson, the Court found that he intended to abandon his residence for the period of time that he was in Florida. The Samuelsson case is instructive because it gives insight into how a court will decide if a person has moved his domicile. It goes without saying that factors such as voting, changing mail, changing a driver's license, etc. are indicia of intent. However, merely making these changes may not be enough. A taxpayer wishing to change his tax residence must be careful not to engage in acts that are inconsistent with becoming a non-resident. In *McDonald v. Director*, a 1989 New Jersey case, the New Jersey Tax Court found that a taxpayer not to be domiciled in New Jersey based on the following:

An individual who was domiciled in Florida and spent less than 183 days in New Jersey in 1985 was a nonresident taxpayer in New Jersey for that tax year, although the individual maintained a house in New Jersey. In 1983, the taxpayer purchased a house in Florida and intended to take up permanent residence. Based on the taxpayer's intention to live in Florida and a variety of factors, including voter registration, driver registration, bank account records and filed state and federal tax returns, the taxpayer had the necessary physical presence and intent to remain in Florida indefinitely prior to 1985 to establish domicile. The taxpayer's New Jersey house was retained for convenience only and no homestead rebate was claimed for this house in 1985. Further, the taxpayer spent only 143 days New Jersey in 1985. Accordingly, the taxpayer qualified as a nonresident taxpayer for 1985.

It is important to note that the Taxpayers did not claim a Homestead Rebate for the years at issue. This would have been inconsistent with their assertion that they were not domiciled in New Jersey.

4. Is the test for Domicile for Estate Tax Purposes the Same as for Income Taxes: The answer is generally "yes." However even if you are not domiciled in New Jersey, the New Jersey death tax may still reach you. This will be discussed in an article to be issued shortly.
5. Conclusion: Changing your tax residence requires careful planning and working closely with your tax professionals. There are many implications that go beyond this article. However, changing your tax residence may be an option in your overall tax planning, now, or in the future.

*The above is meant for discussion purposes only and no action should be taken without consultation with a competent tax advisor who is fully versed in a taxpayer's complete tax and financial profile. Many factors must be considered in any transaction strategy.*