



Tax considerations when changing state of domicile

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If you spend time in multiple states, where you are domiciled determines some of the laws that apply to you and may have a significant impact on asset preservation and the financial burden of state taxes. While there are no definitive rules to determine one's domicile, there are a number of factors that the courts have used.

Each year, many individuals contemplate establishing domicile in another state. While beautiful scenery, your preferred climate, and being closer to family may draw you to a new state, it's important to also consider the tax implications if you change domicile.

Individuals who spend significant time in more than one state should understand the benefits and costs of being considered domiciled in each of those jurisdictions. Also, individuals who recently changed or who are planning to change domicile should consider domicile planning as soon as possible.

Establishing domicile

Two essential elements in establishing a new domicile are your physical presence in a state coupled with your intention to make it your home either permanently or for an indefinite period of time. There is no specific period of residency necessary to establish domicile. One day may be sufficient provided the requisite intent exists, but the mere intention to acquire a new domicile unaccompanied by physical presence will not be enough.

No single factor alone establishes domicile, and each state has its own guidelines. How individuals conduct their affairs is the foundation. You can only have one domicile even though more than one state can claim to be that domicile. When you change domicile, it may be important to eliminate the old domiciliary tie and establish a new one within as short an amount of time as possible in order to minimize the period during which one might be exposed to potential competing residency or domicile claims by two jurisdictions.

For example, Florida, as a popular new domicile state, has developed guidelines around residency assertions; and while Florida's rules may be different from California, Wyoming, or Texas, etc., they are good examples of the issues and themes states utilize to determine domicile.

Generally, six factors are important in determining whether a sufficient relationship exists between individuals and a place to qualify that place as their domicile. These are:

1. A physically appropriate dwelling place
2. A reasonable amount of time spent there
3. The individual's principal activity there
4. The relationship with the persons and things customarily present there
5. The individual's attitude towards the place (i.e., you consider this place as your home for the present, indefinite time)
6. An intent on the part of the individual, when absent, to return there

If you only have one home, then your domicile is fixed there. If you have two or more homes—that is, more than one dwelling place where personal belongings are

kept, dependent family members reside, important activities are conducted, and the situation is intended to continue indefinitely—the law fixes your domicile at the principal home; that is, the home with which you are the most associated with.

Factors considered in determining change of domicile

The following is a list of factors that help document an intended change of domicile. The extent to which these factors apply may depend on the facts of your situation and the laws of the states in question. Generally, the more factors, the better in establishing your domicile.

Physical presence. Physical presence in the state suggests an intent that the state is your “home” state. Documents that indicate presence in the state are telephone bills, electric bills, and credit card statements.

Abandonment of prior domicile. Some states, like California, add another factor—abandonment—to the physical presence and intent test for a change of domicile. For California to recognize that you are no longer domiciled in California, you must show “abandonment of your prior domicile.” Accordingly, even if you demonstrate physical presence and intent to reside in a new domicile state, California may still assert taxation authority if you have not properly abandoned the California domicile.¹

Homestead exemption. In those states that have a homestead exemption, applying for the exemption is an important step.

Declaration of domicile. Some states allow you to sign a “declaration of domicile” in which you declare your domicile/primary residence is the new state.

Dwelling. Your home should be in keeping with your standard of living and compare favorably with any out-of-state residence. Additionally, most of your personal items, including your pets, should be located in the home in your new state of domicile. Some cases have turned on where the dog lived—how could you possibly claim to be domiciled somewhere your dog didn't live?

¹State of California Franchise Tax Board, *2024 Guidelines for Determining Resident Status*; <https://www.ftb.ca.gov/forms/2024/2024-1031-publication.pdf>

Business interests. If you own a business, consider transitioning at least the administration and financial aspects of the business to your new state.

Clubs. If you belong to any out-of-state clubs or organizations, consider changing the membership status to that of a nonresident. Joining various organizations within the new state can also be persuasive.

Charitable contributions. Consider making contributions to local charities in the area, as well as to local branches of national charitable organizations.

Spending. Some states examine the origination point of your checking and credit card transactions to determine domicile. For example, California may use these records to demonstrate that a majority of your transactions originated in California and assert this as a factor toward proving domicile there.²

Voting. You must be a permanent resident to become a qualified voter. Registering to vote, even if by absentee ballot, can be an important step to take. Consider maximizing political affiliations to your domicile's local organizations.

Tax returns. Consider filing all personal income tax returns using the new residence address.

Automobile registration and driver's license. Consider obtaining a driver's license and registering personal automobiles in your domicile.

Records. Even if you receive electronic statements, consider using your new residence as the mailing address for records from insurance companies, banks, employers, brokers, retailers, credit card companies, partnerships, or other organizations of which you are a member, as well as the Social Security Administration.

Agreements. Future legal agreements you enter into should indicate that you are a resident of the new state.

Passport. Consider updating your current passport to reflect your new domicile or apply for a new passport with your new domicile address.

² California State Board of Equalization, Formal Legal Opinion, *In re Bragg*, Appeal No. 2003-SBE-002.

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Bank and brokerage accounts. Consider transferring personal and business banking and investment relationships to the preferred state and paying personal bills through a bank account established in that state.

Safe deposit boxes. Consider closing your safe deposit box in the former state and opening a new one in the new domicile. Further, family records and valuables should be moved to the new domicile.

Will. When drafting a will or other estate planning documents, the document should state that you are a resident of your new domicile.

Former residence

Remember to reverse the above factors in breaking your ties with your former state. Not all states regard domicile and residence as synonymous. Therefore, it is important to also consider the laws of the state that you are leaving to determine whether additional steps are required to ensure you will not be subject to taxes in that state. Consult your attorney and tax advisor to determine the requirements of your former domicile to terminate those ties.

Summary

To enjoy the benefits of domicile in a particular state, you must make sure that your lifestyle is consistent with a permanent change of domicile while also avoiding the residency rules of your former state. Courts determine domicile by weighing the totality of factors, so take as many of the above steps as possible to substantiate your intent to change your domicile. The savings in income, property, and death taxes can be significant, but they must be weighed against the cost of changing your accustomed way of life.

If you are contemplating a change in domicile that will affect your legal and tax status, consult with your attorney and tax advisors to determine what is appropriate for your specific situation.