

ESTABLISHING YOUR PRIMARY RESIDENCE *Where Should I Hang my Hat?*

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This is one of a series of Research Briefs created by Brinton Eaton to keep our clients informed about key developments — in financial planning, tax strategy, and investment management — that we research and implement as appropriate on your behalf.

Where you reside can have far-reaching tax consequences. Income, property, and estate taxes vary considerably from state to state, and in some states can be quite substantial. Given the high stakes involved, more and more citizens have opted to move their primary residence, especially at retirement, while maintaining a home in their former resident state.

For example, many residents of the Midwest and Northeast (New York, New Jersey and Massachusetts, particularly) have moved to Florida due to its extremely tax-friendly laws. The Sunshine State currently imposes no taxes on income, estate, or intangible property, and also limits property tax escalation by capping annual assessment increases to the lesser of 3% or the Consumer Price Index increase. Compare this to income tax rates in the Northeast of 5 to 10%, state inheritance taxes ranging from 10 to 16%, and ever-increasing property taxes, and it is not difficult to see the economic benefits of the migration south.

Establishing Residence

When we discuss a resident state in this *Brief*, we are actually referring to domicile since you may have more than one residence but can have only one domicile (i.e., a permanent place of residence — one to which you always intend to return after any absences).

Taxpayers cannot simply declare their resident state — they must establish intent and create a fact pattern supporting their intent. Obviously, if a taxpayer has and maintains only one residence and merely spends short periods away from home, his/her legal residence is the state where the home is located. However, if your intention is to have two or more homes, the declaration as to your resident state is now compromised, and your actual facts will determine in which state you are resident in the eyes of the tax authorities.

There is no single set of facts to establish a resident state but rather numerous actions which, when taken together, support the taxpayer's intent.

It is important to note that it is not unconstitutional for two different states to successfully claim you as a resident for estate or inheritance tax purposes. It might therefore be extremely expensive if your actions do not fully support your intent. In this instance, an incomplete attempt to change residency can be much more costly than no attempt at all.

Actions Speak Louder Than Words

The key actions that would serve to support your intent of residency are:

- Spend at least 183 days per year in the state you wish to be resident.
- Spend less than 183 days per year in the state you wish to be non-resident.

The above two items may seem obvious and easy to comply with, but sometimes fact patterns could jeopardize the results. For example, if your intent is to be a resident of Florida but you have a second home in, and spend considerable time in, another state, you need to be cognizant that leaving for vacations from the other state may indicate intent that the other state is your place of abode.

Other important actions include:

- Make sure you notify your current Board of Elections and Motor Vehicle Agency of your move to a new state. All permanent registrations, e.g. passports, voter registrations, automobile registrations, and driver's licenses should be moved to your desired resident state.
- All income tax returns should be filed from your resident state and mailed to the corresponding regional tax office.
- Financial reports, such as bank accounts, investment statements, credit cards, etc., should all be addressed to the resident state.
- Wills should be updated to reflect the change of your residency.
- All mail, including magazine subscriptions, should be addressed to your resident state. When not in your resident state, have mail forwarded by the post office rather than temporarily changing your mailing address.
- If you intend to spend substantial time in more than your resident state, maintain a diary noting the state you are in each and every day.

This list is not exhaustive. If you believe any of your actions create ambiguity, you should consult your attorney for clarification.

The general rule? To change your state of residence, you should conduct all aspects of your life accordingly, in as unambiguous and visible (and documented) a manner as possible.

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To ensure compliance with newly imposed Internal Revenue Service requirements on tax practitioners, we inform you that any tax advice contained in this communication (including any attachments) is not being furnished with a view toward its being used (nor can it be used) for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. Each quarter, in your investment performance exhibit, we give you an update on how your portfolio has fared during the preceding three months, and for the year to date. In the cover letter accompanying that exhibit, we provide broad market benchmark returns against which you can compare your results. The purpose of this *Brief* is to clarify some important points about this comparison, since an incomplete understanding has led some of our clients to seriously under appreciate how well their portfolios are truly performing.