

FLORIDA RESIDENCY UPDATE

HOW YOU KNOW YOU HAVE IT, AND WHAT YOU MAY WANT TO DO IF ANOTHER STATE SAYS YOU DON'T.

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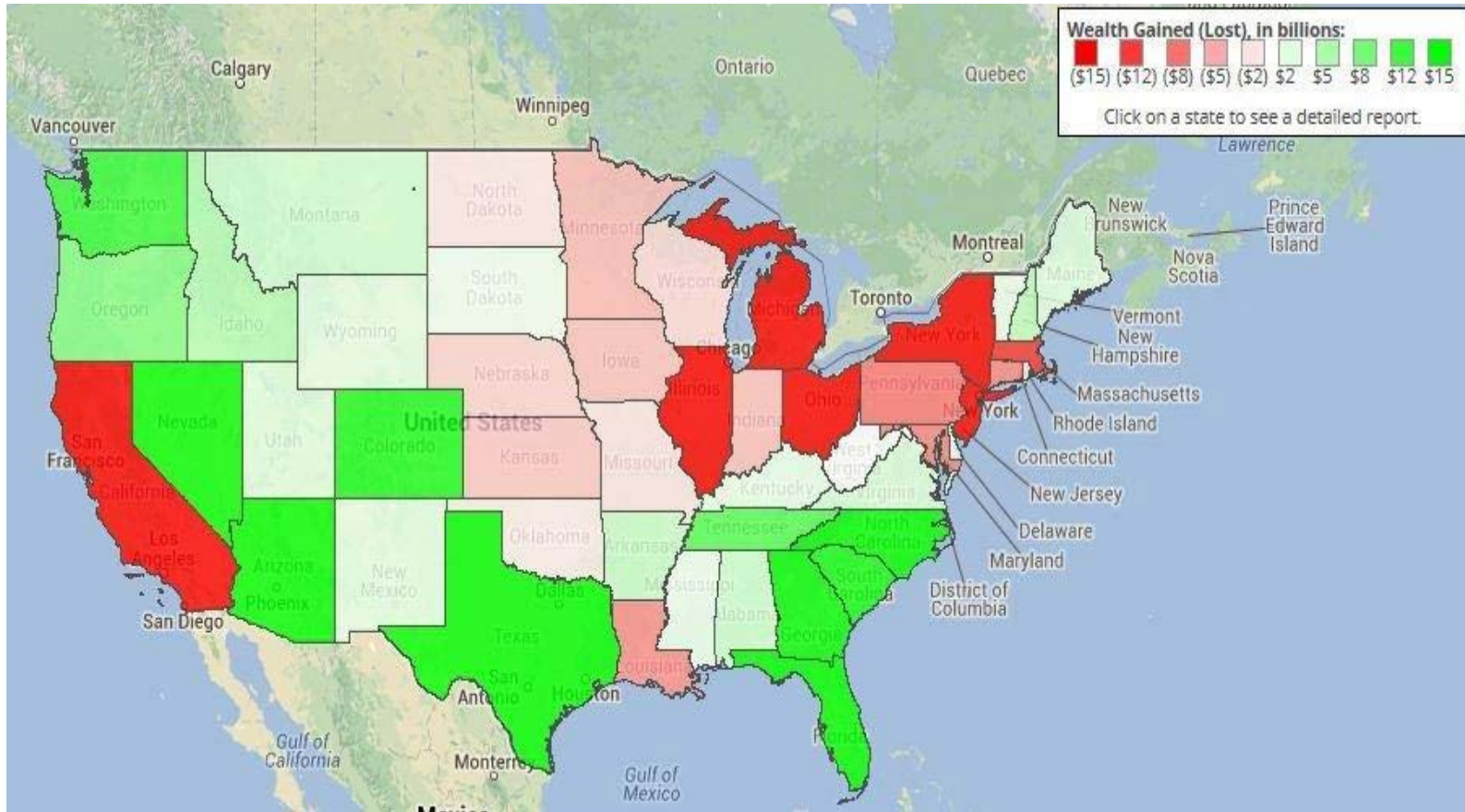
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SUMMARY OF TOPICS

TOPICS DISCUSSED

- Section 1: Overview of New York Residency Rules: Domicile
- Section 2: Overview of New York Residency Rules: Statutory Residency, plus Nonresident Allocation Issues
- Section 3: Enforcement/Audit Issues: Trips and Traps

HOW MONEY WALKS



How Money Walks by Travis H. Brown
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AUDITS!

What do these people have in common?



- 1) All have great hair
- 2) None have visited Florida
- 3) All have been audited by New York State

RESIDENCY - INTRODUCTION

➤ Why do we care?

- The Importance of Residency Status
 - The “One” Thing
- 17 states still impose an estate or inheritance tax
- NY’s Estate Tax
 - Top Rate: approximately 16%
 - Applies to Estates of \$3,125,000 or more through 3/31/16...but be careful (\$3,281,250 full phase out)

RESIDENCY – THE TWO TESTS

- Two Tests for Residency
 1. The Domicile Test
 2. The Statutory Residency Test
- These are the same tests that most states employ, including CT, NJ, PA, etc.



SECTION 1: DOMICILE – GENERAL PRINCIPLES

Domicile: What is it?

INTENT



ACTIONS



SECTION 1: DOMICILE – GENERAL PRINCIPLES

- “Leave and Land” – you have to stick the landing
- Burden of Proof Issues
- Looking for a “Lifestyle Change”
- Examples:
 1. Typical Snowbird
 2. Retirement
 3. Upsizing and Downsizing
 4. Health Issues
- Exceptions to the Domicile Rule: 30-day and 548-day Tests

SECTION 1: DOMICILE – THE FACTORS

➤ The 5 Primary Domicile Factors

1. Home
2. Business
3. Time
4. Near and Dear
5. Family

➤ The “Other” Factors



SECTION 1: DOMICILE – THE HOME FACTOR

➤ The HOME Factor

1. Comparing size, value, nature of use, etc.
2. Keeping the historical home?
3. Watch out for “STAR”
IRC § 121 issues.



SECTION 1: DOMICILE – THE BUSINESS FACTOR

- The BUSINESS Factor
 1. What you do, not just where you do it
 2. Focus on Active Business Ties
 3. Consider the location of business headquarters, your office, assistant, etc.



SECTION 1: DOMICILE – THE TIME FACTOR



➤ The TIME Factor

1. NOT the 183-day test!
2. How to count and compare
3. When does a year have more than 365 days?
4. Consider Quality, not just Quantity

SECTION 1: DOMICILE – THE NEAR AND DEAR FACTOR



➤ The NEAR AND DEAR Factor

1. Where's your teddy bear?
2. Use of pictures
3. Moving bills/insurance
4. Safe deposit boxes
5. Moving vans v. storage

SECTION 1: DOMICILE – THE FAMILY FACTOR

➤ The FAMILY Factor

1. The presumption
2. Separate spousal domicile
3. Minor Children can be critical
4. New Guidelines broaden this factor



SECTION 1: DOMICILE – THE “OTHER” FACTORS

- The OTHER Factors: the three-legged table
 1. Mailing address for bills, financial records, etc.
 2. FL Homestead/domicile declaration
 3. Safe deposit box
 4. Vehicle registrations
 5. Registering to vote (driver’s license)
 6. Manhattan Parking Tax Exemption
 7. Telephone service
 8. Citations in legal documents (wills, contracts, etc.)
- Best Offense is a Good Defense
- Planning Considerations

SECTION 1: DOMICILE CONCLUSION

- Bringing it “Home”
- It’s all about “intent”
- Focus on Big Picture and Lifestyle Factors
- Tell a compelling story
- *Matter of Irene D. May, ALJ (January 8, 2015)*

SECTION 2: STATUTORY RESIDENCY

- General Concept: Your home's somewhere else, but you're here enough to be taxed as a resident!



SECTION 2: STATUTORY RESIDENCY - OVERVIEW

➤ The Statutory Residency Test: 2 Components

1. 183 days

AND

2. A Permanent Place of Abode (“PPA”)



+



SECTION 2: STATUTORY RESIDENCY – DAY COUNT

➤ Factor #1: Day Count

1. A “day” in New York: a minute is a day
2. Only two exceptions: travel & medical
3. Burden of Proof: the importance of record keeping
4. Use of testimony/statements

➤ The Julian Robertson Case

- *Zanetti v. NYS Tax Appeals Tribunal*, 8 NYS3d 733 (3d Dept. 2015)

SECTION 2: STATUTORY RESIDENCY - DAY COUNT METHODOLOGY

Inadequate process

Calendar data



Travel logs



Phone logs



CC Receipts



Raising many concerns

- Incomplete
 - Unreliable
 - Retrospective
 - Self-reported
-
- Tedious
 - Costly

SECTION 2: STATUTORY RESIDENCY - MONAEO, A SOLUTION?



SECTION 2: STATUTORY RESIDENCY – PERMANENT PLACE OF ABODE (PPA)

- Factor #2: A “Permanent Place of Abode”
 1. Type of dwelling
 2. The “11-month” rule
 3. Habitability issues
- The *Barker Case*
 - Really? A Vacation Home?
- The *Gaied Case*: 2014 Case in NY’s Highest Court!
 - A game-changing win for the taxpayer?
- The *Sobotka Case*
 - Statutory Residency might not trump domicile....

SECTION 2: OVERVIEW OF RESIDENCY RULES, PART 2

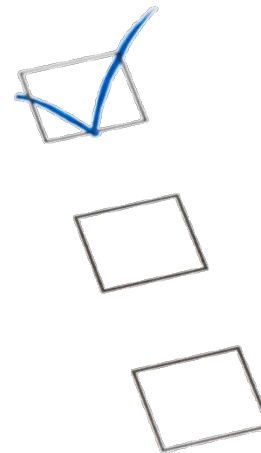
➤ The “No Box”

1. QUESTION: Did you or your spouse maintain living quarters in New York?

➤ The “NYC Days” Question

1. QUESTION: Enter the number of days spent in NYS/NYC in 2015

➤ QUESTION: Is Statutory Residency Constitutional as Applied by New York??



THE “SUPREME’S” TAKE A TAX CASE

A “WYNNE” FOR TAXPAYERS



“Maryland’s [tax law] creates an incentive for taxpayers to opt for intrastate rather than interstate economic activity.... States cannot ... tax [interstate] income earned by individuals ... less favorably.... This violates the Federal Constitution.”

CHAMBERLAIN (NY SUP CT 1/14/16):

New York's WYNNE CASE?

- Domiciliaries of CT were NYC commuters with a NYC apartment. They came to NY 183+ days annually
- As Statutory Residents of NYC and CT domiciliaries, they paid both NY and CT full taxes on \$15 million of income from Intangibles
- Both States tax their “residents” on worldwide income, including investment income from Intangibles
- Neither State allows a “Credit” for income not “sourced” to the other State
- Double Taxation?
- Unconstitutional?

SECTION 2: NONRESIDENT ALLOCATION ISSUES

- Wages (including “convenience” rule)
- Business and flow-through income
- Sales of property (*see, e.g. Ittleson*). Is location temporary?
- Sales of an LLC or S Corp owning NY real estate or sale of co-op shares is treated as a sale of NY real estate
- Termination Pay
- Retirement Income; Federal Preemption: 4 U.S.C. section 114(a)

SECTION 3: ENFORCEMENT AND AUDITS



SECTION 3: ENFORCEMENT - TOP TEN TIPS AND TRAPS

1. Nobody moves on January 1
2. Statutory residence trumps domicile (or does it?); see Sobotka
3. Getting resident tax credits elsewhere
4. Consistency!
5. Husbands and wives usually share a domicile

SECTION 3: ENFORCEMENT - TOP TEN TIPS AND TRAPS

6. Correct W-2s, 1099s and K-1s with old address
7. Don't let client "chat" with auditors
8. But sometimes they can make all the difference
9. Understand the burden of proof
10. Never amend a return under audit

QUESTIONS? (THE ANSWER IS 11)



THANK YOU



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