

TO: LeBlanc & Young Clients

DATE: January 2019

SUBJECT: Change of Domicile

If you, as a Maine resident, decide you want to change your domicile (primary residence) to another state, it may come as a surprise to you that the term “domicile” is not a clearly defined term in Maine’s tax statutes. The closest thing to a definition can be found in a 2006 decision by the Maine Supreme Judicial Court, which noted that the “somewhat elusive concept” of domicile involves two key components: (1) having a primary residence, and (2) intending to maintain it as your primary residence. Maine Revenue Services on its income tax website makes the same basic point, noting that your domicile “is the place you intend to make your home for a permanent or indefinite period of time. It is generally the place where you dwell and which is the center of your domestic, social and civic life.” In other words, it is your “home base.” A person can have multiple residences, but only one domicile. Physical presence at your primary residence is fairly easy to document, utilizing calendars, planners, plane tickets, EZ Pass records, cancelled checks, and credit card and other receipts. But how do you document intent? The answer provided by the Court, as well as Maine Revenue Services, is: look to the actual facts and circumstances of each particular case for various indicia of a person’s understanding and intent with regard to his or her residency. In our experience, the most important indicia of intent tend to be the following:

1. If your new state of domicile allows for the filing of a declaration or affidavit of domicile (as Florida does), make sure you complete and file such a form as soon as you can.
2. If you are entitled to a homestead exemption and/or a Veteran’s exemption with regard to your home in the new state, apply for those benefits as soon as possible. Since such benefits are typically available only to residents domiciled in the state, you will have to give up those benefits in Maine. If you fail to do so, Maine Revenue Services will likely argue that you are still domiciled in Maine for tax purposes.
3. Register to vote in the new state, obtain a new driver’s license there, and register your motor vehicles there. This means giving up your voter registration, driver’s license and motor vehicle registrations in Maine.
4. List your new non-Maine address as your primary address for all billing and correspondence, and as your address on all tax returns. If you retain a residence in Maine, it must be treated as a vacation or summer home only, and never as a primary address.
5. Similarly, your address recorded for insurance policies, deeds, mortgages, and other legal documents should be your new primary residence address, and not your Maine summer address. Any legal document signed by you after your change of domicile should reflect your residence in that new state.

6. If you obtain a hunting or fishing license in Maine, make sure you do so as a nonresident. If you apply for such a license as a resident, that could be construed as a statement of intent to change your domicile back to Maine!
7. If you have a safe deposit box, make sure it is located in your new state of domicile and not in Maine.
8. The same applies to banks, investment firms, and professionals with whom you do business. To the fullest extent feasible, these should all be in your new state of domicile. It is fine to maintain a relationship with a Maine physician if you spend your summers in Maine, but you should also have a primary doctor (and a lawyer and accountant) in your new state after moving from Maine.
  - a. Maine now has a statutory provision which expressly **prohibits** using the geographic location of a person's professional advisors for determining domicile for income tax purposes.
  - b. But there is no such express prohibition in determining domicile for **estate tax** purposes.
9. Fraternal, social and athletic memberships should also reflect your move from Maine to the new state. The same applies to your religious activities. They should now focus primarily on a church, synagogue, or other house of worship in the new state rather than Maine.
10. Charitable donations made to local charities should focus on charities in your new state of domicile. This does not mean you have to stop giving to Maine charities, but your charitable giving should reflect a change of your primary focus from Maine to the new state.
11. Where you keep your pets, where and how you do business, and where you maintain professional licenses can all be seen as indicia of your intent with regard to domicile. Be careful not to have any of these reflect primary residency or focus in Maine.
12. It is generally a good idea to have some or all of your estate planning documents updated in your new state. This is particularly true of powers of attorney and health care directives, which should be in a form familiar to third parties in that new state.

A decedent's domicile in a state other than Maine will determine the extent to which his or her estate may be subject to some **Maine estate tax**; but a living person's domicile does not necessarily determine that person's status as a resident or nonresident for state **income tax** purposes. This is because Maine has "statutory resident" provisions in its income tax statute which treat persons clearly domiciled elsewhere as Maine residents for income tax purposes if certain tests are met. For instance, a Florida resident with a summer home in Maine who "did all the right things" with regard to the 12 planning points listed above, but spent more than 183 days (including portions of a day) in Maine during a particular calendar year, will be treated as a Maine resident that year for state income tax purposes.