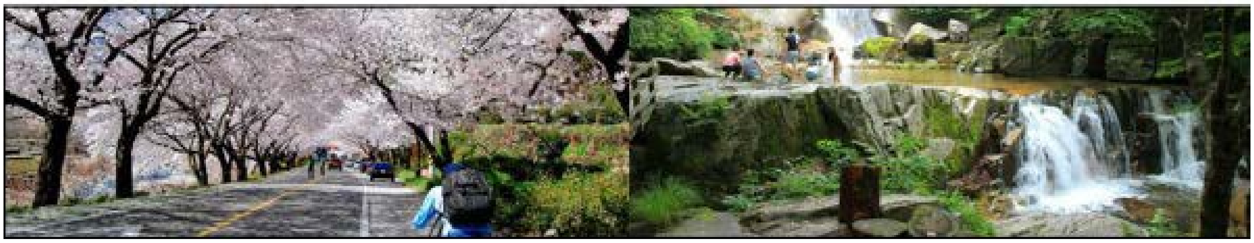

FINANCIAL PERSPECTIVES

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A New Phase in Residency Audits

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New Florida residents or others considering a move to the Sunshine State (or other states with no personal income tax) from New York should not be surprised to learn that the New York Department of Taxation and Finance has begun questioning taxpayers about their remote work outside of New Yorkand details about recent domicile changes.

2020 will be remembered as the year of the global pandemic and the year that remote work became the new normal. Mandated office closures allowedworkers to join family members temporarily or permanently in other states or seek refuge in warmer, less dense, and more affordable communities.

The recent questionnaires sent by New York's Tax Department are likely the tip of the iceberg. Other states concerned about falling tax collections and rising budget deficits may also start aggressively investigating and auditingtaxpayers. For example, in October 2020, New York issued guidance that nonresidents working outside the state during the pandemic for a New Yorkbusiness may owe income tax to New York.

Convenience or Necessity?

New York and several other states rely on the "Convenience of Employer" rule. A non-resident taxpayer's wage income is based on the employee's physical location if they work remotely due to necessity. However, if the employee works remotely for convenience, his or her income is tied to the employer's location and subject to withholding and personal income tax in the employer's state. The debate between "necessity" or "convenience" is sure to be tested with pandemic shutdown orders mandated by government entities.

Some states provide credit to taxpayers for taxes paid to other states to avoiddouble taxation. But, with states applying different rules, taxpayers may end up paying two states on the same income.

Changing Residency

Changing residency (domicile) from states such and New York toFlorida is no easy task. A taxpayer must provide clear and convincing evidence of the move along with intent.

Other correspondence from New York's Tax Department questions some taxpayer's residency status. A recent NY Tax Appeals Division case concluded that personal habits are more determinative than a new Florida driver's license, change in voter registration, or spending the requisite time (184 days)in the new state. Keep in mind that the day-count is secondary to the subjective test of proving a change of residency.

According to the case noted above (In the Matter of the Petition of Thomas and Jean Boniface, case number 829018 as summarized by *Law360*, a couple did not prove they completely changed their habits on the move to Florida. When moving to Florida from states such as New York or California, the burden of proof rests on the taxpayer to conclusively prove a permanent change of domicile by intentions, actions, and activities. The residency day threshold is only materialif the taxpayer first proves abandonment of one state along with demonstrable habits of living in the new state indefinitely.

Tips and Traps for EstablishingFlorida Residency

Taxpayers considering a change of residency should seek advice from experts in State & Local Tax planning to minimize the risk of an audit and penalties.

Some suggestions include:

- Maintain documents supporting a change in residency such as moving and storage receipts, plane tickets, termination notifications for telephone and utilities, details on purchases for your new home
- Rent or buy residential property. If purchased, file for a Florida Homestead Exemption
- Register to vote; relinquish previous registration
- Obtain a Florida driver's license, register vehicles in Florida; cancel same in former state
- Relocate your artwork, pets, and other valued possessions
- Change your estate planning documents to reflect your new home address
- Open local bank accounts
- Use local pharmacies, dry cleaners, and car mechanics
- Join and participate in local social, athletic, and religious organizationsUse Florida-based professional services such as doctors, dentists, andaccountants.

Beware, however, of some common mistakes. Maintaining a home in your prior state of residence often triggers a detailed review of intent and day count in the state and other related activities. Remember that concluding personal and business affairs and moving assets take longer than you likely expect. In the case noted above, the couple spent extended periods in New York wrapping up their business, according to phone records, while claimingresidency in Florida. In so doing, the state found them liable for New York income tax. Auditors often refer to the lag time as creeping domicile and push back on filing dates to maximize the amount of tax owed. The filing date can also impact any contemplated asset sale for state income tax on the gain.

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