WHY YOUR DOMICILE IS A KEY FACTOR IN ESTATE PLANNING

Having an up-to-date estate plan is important for many reasons, one of which is to ensure you have properly planned to minimize the federal and state estate tax. The federal estate tax exemption in 2019 is $11.4 million per person, or $22.8 million per married couple. Although many people do not need to be concerned about federal estate tax, there are 12 states that impose a state estate tax and six states that impose an inheritance tax. Maryland imposes both.

Each state's estate tax exemption is a different amount. For example, Rhode Island has a state estate exemption of approximately $1.56 million, New York's exemption is $5.49 million and the exemption for Massachusetts is $1 million. The two key factors that determine if you are subject to state estate tax is where you are domiciled at the time of your death and if you own real property in a state with a state estate tax.

Domicile

You are deemed to be domiciled in a state if you are physically present in a state with the intent to stay in that state indefinitely.

A famous court case involving the wealthy Campbell Soup magnate, John Dorrance, demonstrates the importance of clearly establishing your domicile. Mr. Dorrance died in 1930 with an estate valued in excess of $115 million. He owned a home in New Jersey and in Pennsylvania. Both states were eager to replenish their diminished treasuries and assessed a state estate tax against Mr. Dorrance's estate. After reviewing the facts, the Supreme Courts of New Jersey and Pennsylvania both determined Mr. Dorrance's intent was to make their respective state his domicile. After six years of litigation, his estate agreed to pay $15 million to each state.

A number of factors are considered in determining where an individual's intent is to domicile. These factors include the amount of time spent in a state, driver's license and vehicle registration, voting registration, homestead exemption, property and casualty insurance, community involvement (volunteer, house of worship, service organizations, etc.), home address used on federal (and state) tax returns, estate planning documents, and relationships with doctors, accountant, attorneys and financial advisors. The more factors you can show apply to a state, the stronger argument you have that state is your domicile.

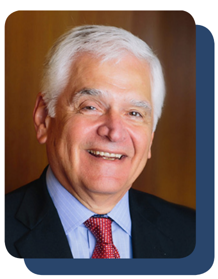
Many individuals choose to domicile in Florida. Besides warmer weather, other benefits include no income tax, no state estate tax, and favorable asset protection laws. In Florida, homestead, life insurance, annuities, IRAs, and 529 Education Savings plans are all protected from creditors.

Real Property

If you are domiciled in a state with no state estate tax and you own a home located in a state with a state estate tax, then you need to plan to minimize the state estate tax. For example, if you are domiciled in Florida but own real property in Rhode Island and your total estate is valued over the Rhode Island state estate tax exemption amount of $1.56 million (approximately) then you will likely be subject to Rhode Island state estate tax if you pass away in 2019.

One planning opportunity to avoid Rhode Island estate tax in this situation is to create a multi-member LLC and transfer your Rhode Island real property to the LLC. As a result, you should be deemed to only own your share of the LLC interests, which is considered intangible property instead of the home that is owned by the LLC. Under Rhode Island law, if a person is domiciled in another state and he or she owns intangible property then it should not be subject to Rhode Island estate tax.

However, this type of planning will not work in other states such as New York or Massachusetts because their state laws differ. It is important to speak with a knowledgeable advisor about your specific situation. They can help ensure you have done all you can to show you are domiciled (or plan to be domiciled) in your new state, as well as update your estate planning documents and advise you on how best to minimize any state estate tax, if necessary.



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