JEFFREY BURR
ESTATE PLANNING & PROBATE ATTORNEYS

ESTATE & TAX MATTERS

BECOMING A RESIDENT OF NEVADA

Generally, a person's "domicile" is his or her primary legal residence. While a person may have several residences or places where he or she lives, in the United States a person may only have one domicile or legal residence. Each state has its own rules for establishing legal residence, and it is possible for more than one state to assert that a person is domiciled in that state, which may happen if a state is looking to levy taxes or assert jurisdiction over a person.

Establishing "domicile" or "legal residence" in Nevada, as defined by statute, is a matter of being physically present in the state with the intent to indefinitely remain. If you are trying to get states (including Nevada) to recognize your status as a Nevada resident, the more "indicia of domicile" that point to Nevada, the better. The Nevada courts have listed some of those indicia of domicile as: having a Nevada mailing address, voter registration, attending school in Nevada, receiving medical care in Nevada, conducting business and financial affairs in Nevada, paying taxes, drafting wills, or being employed in Nevada. Additional indicia of domicile are filing a declaration of domicile with the county clerk, registering a vehicle or vehicles in Nevada, obtaining a driver's license, recording a homestead declaration for your residence in Nevada, using a Nevada address for primary correspondence, including credit cards, magazines, bank accounts, etc., transferring significant cash and securities holdings to Nevada institutions, establishing relationships with professional advisors (attorneys, accountants, etc.) in Nevada, and establishing memberships in community and local organizations.

There are specific parameters, however, for establishing residence in Nevada for certain purposes, including filing for divorce, voter registration, welfare benefits, or in-state tuition at a state college or university. For example, to qualify for in-state tuition, a student must be a bona fide resident (meaning physically present in the state) for at least 12 months prior to matriculation; to file for divorce or annulment, a person must have resided in Nevada for at least 6 weeks before filing the complaint; to be eligible to vote, a person must, before an election, have continuously resided in the State and County for 30 days and the precinct for 10 days.

Trying to avoid residency in another state is a different matter, as the definition of domicile is different in most states, and a state may try to assert that you were a domicile of theirs as well as Nevada in order to levy taxes, or for some other purpose. Thus, if you are trying to establish residency in Nevada, it is not only important to meet Nevada's qualifications, but to make sure that you cannot be considered domiciled in the state you left. ◆

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California's "Springing" Estate Tax

As of the date of this article, eighteen states plus the District of Columbia impose either estate or inheritance taxes or both. These state taxes are in addition to the federal estate tax of 40% currently imposed on estates worth $5.49 million or more.

One of President Trump's most prominent items on his "to do" list as the Nation's 45th President is to repeal the federal estate tax (also called the death tax) to stimulate economic growth. The repeal of the estate tax could be replaced by a federal capital gains tax, however, where no "step up" in basis for income tax purposes is allowed for assets transferred at death, and there is no threshold amount for when this tax is levied.

On February 21, 2017, California State Senator Scott Wiener announced a ballot measure, Senate Bill 726, that would create a California estate tax if the federal estate tax is repealed, equal to the federal estate tax that would have been paid by a decedent who died a California resident. For example, if a California resident died in 2017 (assuming the federal estate tax was repealed and the California "springing" estate tax was in place), with assets worth $10 million, California would levy an estate tax of $1.804 million - 40% on $4.51 million of that estate ($10 million - $5.49 exemption amount). This new tax may also apply to Nevada residents who own real property in California.

On March 23, 2017, Senator Wiener amended Senate Bill 726 to modify the California Revenue and Taxation Code to implement his proposal of a "springing" estate tax, which would recapture those funds for California's schools, healthcare, roads and public transportation, according to Senator Wiener, and would be effective January 1, 2019. The Bill is currently going through Senate Committee Hearings. If it passes through the necessary committees, it will be voted upon by the Senate after the second (and third if necessary) readings. If the Bill is approved, it will go to the California Assembly and if approved again, will be submitted to California residents for a final vote.[4]

If the federal estate tax is repealed, and replaced with the new capital gains structure where assets do not receive a step up in basis at death, this could result in a double tax from states with an estate tax – where assets transferred at death are subject to both the capital gains tax and the state estate tax. Thus, California residents, and those residents of other states with a state-level estate tax (or residents of states that may follow California's example and adopt a "springing" estate tax of their own), as well as those who own real property in such states," should not postpone estate planning in the hope that there will not be any estate tax in the future. In the event the federal estate tax is repealed, it may end up costing even more to transfer assets at death than ever before. ◆

[1] Ebeling, Ashlea. "Where Not To Die In 2017" (2016), https://www.forbes.com/sites/ashleaebeling/2016/10/25/where-not-to-die-in-2017/#731859f51e37.
[2] Senate Bill 726, http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_ id=201720180SB726, (June 15, 2017).
[3] LISI Estate Planning Newsletter #2531 (April 6, 2017) at http://www.leimbergservices.com © 2017, Gordon A. Schaller and Eric R. Bardwell.
[4] "Overview of Legislative Process," www.leginfo.ca.gov/bil2lawx.html (June 15, 2017).

California Prop 13 – Trap for the Unwary

For clients who own real property in California, "Proposition 13, or Prop 13" may be inadvertently triggered when property is transferred which may cause a significant increase in property taxes.

Prop 13 establishes the concepts of a base year for real property tax assessments as well as restricts rates of increase on assessment and limits property taxes to a percentage of the assessed value.

Under Prop 13, when a change in ownership occurs, whether full or partial, real property is re-assessed at its current market value as of the date of transfer. This establishes a new base year value for the property. If only a partial change in ownership occurs, the original base year value is retained for the part of ownership that does not change, and a new base year value is created for only the part of ownership that has changed.

If Prop 13 is triggered and a "change in ownership" occurs, real property will be reassessed at the current fair market value, and clients who have held the same property in their families for generations may find themselves paying higher property tax rates and a significantly higher tax, especially considering the dramatic rise of property values in California over recent years. ◆