WhittierTrust

CHANGING RESIDENCY

Best Practices When Making a Residency Change

SEPTEMBER 2020

1. Defining Residency
2. Change of Residency Checklist
3. 183-Day Threshold
4. Residency Audits

For those contemplating a change of residency, careful planning should be undertaken so as to clearly and properly establish a new state of residence.

In today's world, with state tax rates varying widely, more individuals and families are considering moves out of high-tax states. For example, California's highest income tax rate is currently 13.3%. Other jurisdictions, like New York City, impose a city income tax of as much as 3.876%, on top of a state income tax rate of 8.82%. High taxes are not just limited to the income variety — currently fifteen states impose an estate tax and six states impose an inheritance tax. State estate and inheritance tax rates vary from 10% to 20% and some states have exemption amounts as low as $1 million.

Although the rules vary among states, generally speaking, most states define a "resident" as an individual who is in the state for other than a temporary or transitory purpose. States consider a person's "domicile" to be the place of his or her permanent home to which he or she intends to return to whenever absent from the state for a period of time. Most states claim the right to tax an individual's income if they are believed to be a resident and domiciled in that state. Usually, they also impose tax on 100% of a resident's income from all sources. Many states have exceptions for military personnel in active service and for individuals receiving medical treatment for an extended period of time.

For those contemplating a change of residency, careful planning should be undertaken so as to clearly and properly establish a new state of residence. What follows is a checklist of items you may want to consider. Although there's no explicit guidance on what must be done in order to guarantee a change in residency, the more tasks from this list you can implement, the more likely it is that you will be deemed to have changed your state of residence for tax purposes:

- Change your driver's license to your new state and cancel your old state's driver's license.
- Change your passport to reflect your new state.
- Register your car in your new state and notify your insurance company of the change.
- Register to vote in your new state and cancel your old state's registration.

- Move your religious affiliation and membership to a local group or house of worship in your new state; make local contributions.
- Buy a home in your new state — and if possible, sell your home in your old state (or transfer it to family members or other entities). If you can't buy a home right away, rent with a long-term lease.
- Claim a homestead exemption in your new state (if applicable) and relinquish any homestead claim in your old state.
- Revise your estate planning documents (wills, trusts, powers of attorney, health care powers of attorney, advance care directives, etc.) to recite your new state, and use your new state's forms.
- Change your bank accounts to your new state without retaining bank accounts in your former state.
- Move your safe deposit box to your new state.
- If you plan on working, secure employment in your new state.
- Obtain a library card in your new state.
- Change social clubs and service clubs (Rotary, country club, Kiwanis, golf club, etc.) to your new state; serve on local charitable boards.
- If you have school-age children, enroll them in your new state's school as soon as possible.
- Engage local medical professionals; send your medical records to them.
- Change your address with the IRS — list your new address on your returns.
- Notify vendors (credit cards, etc.) of your new address.
- Generally, focus your activity (economic, social, financial) in your new state.
- Change other local service providers to your new state, such as tax advisors and attorneys.
- Have your family visit your new home state for important occasions, or have other family members move to the new state, too. The more family activities in the new state, the stronger the evidence that the new state is really your new domicile. Be careful of supporting a spouse or children located in your old state, which could be used as evidence against you in an audit.
- Active business involvement in your old state is evidence that there has been no change in domicile. Work as much as possible in the new state, and set up a "real" office in the new state, not just a home office. If you own the business, consider moving the principal place of business to the new state and withdrawing any business registration in the old state. Consider reorganizing the business entity in the new state.
- Move items of personal or sentimental value to your new home. This includes photos, trophies, yearbooks, collections, and the like. Funeral and burial arrangements should be made in the new state.
- Keep a daily calendar (with receipts, if possible) showing that you were outside your former state for each day.

Keep in mind that the list above is not exhaustive and the burden is on the individual claiming the new domicile to prove a change from the former state to the new state; keeping documentation of all of these actions is vital to establishing a new domicile.

As a general rule, you want to stay out of your former state more than 183 days in each calendar year.

Although you don't have to be in your new state for more than 183 days, your former state will look at how many days you spent in your new state as one factor in determining whether you have in fact established residency in the new state. The closer you are to the 183-day threshold, the more likely your former state will initiate a "residency audit," requiring you to prove that you were not in your former state for more than 183 days.

Increasingly, states are challenging former residents who attempt to change their domicile to another state. Residency audits are on the rise, particularly in states where larger numbers of residents are more likely to spend winters elsewhere. Some states are so aggressive in their pursuit of those relinquishing residency that they will conduct a residency audit after the first year an individual claims non-residency, regardless of how close the individual is to the 183-day threshold. In a residency audit, an auditor will focus on a number of factors, including where you spend your time (days in your former state, days in your new state, and elsewhere), the number of residences you own and their respective values, where you claim a homestead exemption for property tax purposes, and other factors.

Just about everything in your personal life can be relevant in determining the true location of your tax home, and taxing authorities will focus on where you spent your money and your time. Auditors will review credit card statements to determine where charges were incurred, and can also look into cell phone records and application data that tracks your time in different jurisdictions. They will examine freeway fast-lane pass charges and records of airline frequent-flyer miles. Given the pervasiveness and personal nature of the evidence needed, it follows that a residency audit can be much more intrusive than a traditional income tax audit.

Changing your residence can be complex, so we recommend that as part of your planning process, you consult with your Whittier Trust team, as well as your legal and tax advisors before undertaking any action.

Written by: S. Victoria Kahn
JD, LLM, TEP, Senior Vice President,
Nevada Regional Manager

WHITTIER TRUST COMPANY

South Pasadena 1600 Huntington Dr,. South Pasadena, CA 91030 | 626.441.5111
Newport Beach 4695 MacArthur Ct., Ste 1500, Newport Beach, CA 92660 | 949.216.2200
San Francisco 505 Montgomery St., Ste 1200, San Francisco, CA 94111 | 415.283.1850

THE WHITTIER TRUST COMPANY OF NEVADA, INC.

Reno 100 W. Liberty St., Ste 890, Reno, NV 89501 | 775.686.5400
Seattle 520 Pike St., Ste 1415, Seattle, WA 98101 | 206.332.0836
Portland 111 S.W. Fifth Ave., Ste 3150, Portland, OR 97204 | 503.444.3428

Whittier Trust Company and The Whittier Trust Company of Nevada, Inc. are state-chartered trust companies, which are wholly owned by Whittier Holdings, Inc., a closely held holding company. All of said companies are referred to herein, individually and collectively, as "Whittier". This document is provided for informational purposes only and is not intended, and should not be construed, as investment, tax or legal advice. Please consult your own investment, legal and/or tax advisors in connection with financial decisions and before engaging in any financial transactions. This document does not purport to be a complete statement of approaches, which may vary due to individual factors and circumstances. Although the information provided is carefully reviewed, Whittier makes no representations or warranties regarding the information provided and cannot be held responsible for any direct or incidental loss or damage resulting from applying any of the information provided. Past performance is no guarantee of future results and no investment or financial planning strategy can guarantee profit or protection against losses. These materials may not be reproduced or distributed without Whittier's prior written consent. For additional information about Whittier, please visit our website at www.whittiertrust.com.