

Escape From New Jersey: Easier Said Than Done

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Imagine that you decide to relocate from New Jersey to Florida, hoping to escape the cold weather and one of the nation's highest state income taxes, a whopping 8.97% on income over \$500,000. You pack up some of your personal belongings, but you still maintain your home in New Jersey and do not take any additional steps to establish a new primary residence in Florida. You file your income taxes and report Florida as your primary home, but do not report any of your income to New Jersey. A year later, an audit notice from the State of New Jersey shows up in your mailbox which indicates that you owe the State a substantial amount of money in unpaid taxes, *plus* penalties and interest. New Jersey has claimed you are a resident of the State and all of your income is subject to State taxes. You can leave New Jersey, but avoiding New Jersey Income Tax requires you to take additional affirmative steps to prove that you have, in fact, severed your ties with the Garden State.

There has been a substantial increase in the enforcement of resident/nonresident income tax audits and claims against taxpayers over the last few years. The number of audits will likely increase in the future as New Jersey seeks to obtain money from taxpayers who leave the state but do not take the necessary steps to cut their ties.

For New Jersey Income Tax purposes, your residency status largely depends on where you were domiciled and where you maintained a permanent home during the course of the entire calendar year. Domicile is often confused with residency; however domicile requires physical presence in the state with the intent to make that state your fixed or permanent home. It refers to any place you regard as your permanent home, or the place where you intend to return after a period of absence, such as a vacation, business assignment or for education.

You may only have one domicile at a time and the burden of proof is upon you, as the taxpayer, to demonstrate that you have changed your domicile. It is imperative to show that the necessary intention existed to abandon your domicile in New Jersey and establish a fixed and permanent home in

another location. Multiple residences do not equate to multiple domiciles. Once established, your domicile continues until you move to a new location with the intent to establish your permanent home and abandon your original domicile. Moving to a new location, even for a long time, does not change your domicile if you intend to return to your original domicile. Unfortunately, there is not a “bright-line” test to determine whether you have changed your domicile. Instead, intent to change domicile is based upon facts and circumstances, including, but not limited to 1) voter registration; 2) bank accounts; 3) maintenance of driver’s license and car registration; 4) mailing address; 5) purchase or sale of a home; 6) location of children’s school; 7) location of personal belongings; 8) whether taxpayer’s job is temporary or permanent; and 9) whether the taxpayer has sold/rented his or her home in New Jersey. If you are a domiciliary of New Jersey, you are a resident for income tax purposes, and all of your income, regardless of its source, will be subject to state income tax.

Even if you are successful in changing your domicile, if you return to New Jersey for more than 183 days during a calendar year and maintain a home, you will be classified as a *statutory resident*. Under New Jersey law, statutory residents are also subject to state income taxes on all of their income, whether earned inside or outside the state. Partial days count as full days for income tax purposes. In addition, New Jersey allocates travel days as New Jersey days for income tax purposes. New Jersey auditors can request cell phone bills, credit card statements, bank statements, airline tickets and E-Z Pass records in order to review a taxpayer’s days in New Jersey. For this reason, if you maintain a home in New Jersey, it is highly recommended that you maintain an accurate log of the dates that you travel in and out of New Jersey.

Generally, you must file a resident income tax return in the state where you live and a nonresident income tax return in any other state in which you receive income. New Jersey considers you a nonresident if you meet the following conditions for the entire year:

- Did not maintain a *permanent* home in New Jersey;
- Did maintain a *permanent* home outside New Jersey; and
- Did not spend more than 30 days in New Jersey.

In addition, New Jersey considers you a nonresident if:

- New Jersey was not your domicile and you spent 183 days or less in the New Jersey; or
- New Jersey was not your domicile, and you spent more than 183 days in New Jersey, but you did not maintain a *permanent* home in New Jersey.

Over the last few years, New Jersey has become increasingly aggressive in their audits of taxpayers failing to pay New Jersey Income Tax.