Matthew Rheingold Responds To NJ.com Query, "Sick Of N.J. Taxes? How To Establish A New Domicile"

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Q. How easy or hard is to establish residency in a different state? I believe there are 13 states that don't tax Social Security or pensions, offering a distinct advantage for retirees. Then some don't tax income either, like Florida. Should I get out?
— Thinking of leaving

A. Taxes are a huge factor for New Jersey retirees. Many choose to move to a lower-tax state so they can keep more of their money.

Recent tax changes make this decision even more tempting,

"In light of changes to both the deductibility of state and local taxes on a federal level, as well as the additional burden of state taxes, many individuals such as yourself choose to move to states that have less onerous - or no - state taxes," said Matthew Rheingold, an attorney with Einhorn Barbarito in Denville.

But, he said, simply purchasing a new home in a different state is not enough to establish residency and avoid New Jersey income tax.

Rheingold said there has been a substantial increase in the enforcement of resident/nonresident income tax audits and claims against taxpayers over the last few years. Each state requires you to take additional affirmative steps to prove that you have, in fact, severed your ties with the state that you have called your "home," he said.

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," he said. "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, he said.

Here's how that works.

A taxpayer is presumed to be domiciled in his or her domiciliary state until a new domicile is acquired, Rheingold said.

"It is imperative that you as the taxpayer show that the necessary intention existed to abandon your domicile in New Jersey and establish a fixed and permanent home in another location," he said. "Moving to a new location, even for a long time, does not change your domicile if you intend to return to your original domicile."

Rheingold said there is no one test to determine whether you have changed your domicile.

Instead, intent to change domicile is largely based upon facts and circumstances, including, but not limited to, voter registration, bank accounts, maintenance of driver's license and car registration, mailing address, the purchase or sale of a home, the location of children's school and the location of personal belongings. Also considered is whether a taxpayer's job is temporary or permanent and 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," he said.

Nevertheless, 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 permanent place of abode in New Jersey, you will be classified as a statutory resident, Rheingold said.

"Under New Jersey law, statutory residents are subject to state income taxes on all of their income, whether earned inside or outside the state," he said. "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."

Those who are not "domiciled" in the state of New York but work in New York should be wary of New York's statutory residency laws, Rheingold said.

"Those taxpayers that are not domiciled in New York but own a permanent place of abode in New York and are present in the state for more than 183 days in any given year then are considered a statutory resident," he said. "As such, under New York law, similar to New Jersey, even if you are a domiciliary of another state, New York will tax the all of the taxpayer's income, including any income earned outside of the state."

New York will also count any part of a day in the state as a full day, he said.

During a statutory residency audit the burden will always lie with the taxpayer to prove their whereabouts every single day of the year, Rheingold said.

"Auditors can request cell phone bills, credit card statements, bank statements, airline tickets and E-ZPass records in order to review a taxpayer's days in a state," he said.

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