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Millionaires Leaving California Over Taxes Is Nothing New

Many Californians complain about high taxes, and some vote with their feet, moving to no tax states like Nevada, Texas, Washington or Florida. A recent report says that dozens of millionaires fled California after the 2012 tax increase. The report quotes a study noting that 138 high income Californians left the state. That may sound draining, although the researcher said that, "We estimate that

California lost 0.04 percent of its top earner population over the two years following the tax change." That's a tiny number, and California's high taxes have always motivated some moves. The 2012 tax change is now old news, and yet there is still talk about the huge impact. However, that may be especially true when taxpayers see their 2018 tax returns next year.

California's Proposition 55 extended until 2030 the "temporary" 13.3% tax rate on California's high-income earners, the highest tax rate in the nation. It hits only 1.5% of Californians, those with a single income filing of at least $263,000, or joint income of $526,000. But the new federal tax law that limits state and local tax deductions to $10,000 seems likely to dramatically change taxpayer attitudes, but will it also change their behavior? If you are writing a several hundred thousand dollar check to California and cannot deduct it on your federal taxes, won't it smart that much more?

The state law workarounds include a charitable deduction plan, but the IRS will surely try to shut it down. It should be no surprise that state taxes are a big reason for moves. Why else would there be such a high probability that Californians become residents of no-tax states like Texas? The IRS reported that between 2013 and 2014, over 250,000 California residents moved away between 2013 and 2014. More than 10% went to Texas alone.

California's tough Franchise Tax Board (FTB) polices the line between residents and non-residents, and does so rigorously. Like other high tax states, California is likely to probe how and when you stopped being a resident. For that reason, even if you think your facts are not controversial, be careful. A California resident is anyone in the state for other than a temporary or transitory purpose. It also includes anyone domiciled in California who is outside the state for a temporary or transitory purpose. The burden is on *you* to show that you are *not* a Californian.

If you are in California for more than 9 months, you are *presumed* to be a resident. Yet if your job requires you to be outside the state, it usually takes 18 months to be presumed no *longer* a resident. Your domicile is your true, fixed permanent home, the place where you intend to return even when you're gone. Many innocent facts might not look to be innocent to California's tax agency. For example, do you maintain a California base in a state of constant readiness for your return?

Year after year, no state has a bigger cadre of would-be tax fugitives than California. Some Californians look to flee the state before selling real estate or a business. Some get the travel itch right before cashing in shares, a public offering, or settling litigation. Some of the carefully orchestrated deals and moves can work just fine. Yet, many would-be former Californians have unrealistic expectations about establishing residency in a new state. They may have a hard time distancing themselves from California, and they may not plan on California tax authorities pursuing them. When fighting California tax bills, procedure counts.

You can have only one domicile. It depends on your intent, but objective facts can bear on it. Start with where you own a home. Where your spouse and children reside counts too, as does the location where your children attend school. Your days inside and outside the state are important, as is the purpose of your travels. Where you have bank accounts and belong to social, religious, professional and other organizations is also relevant. Voter registration, vehicle registration and driver's licenses count. Where you are employed is key. You may be a California resident even if you travel extensively and are rarely in the state. Where you own or operate businesses is relevant, as is the relative income and time you devote to them. Taxpayers with unrealistic expectations can end up with big bills for taxes, interest and penalties.

How about audit times? Although the IRS can audit 3 or 6 years, California can sometimes audit *forever*. In fact, several things give the FTB an *unlimited* amount of time to audit you. California, like the IRS, gets unlimited time if you never file an income tax return. You might claim that you are no longer a resident and have no California filing obligation. The FTB may disagree. That can make filing a non-resident tax return--just reporting your California-source income as a non-resident--a smart move under the right facts.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.