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Shelter In Place In California, Pay California Tax?

How will California and other high tax states treat you if you working from home and just trying to stay safe in this strange new era? It is a surprisingly open question, raising state tax and even city tax issues in California and beyond. As the New York Times NYT recently warned, sheltering in place can put your tax strategy at risk. Nearly all states are going to be hungry for revenue during and in the aftermath of these strange times. High tax stakes like California and New York have been notoriously aggressive in trying to collect from people who try to skip out on their full state tax payment obligations when the state thinks they shouldn't. And even in normal times, you can be taxed in some cases even if you are not a resident or domiciliary. leave California, you keep paying California taxes forever. Even some people who never set foot in the state have learned the hard way that California can assess taxes no matter where you live.

Could you be viewed as a resident of the state just based on a temporary stay? A temporary stay is much less worrisome if you are not working. But if you are working in California, you are probably drawing California taxes, even if you are paying taxes somewhere else. After decades of high taxes in California, things got worse in 2012, and then worse again in 2018. In 2012, California's Proposition 55 placed a temporary extension through 2030 with a 13.3% tax rate on high-income earners. It is still the highest marginal tax rate in the nation, making tax-free states such as Nevada, Texas, Washington, and Florida have considerable allure. The 2018 federal tax changes made it worse, since now only $10,000 of state and local taxes can be claimed as deductions on a federal tax return. That can make paying big state taxes even more painful. Move out of state in anticipation of a big income event such as a legal settlement, a stock sale, or selling off your hoard of cryptocurrency.

Temporary stays should generally not be residency, since a California resident is anyone in the state for other than a temporary or transitory purpose. If you are sheltering in place in California and normally live elsewhere, one can certainly argue that this is transitory. But if you are working in California for your non-California employer, you still have to consider California taxes. A California resident 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, there is a presumption: 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, and if you are fighting a California tax bill, procedure counts.

You can have only one domicile, and it depends on your intent. Yet objective facts can bear on your intent. Start with where you own a home. Where your spouse and children reside counts, as does 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, and that could make the current shelter in place issue a very big one. 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. The state can have a long memory. 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 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.

California tax law has several safe harbors. One safe harbor says that an individual domiciled in California, who is outside California under an employment-related contract for an uninterrupted period of at least 546 consecutive days, will be considered a nonresident unless either: (1) The individual has intangible income exceeding $200,000 in any tax year during which the employment-related contract is in effect; or (2) The principal purpose of the absence from California is to avoid personal income tax. The spouse of an individual covered by the safe harbor can qualify too. Return visits to California that do not exceed a total of 45 days during any tax year covered by the employment contract are considered temporary.

What happens if you *don't* meet the safe harbor? It becomes more complicated. Individuals not covered by the safe harbor determine their residency status based on facts and circumstances. That's where California's tough Franchise Tax Board (FTB) comes in, policing the line between residents and non-residents. California taxes have always been high, and for that reason, many people do their best to try to avoid paying them. So be careful and plan ahead.

Check out my website.