Robert W. Wood
THE TAX LAWYER

TAXES 12/21/2017

Bitcoin Sellers Cut Taxes By Moving Before Sale

Bitcoin has captured the hearts and wallets of techies everywhere, and the returns have been positively heady. But taxes can be painful too. At the start of the crypto craze, it seemed anonymous. But now, the IRS is getting Coinbase customer data. It now seems practically mainstream, with futures and institutional investors. And on the subject of taxes, many a Bitcoin millionaire may be thinking like their forefathers did with appreciated stock. In general, shares of stocks are considered intangible assets for tax purposes. One effect of that rule is that, for tax purposes, you can take them with you when you move. If you live in California and sell your stocks and bonds, they are sourced to California where you reside for tax purposes.

However, if you move to Nevada or Texas before you sell, your sale should be sourced to Nevada or Texas. Since California has a 13.3% income tax, and no tax break at all for capital gain, paying tax in California would be painful. Nevada, Texas, Florida, Washington, South Dakota, Alaska and Wyoming have no state income tax. So it may be worth thinking about the total tax hit. The IRS has said that Bitcoin property, and it sure seems intangible. It seems hard to imagine that the IRS or state tax authorities would view it as different from a share of stock that travels with you when you move.

Moving has its own rules. You have to really do it, and it has to be permanent, not a visit. At the federal level, the capital gain rate is 20% for higher income taxpayers. Add the 3.8% net investment tax under Obamacare, and you have 23.8%. California taxes long term capital gain as ordinary income, so Californian's pay up to 13.3%. By paying 23.8% plus 13.3%, Californians are paying more on capital gain than virtually anyone else in the *world*. California's tough Franchise Tax Board (FTB) polices the line between residents and non-residents, and it does so rigorously. As with other high tax states, California is likely to probe how and when you stopped being a resident.

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. So, if it looks as though you are exiting to sell and then will come back, the state may say you effectively never left. 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. Check out FTB Publication 1031. On the other hand, 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. It should be no surprise that former Californians often become residents of no-tax states like Texas. The IRS reports that between 2013 and 2014, over 250,000 California residents moved away. More than 10% went to Texas alone. Some people get the travel itch right before cashing in shares, a public offering, or settling litigation. Some people have unrealistic expectations about establishing residency in a new state. They may have a hard time distancing themselves from California, and may not plan on California tax authorities chasing them.

You can have only one domicile, and objective facts can bear on your intent. Start with where you own a home. Where your spouse and children reside counts, 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.

California, like the IRS, gets unlimited time to audit if you never file an income tax return. You might claim that you are no longer a resident and claim that you have no California filing obligation. But the FTB may disagree and can audit you forever *unless* you file a return. That can make it smart to file a non-resident tax return, just reporting your California-source income as a non-resident.

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