Saying sayonara to California, for tax purposes

By Robert W. Wood

If you're like me, you love California. But California's high taxes are another matter. And with Gov. Jerry Brown's victory on Proposition 30 at the ballot box, even higher taxes are coming. More than a few people find that they want to distance themselves from the state, either partially or wholly for tax reasons. Often, they consider Nevada's lack of state income tax as they contemplate a major income event.

They might be selling a business or real estate, taking a company public, or receiving a large legal settlement. Whatever the impetus for thinking about your California tax bill, it can be awfully tempting to tally up the tax savings by leaving. After all, one can always consider moving back after a few years of living somewhere else.

Here are a few tips culled from over 30 years of tax practice in the Golden State. A California resident is anyone in the state for a purpose that isn't temporary or transitory in nature. It also includes anyone domiciled here who is outside the state for a temporary or transitory purpose. That's a broad definition, and the burden is on you to show you're *not* a Californian.

There are legal presumptions too. If you're in California for more than nine months, you are *presumed* to be a resident. Conversely, if your job requires you to be outside the state, it usually takes 18 months of being elsewhere to be presumed truly gone from the state. California gets you coming and going.

Fortunately for California tax advisers, though, the mere fact that you hire a California tax lawyer to advise you about your California tax exposure does not mean you're a resident.

Domicile is another legal concept. Your domicile is your true, fixed permanent home — the place where you intend to return even when you're gone. You can have only one domicile, and where it is depends on your intent to remain and to return.

How do you measure intent? With objective facts. That means many relevant facts must be examined, starting with where you own a home. If you own several homes, their size and value will be compared. If you claim a homeowner's property tax exemption as a resident, then that is relevant, showing where you consider your home to be.

Where your spouse and children reside counts too, as does the place where your children attend school. And speaking of school, if you claim not to be a California resident, make sure you are paying non-resident tuition for college students. The small details matter.

The number of days you spend inside and outside the state is also important, as is the purpose of your travels. Where you have bank accounts, and the location of your social, religious, professional and other organizations are all relevant. Voter's registration, vehicle registration and driver's licenses count, too.

Not surprisingly, where you are employed is key. You may be a California resident because it is your home base, even if you travel extensively and are rarely in the state. Where you own or operate businesses matters, as does the relative income and time you devote to them. You can own investments far and wide, but you can expect them to be compared, especially if you manage them actively.

Even where you obtain professional services matters. That includes doctors, dentists, accountants and attorneys. Fortunately for California tax advisers, though, the mere fact that you hire a California tax lawyer to advise you about your California tax exposure does not mean you're a resident.

Some authorities suggest that a key issue is whether you maintain a California base in a state of constant readiness for your return. That's why if you leave California it is so important to sell your residence (which is preferable), or at least to lease it out on a long-term lease. Consider all these numerous factors at once. Many of these points are probably not too significant on their own. Yet they tend to have a cumulative effect, either pro or con.

Almost by definition, if you are thinking seriously about these rules you are probably about to collect some significant money. You may already be calculating how much your California tax hit might be. Whatever you may read online, don't assume that you can simply get a post office box in Nevada and call it a day.

Plainly, this doesn't work. In fact, if you do that kind of a false move on paper only, you will end up far worse off with a high amount of interest and penalties added to the California taxes you will still have to pay. If you're going to move, you need to actually do it.

If you want to maximize the chances that your exit from California will be graceful, do not wait until the night before your big lawsuit settles or your company is sold. Plan ahead. Get some legal advice and plan carefully. Like other high tax states, California is likely to come after you and probe how and when you stopped being a resident. The best way to prevail is to plan carefully and be fully prepared.

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