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Tax Lessons From Trump's NY to Florida Move...For Californians

In announcing his Florida move by tweet, the President said New York City "will always have a special place in my heart!" He says he paid "millions of dollars in city, state and local taxes each year," but that he was "treated very badly by the political leaders of both the city and state." There has been considerable comment about the [President thumbing his nose at New York's tax collector](#). Many sources are rightly wondering if the President's [departure from New York for tax purposes may not be so simple](#). Tax disputes about state residency are very common, and in this case, it is extremely likely that the President [will face a fight over his move](#). Of course, who wouldn't want to bask in Florida's zero state income tax? For anyone trying their *own* version of President Trump's tax move, consider these points.

Consider the Stakes. New York and California are both notorious for fighting over residency, and neither state takes losing wealthy taxpayers lying down. With the high rates in New York and California, it is no wonder that these disputes matter. Arguably, though, the situation for Californians is the toughest of all. Indeed, even if you leave the state, depending on the type of income you have, [California can assess taxes no matter where you live](#). Californians complain about high taxes even more than New Yorkers do, and some Californians vote with their feet, moving to no-state income tax states like Nevada, Texas, Washington or Florida. Reports say [many millionaires fled California after the last tax increase](#), with [studies](#) noting that some of the highest earners left. California's [Proposition 55](#) extended [until 2030](#) the "temporary" 13.3% tax rate on California's highest incomes. You pay the same rates on capital gain as ordinary income, which can make big capital gains painful.



Run Some Numbers. It is worth calculating the savings you expect for the first year, and/or annually. Remember, federal tax law now limits state and local tax deductions to \$10,000. Paying high California taxes could always have been a motivation to move. But if you are paying huge tax dollars to California and can deduct only \$10,000 on your federal taxes, won't it smart that much more? 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, and with 2018 tax changes, more may follow.

Keep Really Good Records. California's tough [Franchise Tax Board \(FTB\)](#) [monitors 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.

Allow Time Before Major Income Events. 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. So if you are hoping to collect on a post-move sale of your company, settling a big lawsuit, or have some other upcoming large income event, don't cut it too close. Move with plenty of time. 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.](#)

Real Domicile Counts. You can have only *one* domicile. It depends on your intent, but objective facts can bear on it. President Trump may well be probed about this by New York. To determine your domicile, 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.

Limit Time in California. Once you move, cut as many ties as you can, and be very careful. 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 California, it usually takes 18 months to be presumed to no *longer* be a resident. You can only have one domicile, which is defined as 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 house or apartment in a state of constant readiness for your return?

Think About Audits. How about audit times? Although the [IRS can audit your returns for 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.

As for Mr. Trump, even if New York ends up agreeing with him that he will no longer be a New York resident, he will surely be paying New York taxes on his New York source income. That could well be considerable, depending on what those elusive tax returns show.

This is not legal advice. For tax alerts or tax advice, email me at Wood@WoodLLP.com.