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With Taxes, Beware Moving And Vacation Homes!

No matter how much you dislike paying taxes, moving outside the country may sound like an extreme measure. Besides, it's hard to avoid federal income taxes even if you do. See Ten Facts About Tax Expatriation. But state taxes? Surely they are different.

In fact, you might be surprised at how many people seriously consider moving states for tax reasons. As a tax lawyer for 30 years, I've found that people are more likely to think of moving right before settling a big lawsuit or selling a family company.

For Californians, Nevada is just next door and has no state income tax. Other no-tax states include Alaska, Florida, South Dakota, Texas, Washington, and Wyoming. New Hampshire and Tennessee only tax dividend and interest income. You might even compare tax rates between states if your plans are more modest.

But moving isn't easy, and many high tax states have a penchant for pursuing you and asserting that you really didn't move after all. Much depends on whether you move with the idea of returning to the state or intend to leave permanently lock, stock, and barrel. Such disputes are factually intense, with the following being some of the more obvious indicators:

- Where do you vote?
- Where are your cars licensed and registered?

- If you have children in college, do you pay in-state or out-of-state tuition?
- Where do you own property?
- Of what clubs are you a member?
- How much time do you spend inside vs. outside the state?

You get the idea. There's usually a comparison between the old state and the new state. Much also hinges on ***when*** you move. Is it possible to end up labeled as a resident of two states? Unfortunately, yes.

Vacation Home? But most of us don't think we could have this kind of tax whipsaw if we merely have a house or apartment in State X we rarely use. But consider New York's tax grab in *In re Barker*. There, a Connecticut couple was ruled subject to New York state tax on all their income because of their Long Island summer home even though they used it only a few times each year.

Like many states, New York drew a bright line so non-New York residents who were in New York for more than 183 days a year had to pay New York tax on any New York income. That seems fair. But now the person's ***entire*** income (even income having nothing to do with New York) could be captured.

The brouhaha centers on where you maintain a "residence" and how it's defined. The New York state tax code defines a "permanent place of abode," to exclude "a mere camp or cottage, which is suitable and used only for vacations." It turns out many people who have fancier vacation digs may not qualify, or that's the current fear.

Indeed, the court in the recent *In re Barker* case considered this couple's Long Island vacation home as a ***permanent*** abode since it was suitable for living year-round. Whether or not the couple actually ***stayed*** in the home wasn't relevant. In this case, the Barkers usually only spent about 17 days a year at the (now considerably more expensive) New York vacation home. For more, see Out-of-State Owners Could Face Tax Bill.

See also:

Notes From California's Tax Trenches

Five True Tales From A Tax Lawyer

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