DOMICILE TAX ISSUES FOR INDIVIDUALS AND ESTATES

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What do Campbell's Soup and Joan Rivers have in common?

The Issue of Domicile

- In Re Dorrance's Estate
  - John T. Dorrance - President and Founder of Campbell Soup Company.
  - Died Sept 1930 with an estate over $115 million.
  - Business in NJ, residence in NJ, voted in NJ, and overtly indicated his intentions verbally and in writing to retain his residency and domicile in NJ.
  - Five years before John's death he purchased another residence in Pennsylvania where he and his family lived most of the time.
  - Will probated in NJ.

WHERE WAS MR. TORRANCE DOMICILED?

- Pennsylvania courts decided domiciled in Pennsylvania and collected inheritance taxes of $14,394,698.
- New Jersey courts decided domiciled in New Jersey and assessed a a New Jersey inheritance tax of $12,247,333.

Estate subject to double taxation!

Estate of Joan Rivers

- Estimated $150 million estate.
- Will filed in New York State Surrogates Court.
- Will declared Joan a resident of New York but State of domicile to be California.
- Will also contained provision that its validity, interpretation and administration to be governed by New York; provided that if Joan was domiciled in California, then California law should apply.

Why?

- Speculation….
- Attempt at best of both worlds?
  - if resident of New York less income tax compared to California.
  - if domiciled in California avoidance of estate tax.

For estate tax purposes, whether laws of New York or California apply will likely be based on which state Joan deemed to be domiciled in at time of death.

Determining Domicile

- General rule, while an individual can have many residences, he/she can have only one domicile.
  - Maine - "The state in which you are domiciled is your permanent legal residence. This is the place you intend to make your home for a permanent or indefinite period of time. It is generally the place where you dwell which is the center of your domestic, social and civic life." Maine Revenue Services, Income/Estate Tax Division, "Determining Residency Status Guidance Document", p. 2 (Jan 2013), available at http://www.maine.gov/revenue/incomeestate/guidance/Residency_Guide_14.htm.
  - Domicile is a question of fact based on the person's intent to remain in, or return to, a particular state.

Determining Domicile

- Same analysis for income and estate tax.
- Analysis tends to be very fact-specific.
    - Taxpayer's own testimony is considered self serving - person’s subjective intent typically inferred from objective standards.

Determining Domicile contd.

Because determination is question of fact and rules/caselaw in each state may differ, more than one state may assert an individual has his/her domicile in that state.

- REMEMBER Campbell Soup!
- No federal constitutional bar to two or more states each classifying a person as a domiciliary for state tax purposes. *See Cory v. White*, 457 U.S. 85 (1982); *Worcester County Trust Co. v. Riley*, 302 U.S. 292 (1937).

Determining Domicile contd.

- Issue typically arises after a state Department of Revenue/Taxation has made a determination that an individual is domiciled in that particular state.

- Therefore, taxpayer typically bears burden of proof establishing that he/she is NOT domiciled in that particular state.

KEY FACTORS IN DETERMINING DOMICILE

Factors to Determine Domicile

Maine

- Property ownership and residence
  - the location of taxpayer's principal residence
  - your mailing address
  - where most amount of time is spent
  - application for a Homestead or Veterans property tax exemption
- Family and Dependents
  - where do spouse/children reside
  - where do children attend elementary and secondary school
  - where children qualify for in-state college tuition

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- Licenses and registrations
  - Voting
  - Driver's license
  - vehicle registration
  - professional licenses
  - hunting/fishing licenses
- Financial Data
  - state where qualify for unemployment benefits
  - in what state were previous resident tax returns filed
  - employment
  - address recorded for insurance policies, deeds, mortgages, or other legal documents

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- Affiliations
  - social and athletic memberships
  - union memberships
  - religious
- Other Factors
  - business connections and relationships
  - location of personal property
  - address listed in telephone directory
  - location of pets

- Maine Revenue Services, Income/Estate Tax Division,"Determining Residency Status Guidance Document at pp. 3-4.

Maine does not consider an individual’s charitable contributions, the location of professional advisors (attorney, accountant, physician, etc), or the location of the individual’s financial institutions.

*But that doesn’t mean other states won’t consider those factors in determining domicile.

→ No one factor is determinative.

→ Courts generally look to the totality of circumstances in determining whether a person is domiciled in the state.

Change in Domicile

- Once domicile is established it is not easy to change even though an individual may have multiple residences.
- Must be an objective intent to *abandon* the old domicile and establish a new one.
- Cases involving change of domicile frequently litigated.

Change in Domicile contd.

- Taxpayer typically bears burden of proof to establish change of domicile.
- TEST to establish change in domicile - taxpayer must generally establish:

  1. a fixed residence in a new place;
  2. intent to abandon his/her old domicile; and
  3. intent to acquire a new one.

Change in Domicile contd.

- Not sufficient for taxpayer to simply establish he/she has moved out of state.
- Must establish that he/she has a fixed place of abode in new state and that he/she intends to remain there permanently.
- Factors considered in determining change of domicile similar to factors used in determining domicile.

Factors in Determining Change of Domicile

- Property ownership and residence
- Family and dependents
- Licenses and registrations
- Financial Data
- Affiliations
- Other

Proof of Change

- Burden on taxpayer to establish change in domicile
- Severing the ties
- Affirmative actions establishing new domicile

Be Aware of Special Cases

- Military Personnel
  - Soldiers and Sailors Relief Act of 1940
    - Individual does not lose domicile or residence in any state solely based on absence from the state due to military orders.
    - Income from military service not considered income for state income tax purposes for non residents.
      - subject to state income tax only on non-military income from sources within state.

- Students
  - Retain domicile of the state they lived in prior to entering college.
  - Dormitories, fraternities/sororities are not considered permanent places of abode.
  - In-state tuition and residency restrictions.

RESIDENCY

- Maine
  - "Resident" taxpayer is a person who is:
    - domiciled in Maine or
    - a statutory resident.
- Individuals domiciled outside a state may be characterized and taxed as in-state residents if they qualify as "statutory residents."

Tests to Determine Residency

- Permanent Place of Abode (PPA) and Day Test
  - 183 day test: In most states, an individual is a statutory resident if he/she maintains a PPA and spends more than 183 days within the state.
    - Maine follows the 183 day test.

Tests to Determine Residency

- Personal Place of Abode
  - *Definition*: most states provide that a PPA must constitute a permanent place of abode and be maintained by the taxpayer.
  - Typically, property must be capable of being used as a residence throughout the year.
    - Camps, cottages, properties under construction, hotel/motel rooms generally not included.
  - *Maine*: "A permanent place of abode is a house, apartment, dwelling place, or other residence that an individual maintains as his or her household, whether or not he or she owns it." Maine Revenue Services, Income/Estate Tax Division, "Determining Residency Status Guidance Document" at p. 4.

– *Maine* does not include a seasonal camp or cottage that is used only for vacations, a hotel or motel room, or a dormitory room used by a student during the school year as a PPA.

– If an individual maintains a PPA in Maine but claims he/she is domiciled in another state and not present in Maine for more than 183 days in the tax year ("snowbirds"), that individual should keep adequate records to verify that more than half of the year was spent in another state.

  - Records commonly include - calendars/planners, plane tickets, canceled checks, and credit card/other receipts.

Residency “Safe Harbors” for Income Tax Purposes

- Maine
  - General Safe Harbor
    - An individual who is domiciled in Maine will nevertheless be treated as a nonresident individual if he/she satisfies all three of the following requirements:
      - » did not maintain a PPA in Maine for the entire taxable year
      - » maintained a PPA outside Maine for the entire taxable year; and
      - » spent no more than 30 days in the aggregate in Maine during the taxable year. Maine Revenue Services, Income/Estate Tax Division, “Determining Residency Status Guidance Document” at pp. 4-5.

Residency "Safe Harbors" for Income Tax Purposes

- Maine
  - Foreign Safe Harbor
    - An individual who is domiciled in Maine will nevertheless be treated as a nonresident individual if he or she satisfies all three of the following requirements:
      - » within any 548 consecutive days beginning on or after January 1, 2007, the individual is present in a foreign country for at least 450 days;
      - » during the 548 day period, the individual is not present in Maine for more than 90 days and does not maintain a PPA in Maine at which the individual's spouse or minor children are present for more than 90 days;

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Residency "Safe Harbors" for Income Tax Purposes

- during the nonresident portion of the taxable year with which or within which the 548-day period begins and during the nonresident portion of the taxable year with which or within which the 548 day period ends, the individual is present in Maine for a number of days that does not exceed an amount which bears the same ratio to 90 as the number of days contained in the nonresident portion of the taxable year bears to 548.

*For more informations see:

http://www.maine.gov/revenue/incomeestate/guidance/Residency_SafeHarbor_12.htm

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Case Study: Ruth P.

- Ruth was married to Ronald for 70 years.
- Lived in a Philadelphia suburb for 20 years, moved to a penthouse in Philadelphia in 1970.
- In 1992, bought property in Palm Beach, Florida.
- Registered to vote in Florida, obtained Florida driver's licenses, voted in Florida.
- Filed Form 1040 using Florida address.
- Lived in Florida from November 1 to May 1 from 1992-2009
- In 2009, Ruth broke a hip and never returned to Florida.

Case Study: Ruth P.

- Family litigation in 2009 brought estrangement between Ruth and Ronald.
- In 2010, Ruth changed her Will, giving no designation of domicile, to provide flexibility to allow for probate in the jurisdiction where she might die, given their multi-state homes.
- Ruth died on July 31, 2011. Probate was submitted in Pennsylvania.
- Ronald appealed, citing lack of jurisdiction, asserting Ruth had been domiciled in Florida.

Case Study: Ruth P.

- Spouses are presumed to have the same domicile
- Ruth demonstrated her intent to exert her independence
- She could have traveled to Florida in 2009, and chose not to
- Ronald argued she had been domiciled in Florida since 1992
- Son argued she purposefully had remained in Pennsylvania for over two years prior to her death
- Court looked at 40 years of social, charitable, physical connection to Pennsylvania

Case Study: Ruth P.

Result?

Pennsylvania domicile

In re Ruth C. Perelman, 32 Pa. D&C 5th 99, 2013 WL 10257595 (Pa. D&C July 23, 2013)

Case Study: Katelyn J.

- Katelyn, a minor child, was seriously injured in an automobile accident in 1995 in Iowa
- In settlement, two annuities were established which provided guaranteed payments to Katelyn for 15 years, and then for life. Her estate was listed as a contingent beneficiary of the annuity, in the event Katelyn died before the 15 year payments expired.

Case Study: Katelyn J.

- In 2001, Katelyn and her parents moved to Wyoming.
- A conservatorship was established in Wyoming, moving the assets from Iowa. No guardianship was required because Katelyn was a minor under the custody of her natural parents.
- In 2004, the family moved to Minnesota, to a home built specially for Katelyn, in order to seek spinal surgery from a Minnesota medical facility.
- Katelyn underwent surgery in 2005, and died on April 30, 2006.

Case Study: Katelyn J.

- The Wyoming conservatorship was terminated and assets transferred to a Minnesota personal representative.
- Federal and Minnesota estate tax returns were filed. Minnesota tax liability was $100K.
- An amended return was filed, denied and appealed.

Case Study: Katelyn J.

- Mother appealed Minnesota tax liability.
  - Katelyn was a ward of the Wyoming court and therefore domiciled in Wyoming at the time of her death.
  - Federal 706 listed Wyoming as her domicile and was accepted by the IRS, and therefore controlled.

Case Study: Katelyn J.

Result?

- Minnesota domicile
  - By law, the domicile of a minor child is that of her custodial parent.
  - Exception exists where minor is under guardianship. A guardian may affect the domicile of a ward.
  - But no guardianship was established here, only conservatorship.

Bradison v. Comm'r of Revenue, 825 N.W.2d 747 (Sup. Ct. Minn. 2013)

Case Study: Dr. Jack

- Dr. Jack was a Canadian veterinarian who resided in and was domiciled in Canada until December of 1992.
- In October of 1992, Dr. Jack was offered a two year position at UC Davis as Equine Medical Director.
- In November of 1992, Dr. Jack applied for and received TC Temporary Professional status allowing him to enter and remain in the US for one year.
- Dr. Jack moved to California in December and started work at UC Davis in January of 1993.

Case Study: Dr. Jack

- Maintained Canadian bank accounts; Canadian professional associations, including his veterinary license; Canadian driver's license, voter registration, and mailing address
- In December of 1993, Dr. Jack extended his TC Temporary Professional visa for one year.
- In December of 1994, he obtained Temporary Professional classification.
- In January of 1995, he extended his contract with UC Davis for 2 years, and in May of 1995, extended his visa through November 11, 1996.

Case Study: Dr. Jack

- On August 27, 1996, Dr. Jack died at the age of 49.
- The estate paid an estate tax of $15,415 as a non-resident not a citizen of the U.S., based on the value of his U.S. gross estate, excluding non-U.S. assets.
- The IRS assessed a deficiency of $80,443, determining Dr. Jack was domiciled in the U.S., therefore Dr. Jack's assets outside the U.S. were includible in his gross estate.

Case Study: Dr. Jack

- The Estate argued that the fact that the visa was temporary prevented the requisite intent that Dr. Jack intended to permanently reside in the U.S.
- By federal regulation, in order to obtain the visa, the applicant must demonstrate to the immigration officer that he does not intend to remain in the U.S. permanently.

Case Study: Dr. Jack

- IRS regulations define resident decedent as "a decedent who had his domicile in the U.S."
- "Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile…." 26 C.F.R. 20.0-1(b)(1).
- If determined a "resident," value of the gross estate includes all property, wherever situated.
- If deemed "non-resident not a citizen", the value of the gross estate includes only that property which at the time of death is situated in the U.S.

Case Study: Dr. Jack

Result? Who knows?

- The Estate sought summary judgment that the grant of the visa was determinative of Dr. Jack's lack of intent to remain in California.
- The IRS argued that it should not be prevented from proving Dr. Jack lied to immigration or developed an intent to remain after the last renewal of the visa.
- Stipulation to dismiss filed by estate two months after Federal Claims opinion.

Estate of Jack ex rel. Blair v. U.S., 54 Fed. Cl. 590 (U.S.Ct. Fed. Cl. 2002)

THANK YOU!