



Tax Considerations When Moving to Another State

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It used to be that people lived in one place and never moved. Those days are gone, as people are much more mobile and, for various reasons, change domicile often. This article will discuss some of the tax issues related to a person with a disability moving from one state to another.

It must be noted that a person could have more than one residence, but only one domicile. The domicile is where a person lives on a permanent basis, where they vote, where they live the majority of the time, where they see their primary medical providers, where they may have a driver's license or other identification card, and also where they file their income tax returns. A handful of states have no income tax on personal income, so, in those states, an individual will not need to file a state income tax return. However, that does not alleviate the need to file a federal personal income tax return to the extent the person does have taxable income, be it from employment, dividends, interest, distributions from a trust, pensions, retirement income, and the like.

In some cases, an individual with a disability may have lived with their parent, but then the adult child may move to a facility or a shared living arrangement in another jurisdiction, perhaps upon the parent's incapacity or death. In these cases, the child would be changing their domicile, and, therefore, they will need to consider many tax-related issues.

The first would be their personal income taxes. The personal tax rate in any particular state could run from zero to 10%. Needless to say, 10% of a person's income is a substantial amount to be paid on an annual basis to any state, but once the person lives in that jurisdiction, they are required to file a tax return on an annual basis and report all taxable income. Some states may provide for an exemption for a disability. In addition, some homecare, therapy charges, and other medical expenses may be deductible, to the extent that a person may itemize their deductions on the personal return. Some states allow for these excess deductions to be carried over from the federal return to the state return to minimize the state income tax, but some states do not.

The second issue is related to estate and inheritance taxes. If a person has a significant inheritance or possibly has a substantial amount in a special needs trust (SNT), depending upon the type of trust, the value of the assets in the trust may be includable in the taxable estate of the beneficiary. Although some states have no death taxes, there are 17 states that impose either an inheritance tax or an estate tax on a person's estate when they die. These taxes usually are assessed from 1% up to 20%, so the tax due upon someone's death could be quite significant. This may not be the best reason to consider which state to live in, but it could be a consideration. On the other hand, if the assets in the estate or trust are being paid to charities, the estate would probably receive a charitable deduction, and, therefore, there should not be any estate tax due so long as the charity or charities are qualified charities as tax exempt under the Internal Revenue Code.

If a beneficiary of a trust is considering a move, it is also important to review the terms of the trust to determine the taxation of the trust. In some situations, the trust will be taxed where the trustee is located or perhaps may be taxed where the assets are being maintained and invested. If the beneficiary is moving from a state that has no state income taxes on trust income, it is important to review the tax laws of the states which may be options for a move. If the move is the priority decision without regard to the taxes, then perhaps the trust can be decanted or modified to change the situs or domicile of the trust so as to obtain the most favorable tax treatment. Certainly, the lawyer who represents the trust, the accountant for the trust, and the trustee themselves should be involved in this process since no one person alone should make the decision as to the tax issues regarding the trust situs. Many trusts do allow the trustee to amend the trust for administrative purposes which may include the right to change the situs or domicile of the trust for income tax purposes.

Another consideration is if the beneficiary is paying a private caregiver from their own funds. If this is the case, then the caregiver may need to report taxable income from a different state. For instance, if the caregiver is living in New York, but the beneficiary is living in Connecticut, the caregiver may have to report the income in two states but receive a credit for the tax paid from one state to the other. Of course, if a caregiver company is being paid from the beneficiary's funds, this will not be a concern as the caregivers themselves will be paid by the company, which will attend to the necessary tax filings. If the person with a disability is moving to a foreign country, there are major issues to review to be sure all US, state, and foreign laws are complied with as required by each jurisdiction.

In any event, when a person does move, they should be filing a final return for the state they are leaving, and then the first return in the new state should be listed as an initial return. The federal return merely needs to have an address change on the form filed to list the new

address of the taxpayer or trustee. Sometimes the tax issues are not as important as other issues, such as the availability and quality of programs, medical care, or mental health services, that a person may be getting. The tax may be somewhat higher in a new jurisdiction, but it may be far outweighed by the additional services and benefits provided by another state.

There are some very important tax considerations to review in changing domicile from one state to another. Although taxes need to be dealt with, care and services are important also. Therefore, it is a good idea to consult with well-qualified tax and legal professionals regarding the tax considerations in the context of a move for an individual with disabilities.

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