LexisNexis Practice Insights

Lexis OR Tax P.I. 6,308

Establishing Residency Outside of Oregon for Personal Income Tax Purposes

ORS § 316.027

By Joshua E. Husbands -- Holland & Knight LLP
General Editor, Darin Christensen -- Bullivant Houser Bailey PC

INSIGHT

Due to Oregon's onerous (9% for taxable income above $5,000) state income tax, a practitioner may find that some clients will attempt to establish that they are not residents of Oregon but are instead residents of neighboring Washington, which imposes no state income tax on its residents. Sometimes the clients may desire to relocate to Washington for tax purposes but want to keep substantial ties to Oregon (such as continuing to own an abode in Oregon). This process of changing a person's residence for tax purposes is more difficult and involved than simply purchasing a house in Washington, and certainly requires more than simply renting an abode across the Columbia River.

ANALYSIS

Intent to change domicile to a new state of residence is required to establish residency in a state other than Oregon.

If a taxpayer wishes to establish residency in Washington rather than Oregon, he or she must truly intend to change domicile to the new state of residence. ORS 316.027 defines a resident of Oregon as: (1) an individual who is domiciled in the state, unless the individual (a) maintains no permanent place of abode in the state, (b) does maintain a permanent place of abode elsewhere, and (c) spends in the aggregate not more than 30 days in a taxable year in this state; or (2) an individual who is not domiciled in Oregon, but maintains a permanent place of abode in Oregon and spends in the aggregate more than 200 days of the taxable year in the state, unless the individual proves that he or she is in the state for only temporary or transitory purpose. It only takes one quick read through the statute to see immediately that the determination of whether a taxpayer is an Oregon resident is dependent first, on whether he or she is "domiciled" in the state and secondly, the extent of his or her activities in the state of Oregon.

Objective evidence of intent to establish domicile in the new state is required.

In addition to purchasing a residence in the new state of domicile (Washington in our example), the taxpayer must objectively demonstrate his or her intention of permanently changing his or her place of abode and residency. Beyond the establishment of the new address, the individual should at a minimum register to vote in the new state, register automobiles and other titled assets in the new state, change the primary mailing address for bills and other notices to the new residence, and otherwise spend as much time and as many days (and nights) in the new state of domicile as possible. One useful action to illustrate a taxpayer's intent to change residency is filing a partial year resident tax return with the state of Oregon in the final year of residency, thereby putting the state on notice that the taxpayer intends to change residency from Oregon to another state. Filing the final Oregon income tax return is one indicia of the individual's intent to change residence to another state.

A taxpayer does not have to sell his or her home in Oregon to establish residency in another state, but it may be a factor in determining one's remaining ties to Oregon.

It is permissible to maintain a residence in Oregon and still be a resident of another state. However, that factor will weigh against the taxpayer in balancing the various factors that determine the true place of domicile. If a former Oregon resident retains his or her old Oregon abode as a second home after moving to another state, he or she should be cautious to avoid spending too much time at the old residence and maintaining too many legal ties to Oregon.