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### Procedure

Taxpayers who move in and out of the country should fully consider the state tax consequences of living and working in another jurisdiction. In this article, Mary Beth Lougen of American Expat Taxes explains the general considerations states use in determining whether a taxpayer is a domiciliary of that jurisdiction, and makes recommendations as to the steps practitioners can help their clients take to minimize risks of state tax liability.

## **Effect of State Domicile on Expat Moves: Helping Taxpayers Determine When and How to Keep or Terminate State Domicile**

BY MARY BETH LOUGEN, EA

**L**iving and working on an international assignment can advance a career and look great on a resume, as well as provide excitement and adventure in the employee's personal life as they learn to live in and adapt to new cultures. However, it can be a very costly exercise in taxation for your client without proper foresight and planning. A taxpayer who fails to properly terminate state residency can incur thousands of dollars in income tax, penalties and interest years later. Even if a taxpayer thinks they have terminated their tax residency, the state may not agree.

Let's start the discussion with the basics. Currently seven U.S. states do not have an income tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming. Two others – New Hampshire and Tennessee – tax only the interest and dividend income of residents. The rest of the states and the District of Columbia have their own set of rules to determine who is a resident of

their jurisdiction and thereby subject to taxation on world income. The rules lean towards inclusion as opposed to exclusion in the state “resident club,” and for some states it seems to be almost impossible for taxpayers to break their membership.

### **Domiciliary Versus Physical Residents**

There are two different types of residency for state income tax: domiciliary and physical residents. Although every state has its own set of particulars, there are generalities that we can use for this conversation.

All states start with the premise that individuals who are “domiciled” in their state are residents for tax purposes. This means that taxpayers are responsible for filing state tax returns declaring their world income each year – even if they do not spend a single day in or have any income from that state. World income is all income received in the form of money, goods, property and services that is not exempt under the tax laws of the individual state, including income from sources outside the United States. In contrast, taxpayers who are deemed not domiciled or currently a resident in a state would report and pay tax only on certain state-sourced income.

The definition of state-sourced income for tax purposes varies by state, but practitioners can always count income from rentals, businesses, wages, and sales of real property interests to be subject to taxation for a state nonresident. Certain state-sourced income would not be taxed to a person who is not considered a resident – such as pension distributions, and interest, divi-

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dends and capital gains from personal portfolio investments.

It is very important to discern whether your client, the taxpayer, will be considered a domiciliary resident or a nonresident after he accepts a position in another country so the taxpayer can file the correct form and include only the income he is legally required to on his state tax return.

Domicile is generally defined for tax purposes as the place where a person voluntarily establishes herself and family with the present intention of making it her true and permanent home. It is the place where, whenever absent, the individual intends to return. A person can only have one domicile at a time, and once established a domicile is retained until the taxpayer acquires another one.

Physical residence is based on a set of rules that when met, cause the person to become a resident for state tax purposes. It is not uncommon for a person to be a resident in one state and domiciled in another. Physical residency determinations usually involve a “days of presence” and a “permanent place of abode” test, both of which vary by state. Each state has its own rules that determine residency and nonresidency under physical presence. Residence under physical presence is not a concept relevant to this article, since residency defined by physical presence alone would not create an ongoing issue for taxpayers who move abroad.

Domicile and residence are two different concepts that are often used interchangeably. Residence is the jurisdiction where a taxpayer physically lives at that moment in time. Domicile is the jurisdiction where the taxpayer intends to live, even if he or she does not currently live there. Current residence is not always the place where a taxpayer intends to live for the undetermined future. A taxpayer can be a resident of Canada, but be domiciled in California.

## Maintaining a State Domicile

Now that we have laid the basics, let’s talk about what maintaining a state domicile means for someone on an overseas assignment. Essentially, it means that the taxpayer will be responsible for fulfilling any and all tax filing obligations imposed by his state of domicile on its residents, which includes the declaration of world income on the taxpayer’s state tax return. In addition to income tax, a person’s estate may fall under the state inheritance tax rules should they die while a domiciliary. Many states have estate taxes that kick in well below the federal threshold of \$5.34 million for 2014 – in fact, New Jersey begins taxing at just \$675,000.

The repercussions of maintaining a state domicile while living out of the country vary widely with the particular state involved. The best scenario for the taxpayer is to be domiciled in a state with no income tax, or in Tennessee or New Hampshire where only investment income is taxable for individuals. A worse case is for the taxpayer to be tied to a state that will tax their foreign income and provide no mechanism in the tax code to avoid double taxation of the income. Some states do not allow for exclusion of income under I.R.C. §911 or for credit for taxes paid to a foreign country or province.

Many U.S. states allow their residents to receive a credit for taxes paid to another state, or have reciprocal state tax agreements in place for people who live in one

state and work in another. This treatment avoids double taxation of the income by one of two different methods.

## Credit for Taxes Paid

First, credit for taxes paid to another state allows an offset or reduction of taxes imposed in the taxpayer’s state of residency by the amount of taxes imposed by the state of source. As a general ordering rule when it comes to figuring out credits for taxes paid to another taxing jurisdiction, the jurisdiction of source has the right of first taxation, followed by the jurisdiction of residency.

For example, Charlotte lives in southwestern New York near the Pennsylvania line. She works in Pennsylvania. Pennsylvania has the right to impose and receive tax on Charlotte’s wages since the money was earned there. Charlotte would file a Pennsylvania nonresident tax return and declare her wages. New York has the right to tax her world income because Charlotte is a resident, but will allow her to reduce the New York taxes payable on her wages by the amount of tax she will pay Pennsylvania on the income. Thus, Charlotte is not double taxed on her wages.

This is the same principal that is applied when calculating the foreign tax credit when a person is considered a resident for U.S. tax purposes, and lives or works in a foreign country. Some states allow a credit for taxes paid to other countries or foreign provinces. Other states allow a credit just to certain specific foreign countries. For example, New York has Form IT-112-C, Credit for Taxes Paid to a Province of Canada, which computes a credit against New York state tax. There are also rules to coordinate with the federal Form 1116, Foreign Tax Credit, to prevent “double dipping.” Practitioners need to research the regulations for the state in question for their clients.

## Reciprocal Agreements

Secondly, avoidance of double taxation is accomplished by reciprocal state tax agreements where wages earned in neighboring states are only taxed in the state of residence. This is a much simpler approach to the same end – elimination of double taxation.

Let’s move Charlotte to Waukegan, Ill., and have her commuting across the state line to work every day in Milwaukee, Wis. Wisconsin will neither require the withholding of Wisconsin state income tax, nor the filing of a Wisconsin tax return. Charlotte will have Illinois withholding throughout the year and file a resident Illinois return reporting her world income.

A similar principal exists inside the tax treaties the United States has with certain other countries. Tax treaties are reciprocal agreements between the governments of two countries that outline rules for the taxation of individuals and businesses resident in the other country. One of the goals of the tax treaties is the elimination of double taxation. Some treaty-based positions mirror state tax reciprocity provisions, there is a common treaty provision that taxes social security benefits from either treaty country only in one of the countries. For example, the United States/Canada tax treaty includes a provision like this—article XVIII(5) states that benefits received under the social security legislation of

either country will be taxed only in the country of residence.<sup>1</sup>

So if Charlotte moves to Winnipeg, Manitoba, when she retires, her social security will only be taxed by Canada.

## Varying State Tax Treatment of Foreign Income

Unfortunately for taxpayers, not every state has included one of these provisions in their tax code where the income in question is from sources outside the United States.

Alabama and California are two such states.<sup>2</sup> To California's credit though, they have a "safe harbor rule" for people who are domiciled in California, but are absent under an employment-related contract for an uninterrupted period of at least 546 days.<sup>3</sup> Under safe harbor these taxpayers will be treated as California nonresidents. As long as the taxpayer and spouse do not have large amounts of intangible income (\$200,000 or more from stocks, investments, etc.) or spend more than 45 days during any tax year in California during the contract period, they can file as nonresidents of California from the first day of the assignment. If at any time before the 546-day period is met, the taxpayers no longer meet the safe harbor requirements, they must amend any previously filed nonresident returns as residents and pay tax to California on world income for the entire period that falls outside the program.

For example, Marge is a domiciliary resident of California and accepts an assignment in London that is expected to last two years. She packs up and moves on Dec. 31, 2011. She can file her 2012 California tax return as a nonresident, taxed only on her California-source income, even though she has not yet been out of the state for the required 546 days. Her mother falls quite ill during the beginning of 2013 and Marge leaves her London assignment and returns to California to care for her. Now Marge must amend her 2012 tax return to a resident return and include her world income. California does not allow her to exclude her income using the Foreign Earned Income Exclusion, Form 2555, nor can she take a credit for taxes paid to the United Kingdom on her income.<sup>4</sup>

She will also file her 2013 taxes on Form 540, California Resident Income Tax Return, as a full-year resident. Her United Kingdom wages will be double taxed.

Even if a state provides a nonresident provision for domiciliary residents who are absent from the state, the above scenario of an assignment terminating early, for whatever reason, should be considered and factored in to the compensation package.

<sup>1</sup> Convention Between Canada and the United States of America With Respect to Taxes on Income and on Capital, U.S.-Can. (1980) (as amended by 2007 Protocol).

<sup>2</sup> Ala. Dept. of Rev., Admin. Law Div., Nos. INC. 96-234 (Sept. 13, 1996) and INC. 85-147 (Sept. 24, 1985) (Alabama does not allow exclusion of foreign earned income under I.R.C. §911); Alabama Form 40 Instructions; California Instructions for Schedule CA (540); California Instructions for Schedule S (540).

<sup>3</sup> Cal. Franch. Tax Bd., Pub. 1031 (2010).

<sup>4</sup> *Id.*

## Advising Clients on Tax Ramifications of Foreign Moves

When a taxpayer begins to prepare for an overseas assignment, he should speak with a professional who can help him decipher the state domicile rules and what they mean to the client given his personal situation. Both income and estate tax should be discussed, as well as any other pertinent nuance in the state's code of law.

If the state does not provide relief from taxation while the taxpayer is out of the country, the taxpayer needs to decide whether to terminate domicile. This means cutting ties to the state in a real and substantive way. A common mistake many people make is that they try to garner the best overall deal they can from their old and new residences by keeping what is beneficial as a resident from each place – perhaps discounted hunting or fishing licenses, a property tax exemption on a former personal residence, or keeping in-state tuition options open for a child who is almost out of high school. These types of actions can give a state reason to reject claims of nonresidency and impose state taxation on world income. Taxpayers cannot have their cake and eat it, too, when it comes to state residency.

Cutting ties means terminating relationships in the original state and creating new ones at the taxpayer's new home.

### Terminating Domicile

Here is a list of things your client needs to consider doing to prove he or she has the intent to terminate domicile. This is not an exhaustive list, nor does everything on this list need to be done to meet every state's threshold.

- Sell the old home and buy a new one in the new country, or at minimum rent it to tenants who are not related for full rental value.

- Close old bank accounts and open new ones in the new area. A case can be made for keeping U.S. accounts and credit cards open, and it is not always feasible to close all U.S. accounts when someone moves abroad. There are many good reasons a person would need one, such as keeping credit active in the United States, buying and shipping gifts to friends and relatives in the States, and of course being able to pay U.S. tax obligations easily with U.S. dollars. But taxpayers should not use it as their main account.

- Investment accounts should be moved to a broker who can work with a client located in a foreign jurisdiction. U.S. Securities and Exchange Commission (SEC) rules require that brokers be licensed where their clients live.

- Give up the old driver license for a new one. The taxpayer will have to lose any sentimental attachment they have to that much younger and thinner picture on the old license. Many state codes require a person to attest that they are a resident of the state when they apply for a driver license, and nonresidents cannot be issued driver licenses.

- Switch doctors, dentists, and yes – even accountants – to professionals in the new home country, if feasible. However, it does not always make sense to stop using an experienced accountant and tax advisor who can handle expat issues.



- Switch any club or professional affiliations to nonresident status, and close any that do not allow non-residents.

- Register to be an absentee voter, but do not vote in the state elections.

- Move household goods to the new domicile, including items of sentimental value.

- Change auto registrations and insurance.

- If it is possible, bring the pets along. Do not hire a friend to watch them until the assignment ends. Get new pet licenses in the new jurisdiction.

- Get established in the new town: join clubs and professional organizations.

- Keep excellent records showing what has been done to terminate domicile. It will be very hard to compile a comprehensive list a couple of years down the road if the state decides to argue the taxpayer's nonresidency claims.

## Practitioner Advice

When you are working with a client who is about to move to a foreign country for an undetermined amount of time, breaking domicile can be difficult to do. But if the client commits to the process and breaks as many ties as they can, it can be done. With a solid plan, it is possible to break U.S. ties and establish a foreign domicile for all intents and purposes, even when the client's state of domicile is one of the more difficult ones in which to terminate residency.

As a tax advisor, do your research! If you do not work in the world of expat taxation, speak to someone who is well versed in international tax. Confusion and misconceptions can occur when state guidance is written on a level most people will understand without being an expert, and you are dealing with an out-of-the-ordinary situation. Always take it back to legal code, no matter what people write in articles or blogs. If you cannot identify it in the tax code or other official source, it can not be cited as a defense position in an audit. Where the point is not clarified in code, look to other official sources such as decisions from a state tax court or tax commissioner, which can be used as precedence.

Case in point: the Virginia Department of Taxation's website states, "If you are a Virginia resident who accepts employment in another country or moves outside the United States for other reasons (including military orders), the fact that you are living abroad does not mean that you are no longer considered a Virginia resident for tax purposes. Unless you have established residency in another state, you will still be considered a domiciliary resident of Virginia, and will be required to file Virginia income tax returns."<sup>5</sup>

Many people believe that this statement means that taxpayers cannot terminate Virginia domicile with a move to a foreign country. At first read it would seem that way. The Virginia tax code provides the definition of domicile, but does not elaborate for foreign moves.<sup>6</sup>

However, a quick search on the Virginia Policy Library, Rulings of the Tax Commissioner page yielded several foreign assignments that resulted in termination of domicile. These types of rulings are essentially a textbook of how to terminate domicile for a particular state.

One ruling outlines a husband and wife who were residents of Virginia, and in tax year 2000 the husband accepted employment in a foreign country. The husband received a permanent permit to work in Country "A," so they terminated their lease on their home in Virginia, sold their cars that were registered there, and registered their child in school in Country A.

In September 2002, the Country A employer terminated the husband's employment. During August and September 2002, the taxpayers purchased and registered cars in Virginia, took out a new lease on a residence in December, and moved back to Virginia to live.

Pursuant to an audit, they were found to have never terminated their Virginia domicile and were ordered to file the 2000 through 2002 tax returns as residents. However, in response to a letter asking for reconsideration of the audit results, Tax Commissioner Kenneth W. Thorson conceded that it is difficult to ascertain intent and that, "In determining domicile, consideration may be given to the individual's expressed intent, conduct, and all attendant circumstances including, but not limited to financial independence, profession or employment, income sources, residence of spouse, marital status, sites of real and tangible property, motor vehicle registration and licensing, and such other factors as may be reasonably deemed necessary to determine the person's domicile. A person's true intention must be determined with reference to all of the facts and circumstances of the particular case. A simple declaration is not sufficient to establish residency or domicile."<sup>7</sup>

In the end, he determined that the taxpayers had in fact terminated domicile in 2000 and reinstated it in 2002 on the date they signed their new lease. The taxpayers were required to file a part-year tax return for Dec. 15-31, 2002, and resident returns going forward.

**Planning Opportunities.** Even when the intent is genuine, sometimes there are insurmountable obstacles that just can't be overcome with diligent severing of ties from the original state. If a client moves abroad on a temporary visa, it is doubtful that they will be able to terminate current state domicile. With a timestamp on the length of time they can remain in the new home country, they cannot establish a new domicile in the true sense of the word and would likely lose a challenge by the state.

Another forward-thinking consideration is that when the foreign assignment has ended and the taxpayers move back to the States, they should settle in a different state. If they move back into their old house in their former community, the state can deny that domicile was terminated because moving back clearly demonstrates intent to return. This could result in the state assessing taxes on world income for all the years the taxpayers were out of the country. Obviously, this could be a massive financial blow.

**Having Cake and Eating It, Too.** In the previous example the taxpayers made very clear steps to terminate their residency and it worked in their favor. Others who are not so careful do not necessarily fare so well.

In another Virginia agency decision, a husband and wife who moved to State "A" in 2005 spent more than 183 days per year there and qualified for State A's

<sup>5</sup> Va. Dept. of Taxn., Residency Status, <http://www.tax.virginia.gov/site.cfm?alias=ResidencyStatus>.

<sup>6</sup> Va. Code Ann. §58.1-302.

<sup>7</sup> Virginia Ruling of the Commissioner PD 05-120.

homestead exemption. They kept their driver licenses and four vehicles registered in Virginia, because the cost of insurance in State A was very high. They changed their voter registrations to State A. They also owned a home in Virginia, which they were in process of transferring to their son through a qualified personal residence trust (QPRT).<sup>8</sup>

Under audit and reconsideration they were held to be domiciled in Virginia during the period in question. Although they had performed actions consistent with establishing State A domicile, they had failed to terminate their Virginia domicile by keeping their driver licenses and cars registered in the state, along with the existence of the trust, which afforded them use of the home for a period of time.

In another agency decision, a taxpayer who resided and worked abroad claimed he was not a domiciliary resident of Virginia. However, he purchased a home in Virginia, registered some cars there, obtained a Virginia driver license and voter registration, and indicated he lived in Virginia on the application for in-state tuition rates for his children. Not only was he deemed to be domiciled in Virginia every year from the point he registered to vote, but he was assessed a 100 percent penalty for fraud with intent to evade tax.<sup>9</sup> “The Department considers the fact that a taxpayer seeks to gain the benefits of lower costs available to Virginia residents to be strong intent of a taxpayer’s desire to be a domiciliary resident of Virginia,” according to a subsequent agency decision.<sup>10</sup>

<sup>8</sup> Virginia Ruling of the Commissioner PD 10-249.

<sup>9</sup> Virginia Ruling of the Commissioner PD 02-149.

<sup>10</sup> Virginia Ruling of the Commissioner PD 10-249 (summarizing a key finding in Virginia Ruling of the Commissioner PD 02-149).

## Planning Points

Proper planning can make the all the difference in the world to a client who accepts an international assignment, and can prevent a rude awakening from a state tax perspective after it is too late to change the facts.

1. Do your research! Just reading blogs doesn’t count.

2. Speak to someone who works in international taxation.

3. Make sure your client understands the choices of terminating domicile or keeping it—they need to know the ramifications of both.

4. If your clients choose to terminate domicile, they should cut ties in every way that is reasonable and makes sense.

5. If you see your clients playing the game of getting economic benefit from both sides of the border, advise them that they are playing with fire and explain the risk involved.

6. If your clients keep their domicile, help them understand what it will cost in the way of taxes and tax preparation fees, so they can speak with their employer about a tax equalization package that includes state tax considerations.

7. If the state provides nonresident treatment of domiciliaries, make sure the clients understand the rules and what will happen if they do not meet the requirements to take advantage of the provision.

For U.S. citizens who accept international assignments, advance planning on a state level is very important. Unfortunately many of our clients come to us after the fact, and there is no “un-doing” bad planning—only the challenge to make the best possible case within the regulations and rules of whichever state with which we are dealing.

## State Taxation of Expatriates

Jurisdiction	Expatriate Treatment
Alabama	If an Alabama resident accepts employment in a foreign country for a definite or indefinite period of time with the intent of returning to the United States, the individual remains an Alabama resident and all income, wherever earned, is subject to Alabama income tax. This is true even if the taxpayer leaves no property in Alabama. Ala. Dept. of Rev., Form 40 Booklet.
Alaska	Alaska does not impose an individual income tax.
Arizona	If an Arizona resident leaves the state for a temporary period, the taxpayer remains an Arizona resident while out of the state. A resident is subject to tax on all income no matter where the income is earned. Ariz. Rev. Stat. Ann. §43-104(19)(b); Instructions 2013 Resident Personal Income Tax Return. An Arizona resident is deemed to become a nonresident if he changes his residence to another country. See <i>DeWitt v. McFarland</i> , 112 Ariz. 33, 34-35, 537 P.2d 20, 21-22 (1975) (quoting <i>State v. Dillett</i> , 240 Wis. 465, 3 N.W.2d 699, 700 (1942)) (Vietnam was the taxpayer's domicile because he intended to remain there for an indefinite period).
Arkansas	A taxpayer can be deemed to be an Arkansas resident even if they are absent from Arkansas for a long period of time. Ark. Regs. 2.26-51-102(9)(b).
California	An individual domiciled in California who leaves the state retains California as a domicile as long as the individual has the definite intention of returning to California, regardless of the length of time or the reasons why the individual is absent from the state. Cal. Code Regs. tit. 18, §17014(c). There is an exception from resident taxation for domiciliary residents who are absent from California for at least 546 consecutive days on employment-related contracts. California Tax Publication 1031 (2010).
Colorado	A Colorado resident reporting federal taxable income must continue to file Colorado returns as a full-year resident no matter how long he or she is out of the country. Most such individuals are working on a temporary assignment, and return to Colorado. Because of this, there is a presumption that people from Colorado working in foreign countries are still Colorado residents. Colorado FYI Income 28 (Oct. 2006).
Connecticut	Generally, a Connecticut resident will not lose their domicile in the state merely by moving to a foreign country. Instead, they must actually change residence to the foreign country through an intent to reside there indefinitely. Conn. Agencies Regs. §12-701(a)(1)-1(d)(2); see <i>Amen v. Law</i> , No. CV 02 0515337 (Conn. Super. Ct. April 14, 2005) (holding that taxpayer retained his Connecticut domicile despite moving abroad for work because he failed to show an intent to change his domicile by leasing, rather than selling, his home for short periods of time based on the duration of his employment; including early termination provisions in the lease; undertaking major renovations on the home before returning; having employment abroad that was temporary in nature; and maintaining a link to his country club in order to renew active membership when he returned).
Delaware	Delaware residents are not considered to have terminated their state domicile when they move to a foreign country. However, individuals can be treated as nonresidents for tax purposes if they are present in the foreign country or countries for at least 495 full days in any consecutive 18-month period, and during that period are not present in Delaware for more than 45 days, and do not maintain an abode for themselves or their family. This does not apply when the taxpayer is an employee of the U.S. government, including the military. Del. Code Ann. tit. 30, §1103.
District of Columbia	An individual is a resident of the District if that person is domiciled in the District or if they maintain a place of abode in the District for an aggregate of 183 days during the year. Temporary or transitory absences from the District are not sufficient to abandon domicile or place of abode. D.C. Code Ann. §47-1801.04(42); D.C. Mun. Regs. tit. 9, §105.6. D.C.'s code has exclusions to residency for elected officials and their staff who are domiciled in other states, and for persons who are not required to file U.S. tax returns, which would exclude foreign government and consular staff from filing as District residents. D.C. Code §47-1801.04(42); Instructions to 2013 Form D-40.
Florida	Florida does not impose an individual income tax.
Georgia	Once a taxpayer becomes a Georgia resident for tax purposes, they remain a resident until they can show to the satisfaction of the commissioner that he or she has become a legal resident or domiciliary of another state and that he or she have not resided in Georgia for 183 days or more during the year. Ga. Code Ann. §48-7-1(10)(B).
Hawaii	A Hawaii resident working in a foreign country will remain a Hawaii resident unless permanent resident status is granted by the foreign country. Hawaii 2013 N-11 Resident Income Tax Forms and Instructions.
Idaho	Once a taxpayer is domiciled in Idaho, a concurrence of three factors must occur to change the individual's domicile. The factors are (1) the intent to abandon the Idaho domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Idaho Regs. §35.01.01.030.02.a. See also, <i>Pratt v. Idaho State Tax Comm.</i> , 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996); Idaho Commission Decisions Docket No. 16986.
Illinois	An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. Ill. Admin. Code tit. 86, §100.3020(f). However, this is not a blanket statement that can be used in regard to foreign moves—a person who is away for even lengthy periods of time on foreign assignments may still be considered domiciled in Illinois. Illinois General Information Letter IT 09-0024-GIL (Aug. 3, 2009). If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary. Illinois General Information Letter IT 06-0013-GIL (June 7, 2006).

## State Taxation of Expatriates – Continued

Jurisdiction	Expatriate Treatment
Indiana	U.S. citizens domiciled in Indiana, who go to a foreign country for a limited amount of time because of a work assignment or for study, research or any other purpose, do not lose Indiana domicile unless they can clearly show intent to remain in that foreign country permanently and that they do not plan to return to Indiana. Indiana Tax Information Income Tax Bulletin 55 (September 2001).
Iowa	Iowa does not provide a definition for expatriates. However, once an individual is domiciled in Iowa, the status is retained until the individual takes positive action to become domiciled elsewhere, relinquishes the rights and privileges of residency in Iowa, and meets the <i>Julson</i> criteria. A new domicile is perfected by: (1) a definite abandonment of the former domicile; (2) actual removal to, and physical presence in, the new domicile; and (3) bona fide intention to change and to remain in the new domicile permanently or indefinitely. <i>Julson v. Julson</i> , 255 Iowa 301, 122 N.W.2d 329, 331 (1963). Individuals claiming domicile outside the state of Iowa may be required to provide documentation supporting the claim. Iowa Admin. Code r. 701-38.17(422)(2).
Kansas	Kansas does not provide a designation for expatriates. However, being absent from Kansas for more than six months is not, by itself, enough to create a presumption that a new domicile has been created. Also leaving the state to accept a job assignment is not enough to create a presumption that a new domicile has been created. Kan. Admin. Regs. 92-12-4a. If a person leaves the state to accept a job assignment in another jurisdiction, that person is not presumed to have lost their domicile in Kansas. Kan. Admin. Regs. 92-12-4a(b).
Kentucky	An individual residing in a foreign country who is permitted to file federal income tax returns as a nonresident citizen, and who immediately before residing in a foreign country was domiciled in Kentucky, is presumed to be a Kentucky resident and is required to file a resident Kentucky income tax return. 103 Ky. Admin. Regs. 17:010.
Louisiana	Louisiana has no separate rule for expatriates. For income tax purposes, every natural person who is domiciled in the state, and every other natural person who maintains a permanent place of abode within Louisiana or who spends an aggregate of more than six months of the taxable year within the state, is deemed to be a state resident. La. Rev. Stat. Ann. §47:31(1). A natural person can change domicile by moving his residence to another location with the intent to make that location his habitual residence. La. Civ. Code Ann. art. 44.
Maine	Maine does not provide a designation for expatriates. However, Maine provides a foreign safe harbor with respect to residency. Me. Rev. Stat. Ann. §5102(5); Code Me. R. §18-125-807.08. Under the safe harbor, an individual who is domiciled in Maine will be treated as a nonresident individual if they satisfy all three of the following requirements: within any period of 548 consecutive days, the individual is present in a foreign country (or countries) 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 permanent place of abode in Maine where the individual's spouse (unless the spouse is legally separated) or minor children are present for more than 90 days; and during the nonresident portion of the taxable year during the 548-day period 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. Me. Rev. Stat. Ann. §5102(5); Code Me. R. §18-125-807.08.
Maryland	A person may be legally prohibited from establishing a domicile in a foreign jurisdiction because of immigration or visa restrictions. For example, an individual who is sent to a foreign country to perform the duties of the individual's job may not be allowed to remain in that country for an indefinite period of time. Maryland Administrative Release No. 37, Domicile and Residency (2009). An individual who is required to leave a foreign country after a certain period of time, or upon the happening of a certain event, cannot establish a domicile in that country and, therefore, cannot effectuate a change of domicile, regardless of their intent. Certain factors to consider include: (1) Is the taxpayer employed by the U.S. government, including the military? (2) Is the taxpayer in the foreign country under a work visa or other restrictive visa? (3) Is the taxpayer in the foreign country on a temporary assignment? Maryland Administrative Release No. 37, Domicile and Residency (2009).
Massachusetts	A person can be considered a resident even if that person is not domiciled in Massachusetts. A resident is a person who maintains a permanent place of abode in Massachusetts and spends more than 183 days of the taxable year in Massachusetts. Mass. Regs. Code tit. 830, §62.5A.1(1). Massachusetts does not apply the foreign earned income exclusion. Mass. Gen. L. ch. 62, §2(a)(1)(C). However, the state's residents who are taxed on income earned in Canada or in any of its provinces are entitled to claim credit for such taxes after accounting for any federal credit. Frequently Asked Questions and General Information for Nonresidents and Part-Year Residents (Dec. 1, 2010).
Michigan	Domicile in Michigan, once established, is not lost until there is a concurrence of all of the following: the specific intent to abandon the old domicile; the intent to acquire a specific new domicile; and actual physical presence in the new domicile. Generally, the domicile of the wife follows that of the husband. Mich. Admin. Code r. 206.5.



## State Taxation of Expatriates – Continued

Jurisdiction	Expatriate Treatment
Minnesota	Minnesota does not provide a definition of who is an expatriate. See Minnesota Individual Income Tax Fact Sheet 1 (November 2013); IRS, Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad; federal Form 2555, Foreign Earned Income. Foreign earned income that qualifies for the federal foreign earned exclusion will not be taxed by Minnesota. Also, an expatriate will qualify as a nonresident if he or she has established a tax home in a foreign country and has been outside the United States for at least 330 days during a 12-month period. Minnesota Individual Income Tax Fact Sheet 1 (November 2013).
Mississippi	In Mississippi, a resident who does the following remains a resident of the state: accepts temporary employment in another country; or travels extensively abroad or accepts a temporary assignment in another country; or otherwise leaves the state with intentions, at the time of departure, of returning to the state. Miss. Regs. §35.III.07.01.105.
Missouri	Missouri does not provide a definition for expatriates. However, an individual domiciled in Missouri who does not maintain a permanent place of abode in Missouri and maintains a permanent place of abode elsewhere, and spends 30 days or less of the taxable year in Missouri is not a resident. Mo. Rev. Stat. §143.101; Mo. Dept. of Rev., Form MO-A Instructions.
Montana	Montana status as a resident cannot be lost until residency in another state or country is gained. Mont. Code Ann. §1-1-215(3).
Nebraska	Any citizen residing outside the United States whose last domicile within the United States was within Nebraska will continue to be a Nebraska resident until the person ceases to be a citizen of the United States, establishes residence as a permanent resident alien in a foreign country, or reestablishes another domicile within the United States. Neb. Admin. R. & Regs. 22-001.03A.
Nevada	Nevada does not impose an individual income tax.
New Hampshire	New Hampshire does not provide a definition for “expatriates.” However, New Hampshire does not consider an individual to be a part-year resident if the person is temporarily absent from their state of residence. N.H. Code Admin. R. [Dept. Rev. Admin.] 902.03. In New Hampshire, a temporary absence from an individual’s state of residence exists when a person is in another state or country on an employment assignment of limited duration after which the person returns to his or her regular place of employment or another temporary assignment; seasonal trips resulting from a desire to be in a different climate from the individual’s state of residence; trips of varied duration visiting friends, relatives or various parts of the country or world; or other similar absences where the person does not effect an establishment of intent to be a New Hampshire resident. N.H. Code R. [Dept. Rev. Admin.] 902.03.
New Jersey	A taxpayer may only have one domicile at a time. Once established, a taxpayer’s domicile continues until the taxpayer moves to a new location with the intent to establish a fixed and permanent home there. A taxpayer’s domicile is not changed when the taxpayer moves to a new location, even for an extended period of time, if the taxpayer intends to remain their only for a limited time. New Jersey Technical Bulletin GIT-6. Included within the definition of “resident” is a person who is not domiciled in New Jersey, but who maintains a permanent place of abode in the state and spends in the aggregate more than 183 days of the taxable year in the state, unless the individual is in the U.S. Armed Forces. N.J. Rev. Stat. §54A:1-2(m). A place of abode, whether inside or outside of New Jersey, is not permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose, such as for a temporary job assignment. N.J. Div. of Taxn., Instructions to Form NJ-1040.
New Mexico	Taxpayers can only have one domicile, and a New Mexico domicile is not changed until the taxpayer can show by clear and convincing evidence abandonment of the domicile and the establishment of a new domicile outside of New Mexico. N.M. Taxn. and Rev. Dept., 2013 Personal Income Tax (PIT) Form Packet. If a taxpayer’s domicile is New Mexico and the taxpayer goes to a foreign country for a business or work assignment, or for study, research or any other purpose, the taxpayer’s domicile does not change unless he or she shows that they definitely do not intend to return to New Mexico. N.M. Taxn. and Rev. Dept., PIT 1. In New Mexico, no change in domicile results when an individual leaves the state if the individual’s intent is to stay away only for a limited time, no matter how long, including: for a period of rest or vacation; to complete a particular transaction, perform a contract or fulfill an engagement or obligation, but intends to return to New Mexico whether or not the transaction, contract, engagement or obligation is completed; or to accomplish a particular purpose, but does not intend to remain in the new location once the purpose is accomplished. N.M. Admin. Code tit. 3, §3.1.9(C)(3).



## State Taxation of Expatriates – Continued

Jurisdiction	Expatriate Treatment
New York	Certain persons are not deemed residents although domiciled in New York state. Any person domiciled in New York state is a resident for personal income tax purposes for a specific taxable year unless for that year such person satisfies all three of the requirements in paragraph (1) or all three requirements in paragraph (2) below. (1) A person is not deemed a resident although domiciled in New York state if: the person maintains no permanent place of abode in New York state during such year; the person maintains a permanent place of abode outside New York state during such entire year; and the person spends in the aggregate not more than 30 days of the taxable year in New York state. N.Y. Comp. Codes R. & Regs. tit. 20, §105.20(b)(1). (2) A person is not considered a resident of the state although domiciled in the state if: within any period of 548 consecutive days the taxpayer is present in a foreign country or countries for at least 450 days; during the period of 548 days, the taxpayer, the taxpayer's spouse (unless the spouse is legally separated), and the taxpayer's minor children are not present in the state for more than 90 days, and during the nonresident portion of the taxable year with or within which the period of 548 consecutive days begins and the nonresident portion of the taxable year with or within which the period ends, the taxpayer is present in this state for a number of days which does not exceed an amount which bears the same ratio to 90 days as the number of days contained in that portion of the taxable year bears to 548 days. N.Y. Tax Law §605(b)(1)(A); N.Y. Comp. Codes R. & Regs. tit. 20, §105.20(b)(2).
New York City	Certain persons are not deemed residents although domiciled in New York City. N.Y. Tax Law §1305(a)(1); N.Y. City Admin. Code §11-1705(b)(1)(A).
North Carolina	North Carolina does not have a specific designation for expatriates. However, a resident who leaves North Carolina during the taxable year is considered to be a resident until he both establishes a definite domicile elsewhere and has abandoned any domicile in North Carolina. Unless there is convincing contrary proof, an individual is presumed to be a resident if he is present in the state for more than 183 days. However, an individual's absence from the state for more than 183 does not raise a presumption that the individual is not a resident. N.C. Gen. Stat. §105-153.3(12).
North Dakota	For income tax purposes, "resident" means any person domiciled in North Dakota and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the income year within the state. Full-time active duty members of the armed forces who are assigned to North Dakota military installations, or the member's spouse, are not "residents" of North Dakota for income tax purposes simply by voting in an election in the state. N.D. Cent. Code §57-38-01(11). In North Dakota, an individual that moves into, or moves out of, the state during the taxable year is considered a part-year resident. N.D. Admin. Code §81-03-02.2-01(4).
Ohio	In Ohio, the following factors may be considered in making a determination of an individual's domicile: the number of contact periods which the individual has in Ohio; the individual's activities in tax years other than the tax year or years at issue; and any other fact the tax commissioner deems relevant. Ohio Admin. Code §5703-7-16; Ohio Information Release IT 2007-08.
Oklahoma	In Oklahoma, a nonresident individual, with respect to foreign earned income and deductions, includes an individual who during any period of 24 consecutive months is out of the United States at least 550 days and is not present in Oklahoma for more than 90 days during any taxable year. A nonresident individual also includes someone who, within a 24-month window for any period of less than an entire taxable year, is not present in Oklahoma for a number of days equal to the same ratio to 90 days as the number of days contained in the period of less than an entire taxable year bears to 365. Finally, a nonresident individual includes someone who, during a consecutive 24-month period, does not maintain a permanent place of abode in Oklahoma at which the individual's spouse (unless the spouse is legally separated) or minor children are present for more than 180 days. Okla. Stat. Ann. tit. 68, §2353(4).
Oregon	For Oregon income tax purposes, the term "nonresident" includes a person who is a "foreign nonresident," which means someone who is: a qualified individual under I.R.C. §911(d)(1), and has a bona-fide residence in a foreign country for one full tax year, or is physically present in a foreign country for 330 full days out of a consecutive 12-month period. Or. Admin. R. 150-316.027(1)(b).
Pennsylvania	If an individual retains his domicile in Pennsylvania and wishes to change residency to a foreign jurisdiction, the individual must: maintain no permanent place of abode in Pennsylvania during the year; maintain a permanent place of abode elsewhere during the year; and spend in the aggregate not more than 30 days of the taxable year in Pennsylvania. 61 Pa. Code §101.4(a); 61 Pa. Code §121.7; Penn. Dept. of Rev., REV-611 PO, Determining Residency for PA Personal Income Tax Purposes (July 2013).
Rhode Island	Every resident of Rhode Island required to file a federal tax return, or every nonresident individual who has Rhode Island source income, must file a Rhode Island tax return. R.I. Regs. §PIT 90-3(I)(B). The term resident includes a person who is not domiciled in Rhode Island but maintains a permanent place of abode there for more than 183 days of the taxable year, unless the individual is in the armed forces of the United States. R.I. Gen. Laws §44-30-5(a)(2).
South Carolina	An individual will not be subject to South Carolina income tax if it can be shown that the individual has become domiciled in a foreign country, is no longer a South Carolina resident, has severed all connections with South Carolina, and has clearly demonstrated an intention to reside abroad permanently with no intention of returning to South Carolina. 117 S.C. Code Regs. §620.1.
South Dakota	South Dakota does not impose an individual income tax.

### State Taxation of Expatriates – Continued

Jurisdiction	Expatriate Treatment
Tennessee	Tennessee does not have specific requirements or definitions for expatriates. Tennessee imposes individual income tax on persons whose legal domicile is in Tennessee and persons who maintain a residence in Tennessee for more than six months during the year. Tenn. Code Ann. §67-2-101(5).
Texas	Texas does not impose an individual income tax.
Utah	Utah does not provide a definition of expatriate.
Vermont	An individual qualifies as a Vermont resident for the portion of the taxable year during which the individual is domiciled in the state or the individual maintains a permanent place of abode and is present in the state for more than an aggregate of 183 days of that taxable year. Vt. Stat. Ann. tit. 32, §5811(11).
Virginia	Expatriates are not considered actual residents so long as they are not domiciled in Virginia and do not maintain a place of abode in Virginia for more than 183 days, in the aggregate, during the taxable year. Va. Regs. §10-110-30(B).
Washington	Washington does not impose an individual income tax.
West Virginia	West Virginia defines a resident as an individual who is either domiciled in the state or who maintains a permanent place of abode in West Virginia, and spends more than 183 days in state in the aggregate during a taxable year, or both. W. Va. Code §11-21-7(a).
Wisconsin	Every natural person domiciled in Wisconsin is deemed to be residing within the state for purposes of determining liability for income taxes. Wis. Stat. §71.02(1). Any nonresident and every person who changes domicile into or out of Wisconsin during the taxable year must file a return if the single individual has gross income of \$2,000 or more, or if the married individual and spouse have a combined gross income of \$2,000 or more. Wis. Stat. §71.03(2)(a)(2).
Wyoming	Wyoming does not impose an individual income tax.