

A number of ASCPA members have mentioned recently, and we've also noticed, a major uptick in the number of so-called "residency audits" conducted by the Alabama Department of Revenue (ADOR). The Alabama Tax Tribunal has issued a number of rulings on this issue in the past few years as well. Often these audits result from the taxpayer having filed a federal income tax return listing an Alabama address, while not having filed an Alabama return. The ADOR receives notice of this discrepancy through its exchange of information agreement with the IRS.

Some of our readers suggested that we outline the key criteria to be followed by an Alabama resident who wishes to change his or her domicile to another state or another country. For Alabama tax purposes, "domicile" is defined as "an individual's true, fixed home to which he intends to return when absent." Nonetheless, as Chief Tax Tribunal Judge Bill Thompson has noted on numerous occasions: "[t]here are [no] hard rules for determining if a person is domiciled in Alabama." Thus, it's a highly fact-sensitive determination, mixed with some relatively consistent return filing tips outlined below. There is no "one size fits all."

In general, Alabama residents include those individuals who (1) have domicile in Alabama, (2) maintain a place of abode in Alabama, or (3) spend more than seven months during the tax year in Alabama. Ala. Code § 40-18-2(b). In order for a taxpayer to change his domicile from Alabama to another state, "a taxpayer must abandon Alabama, and also establish a new domicile elsewhere with the intent to remain permanently, or at least indefinitely." *Canady v. State Dep't of Rev., Admin. Law Div., Dkt. No. INC. 14-445* (Aug. 15, 2014). And "[a] person's intent will be ascertained by examining his actions." ADOR Rule 810-3-2-.01(1)(b)(1)(i).

A textbook case is *Boudreaux v. State Dep't of Rev., Admin. Law Div., Dkt. No. INC. 07-848* (Apr. 15, 2008), where the taxpayer moved to the U.S. Virgin Islands for business reasons, while his wife and children continued to live at their old residence in Alabama. However, the taxpayer moved back to Alabama after only two years because his business opportunities had effectively been foreclosed by governmental changes beyond his control. Judge Thompson stated that the taxpayer's "purchase of and active involvement in running the businesses shows that he intended to live and work

...". Id. Thus, the taxpayer's actions, when considered with his testimony, "show that [he] intended to live in the Virgin Islands indefinitely when he moved there." Id.

We have also found it helpful if the taxpayer files an Alabama income tax return for the year prior to moving labeled "Final Return" and attaches a statement of intent to abandon Alabama domicile as suggested by ADOR Rule 810-3-2-.01(4). Other practical indicia of an intent to change domicile include such things as:

- purchasing a home or signing a

- listing the new state address on the federal income tax return (and other documents);
- obtaining a driver's license in the new state;
- purchasing a new car tag;
- registering to vote in the new state;
- opening a bank account in the new city and having paychecks deposited into that account;
- obtaining professional licenses and joining professional groups in the new state;
- joining a local country club, health club, church or other civic organization (e.g., the local Kiwanis or Rotary Club); and
- enrolling children (if applicable) in school in the new city.

We have handled appeals in which it was helpful to show that the taxpayer changed his estate planning documents to be governed by the new state's probate laws. We have also found that affidavits from co-workers or supervisors at the new workplace were useful. Conversely, frequent return trips to Alabama to visit loved ones (e.g., the spouse or other family members) tend to show an intent not to permanently abandon the state, especially since spouses are presumed to have the same domicile.

The suggestions in this article are by no means intended to be an exhaustive checklist, and we also realize that few taxpayers can check each one of these boxes. But it's important for your client to take proactive measures upon deciding to move away from Alabama. Taxpayers bear the burden of proof if the ADOR initiates a residency challenge, and according to RIA Checkpoint, the ADOR "takes a very aggressive position on the domicile issue..." So, before your clients move, be sure to talk to them about the importance of taking (and documenting) as many of these steps as possible.

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## Helping Your Client Avoid a Residency Challenge After They've Moved Away

By Bruce P. Ely  
William T. Thistle, II  
Bradley Arant Boulton Cummings LLP  
Birmingham, Alabama



on the Islands for an extended or indefinite period. The fact that he purchased a place to live on the Islands further evidences his claim that he intended to remain indefinitely. The Taxpayer also purchased a vehicle and obtained a Virgin Islands driver's license. He registered to vote and filed federal tax returns as a resident of the Islands. Importantly, he put his oldest child on a waiting list at a private school on the Islands

long-term lease on an apartment in the new city;

- selling the Alabama residence or listing it for sale;
- notifying the county tax assessor to remove the Alabama homestead exemption from the Alabama residence if the client intends to keep the [former] residence;
- filing state or local tax returns with the new state or locality (if required);