

When vacation home becomes 'domicile'

By Denice A. Gierach – Law Talk

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As many Naperville residents become more successful in their businesses, they may purchase another residence in another state. As time goes on, they may choose to spend more time in that state (especially in the wintertime). The other state may be more attractive, because that state might not have an income tax or an estate tax upon death. Thus, even if people choose to spend a substantial amount of time at their Illinois residence, they may declare they are a resident of another state.

The Illinois Department of Revenue has decided to pay special attention to high-net worth "former" Illinois residents who continue to maintain their ties to Illinois.

According to the law in Illinois, a person becomes a resident of Illinois for purposes of the state income tax when the person is in Illinois for a more permanent purpose and that person's domicile is in Illinois, even if that person is gone from the state for a temporary purpose.

Whether you are a resident or nonresident of Illinois is dependent upon the issue of where is your domicile. Domicile refers to a person's permanent home. A person may have only one domicile, even though they may have two or more homes and spend a substantial amount of time in both homes. For instance, a client may have a home in Illinois and another home in Florida (which has no state income tax).

Illinois applies a presumption that a person who spends more than nine months of any taxable year in the state is considered a resident. On the other hand, if a person is absent from Illinois for one year or more, there is a presumption that the person is a nonresident of Illinois.

With this in mind, it is important that such residents take the time to document their changes in residency to show they have changed their domicile.

Some examples of documentation that demonstrate the choice of the person's domicile are in which state you are registered to vote, the registration of your automobiles or driver's licenses, how you file your income taxes, club membership and participation, maintenance of professional or sporting licenses, affiliation with places of worship and the like. All of this is evidence as to your choice of your permanent home.



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As Illinois has exacerbated budget problems, expect the Illinois Department of Revenue to be more aggressive on the issue of residency in the future, both for income tax purposes and for estate tax purposes.

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