

Memorandum

Re: Domicile for Estate Tax Purposes

In the current globalized world individuals are more mobile than ever before and wealthy families now have the opportunity to live and maintain homes concurrently in different parts of the world. This creates issues for members of these families when preparing their respective estate plans.

The estate tax provisions of the Internal Revenue Code (“I.R.C.”) creates a transfer tax on the worldwide assets of every decedent who is a citizen or resident of the United States at the time of his or her death. The term “resident of the United States” for purposes of the U.S. estate tax is not the conventional understanding of resident but rather is defined as being domiciled in the U.S. at the time of death of the decedent.¹ Domicile is acquired when an individual lives in a place with the intent to remain there indefinitely.² Once domicile is acquired, it is presumed to continue until shown to have been changed.³ A change of domicile requires both actual removal to a different place and intent to remain there indefinitely.

Example:

Jane and John Sample are citizens of Switzerland. They maintain a residence in Switzerland as well as in New York. Their home in Switzerland is much larger than their home in New York and in Switzerland they own their home, while in New York they rent an apartment on the Upper East Side. They maintain Swiss passports and spend 300 days a year in Switzerland. They maintain a vehicle in

¹ I.R.C. § 2001; Treas. Reg. § 20.0-1(b)(1).

² Treas. Reg. § 20.0-1(b)(1).

³ *Estate of Nienhuys v. Comm’r*, 17 T.C. 1149, 1159 (1952); *Mitchell v. United States*, 17 T.C. 1149, 1159 (1952).

IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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Switzerland. They have a vast collection of art work which is maintained primarily in Switzerland. They have doctors, friends and a social network in both locations.

The primary issue here is whether or not Jane and John Sample are domiciliaries of the United States.

Domicile is a factual issue based on various factors, none of which are independently determinative. Some of these factors include:

- Status for immigration purposes⁴
- Personal contacts and affiliations⁵
- Location where filed income tax returns⁶
- Passport⁷
- Automobile registration and insurance⁸
- Assets⁹
- Real property¹⁰
- Declaration of domicile in wills, trusts, deeds, etc.¹¹
- Length of time spent in the United States and abroad
- Location of decedent's family and close friends
- Place of residence
- Length of time at residence
- Size, cost, and nature of the decedent's houses, or other residence
- Motives for changing residence
- Location and extent of social and community contacts

⁴ See *Estate of Fokker v. Comm'r*, 10 T.C. 1225, 1246 (1946); *Bank of New York & Trust Co. v. Comm'r*, 21 B.T.A. 197, 203 (1930) indicating that status for immigration purposes is determinative of domicile; *but see Estate of Nienhuys v. Comm'r*, 17 T.C. 1149, 1160-1161 (1952); *Elkins v. Moreno*, 435 U.S. 647 (1978); Rev. Rul 80-363, 1980-2 CB 249; *Estate of Jack ex rel. Blair v. U.S.*, 54 Fed. Cl. 590 (2002).

⁵ *Estate of Paquette v. Comm'r*, T.C. Memo 1983-571 (1983).

⁶ *Estate of Paquette v. Comm'r*, T.C. Memo 1983-571 (1983).

⁷ *Estate of Paquette v. Comm'r*, T.C. Memo 1983-571 (1983).

⁸ *Estate of Paquette v. Comm'r*, T.C. Memo 1983-571 (1983).

⁹ *Estate of Paquette v. Comm'r*, T.C. Memo 1983-571 (1983).

¹⁰ *Estate of Paquette v. Comm'r*, T.C. Memo 1983-571 (1983).

¹¹ See *Union Trust Co. of Cleveland, Ohio v. Comm'r*, 5 B.T.A. 1272, 1273 (1927); *Rogers v. Comm'r*, 17 B.T.A. 570, 574 (1929); *Bank of New York & Trust Co. v. Comm'r*, 21 B.T.A. 197, 204 (1930); *Farmers' Loan & Trust Co. v. Comm'r*, 21 B.T.A. 197, 203 (1930)

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- Declaration of intent
- Location of physicians
- Location of personal property- particularly valuables
- Location of business interests
- Where you are registered to vote
- Where you are licensed to drive
- Where you intend to be buried.

Additionally, aside from the general domicile factors there are treaties which could impact the application of the estate and gift tax code to nonresident aliens. The United States maintains estate and gift tax treaties with Australia, Austria, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Netherlands, Norway, South Africa, Sweden, Switzerland and the United Kingdom

There is no particular weighting structure which relates to the factors for evaluating an individual's domicile as they are generally looked at from a holistic approach. Here, Jane and John Sample clearly appear to have more ties to Switzerland and do not seem to be U.S. domiciliaries, despite their residing in the United States for a portion of the year and their maintenance of a residence in New York as well as having ties to the New York community. However, domicile must be looked at on a facts and circumstances basis. Additional facts to this scenario could result in a different conclusion with regard to the individual's domiciliary status. Please seek additional advice when determining your domicile or residence for estate tax purposes.

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