

# Charitable contributions a ‘non-factor’ in donor domicile

**C**an a donor make a contribution to a New York-based charity and not have it affect his or her legally declared “domicile” in another state? Absolutely!

Clients frequently ask how they can effectuate the change of their “residence” from New York to another jurisdiction with a more friendly tax code.

However, the change of “residence” is not really the issue. In order to avoid New York income and estate tax, a donor must change his or her “domicile.”

Individuals may have many residences, but they can only have one home — or domicile — for purposes of income and estate taxes. Your domicile is where you call home, it is the place to which you return to when you are away for any reason. It is where you vote, collect your mail, where your medical providers are, and where you have made your roots into the community.

When taxpayers attempt to leave New York for another jurisdiction, they must prove that they intended to, and then actually did, effect the change from the former jurisdiction to the new one. A mere change in residence without an intention to actually change your domicile — for example, make your new home — will not be sufficient to escape New York taxes. Again, the mere move to another jurisdiction is not enough. The taxpayer must “abandon” New York State as his home and

establish all of the ties which constitute a new domicile in the new state.

New York State has issued guidelines for its auditors which include the “rules” the auditors are expected to follow when auditing a taxpayer with regard to a change of domicile. These guidelines divide the factors to be considered into two groups: primary factors, and secondary factors. If the primary factors are not satisfied, auditors do not even consider the secondary factors. None of the primary factors is alone, significant. They must be evaluated together. Primary factors are:



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**HOME** — The taxpayer’s and his immediate family’s idea of home, and where the taxpayer has established ties to his community, the size and value of the residence in New York as compared to the other jurisdiction, whether the residence in New York is for sale, or is seasonal.

**ACTIVE BUSINESS INVOLVEMENT** — The taxpayer’s continued employment or active participation in a New York business.

**TIME** — Where the taxpayer spends his time when not in New York. If the

taxpayer is not in New York State, but is not in the new jurisdiction he claims is his domicile, the evidence that he has established his domicile in the new jurisdiction is more difficult to establish.

**NEAR AND DEAR** —

The location of the taxpayer’s pets, family heirlooms, family photographs, and those items of tangible personal property which “enhance the quality of the taxpayer’s life.”

**FAMILY CONNECTIONS** —

Where the taxpayer’s family members live, where holidays are celebrated, how often the taxpayer returns to New York to see his grandchildren, for instance.

Significantly, the auditor’s guidelines specifically state that the taxpayer’s charitable contributions are a “non-factor” and are not to be taken into account in determining domicile. Indeed, an “Opinion of Counsel” issued on Nov. 22, 1984, specially stated that ... “it is the policy of the Department that the making of contributions to a New York State charity will not be taken into account in determining domicile under New York’s personal income tax.”

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# Starting a charitable fund at the Community Foundation is easy

**C**reating a fund at the Northern New York Community Foundation is an easy way to invest in our community. By establishing a fund today, your clients can support favorite charities during their lifetimes. Many donors add to their funds each year, recommend grants on a regular basis, and name the fund in their wills.

As a public charity, the Northern New York Community Foundation offers

donors the maximum charitable tax deduction permitted by law. It may be advantageous for your client to make a current gift based on this year’s tax situation, and to determine grants from their fund in future years.

Opening a fund at the Community Foundation is quick and easy — in most cases, the fund is operational in less than 24 hours. It can be done by you on behalf of your client, or you may refer your client

to us directly. Our team is here to help meet their objectives. The Community Foundation is able to keep it just as simple to set up a fund for the future — as part of your client’s estate plan, for example.

The following are simple steps to establishing a fund. Community Foundation staff is always happy to help answer any questions or issues that arise during the process.

**See EASY STEPS on next page**