

FLORIDA versus GEORGIA RESIDENCY

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Georgia Law. Under Georgia Law (O.C.G.A. 48-7-1(10)(A)): a "Resident" means:

- (i) Every individual who is a legal resident of this state on income tax day;
- (ii) Every individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner and who so resides within this state on income tax day; and
- (iii) Every individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, of the immediately preceding 365 day period.

(B) Every individual who, having become a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph, is deemed to continue to be a resident of this state until the person shows 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 does not come within division (iii) of subparagraph (A) of this paragraph. Upon such a showing with respect to any 12 month period immediately preceding income tax day, the person shall be taxable as a resident of this state only to the date of becoming a nonresident on an apportionment basis as prescribed in Code Section 48-7-85.

(C) Every individual who becomes a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph for the first time during the 12 month period immediately preceding income tax day and who does not otherwise come within division (iii) of subparagraph (A) shall be taxable as a resident only from the date of becoming a resident on an apportionment basis as prescribed in Code Section 48-7-85.

The Significance of Domicile. The state of your domicile can impact you and your family in a multitude of ways, including (but not limited to):

- State and local income taxes
- Differences in sales taxes
- State estate and/or inheritance taxes
- Unique issues with regard to estate administration and costs of administration
- Particular spousal benefits to a surviving spouse (e.g., a right to take a share of your estate)
- Increased or decreased costs of Insurance (e.g., hurricane coverage in Florida)
- Right of a Spouse to make Medical and Property decisions for their incapacitated Spouse
- Right to serve as the Estate Administrator, unless the Will provides otherwise
- The inheritable Right of Personality benefits accruing to heirs (mainly for celebrities)

Dr. John T. Dorrance (founder of Campbell's Soup Company) died in 1930 with a \$115 million estate. The estate said that it was subject to a New Jersey inheritance tax of \$12 million, but Pennsylvania imposed a \$17 million inheritance tax, arguing that the deceased was a Pennsylvania resident. The US Supreme Court refused to get involved and the estate ultimately paid both states an inheritance tax.

State of Domicile. The question of whether or not you are no longer a Georgia resident and have become a Florida domiciled resident are "**fact-driven**." There are no absolute assurances of the Georgia tax treatment. It is important to remember that the law understands that you can have multiple personal residences, but you can have only one state of domicile – and the state laws governing whether a change of domicile has occurred vary widely.

A number of states, such as New York, Connecticut and New Jersey¹ can be very aggressive in pursuing tax claims against former residents.

Beware: Even if you are no longer a Georgia resident for Georgia income tax purposes, you may still owe Georgia income taxes on Georgia based revenue sources.

Beware: Florida's statutes provide for strong rights and beneficial interests to a surviving spouse that are not found in Georgia. Particularly in second and third marriages, these Florida rules can pass assets in ways that you did not intend. Consult with a Florida attorney.

Facts Supporting Florida Residency. However, among the facts, you should create are (and the more facts on your side, the better your case):

_____ Be outside of your former states more that 183 FULL days in a calendar year (i.e., over half the year)²

a. Keep a calendar and try and attach one receipt per day showing that you were outside the state for that day as evidence of being outside of the state for 183 days.

b. You do not have to be in your new state for 183 days - just outside the former state for 183 days (i.e., vacations and visiting the grandchildren in other states does not work against you).

_____ Buy (preferably) or rent a local residence (and furnish it with furniture – empty residences don't work well); refurbish the home as a place you would live in

_____ Declare a homestead exemption in your new state & terminate your former Homestead Exemption

_____ If possible, sell or transfer any real estate in your former state to family or other entities (e.g., an LLP)

_____ If permitted by state law in your new state (e.g., Florida), go to the local Court and make a "Declaration Domicile" or similar statement in the Court records of the county of your new residency

_____ If possible, have no salary or other earned income in your former state

_____ Change driver's license to your new state and surrender your old license

_____ Change all bank accounts to your new state and do not retain any bank accounts in the former state

_____ Move your only safe deposit box to your new state

_____ Change vehicle registration(s) and insurance to your new state

_____ Obtain a library card in your new state

_____ Change gym, social clubs and service clubs to your new state (e.g., Rotary, Kiwanis, golf club)

¹ Domicile can matter to the former state. For example, in 2016 New Jersey lost its wealthiest resident when a hedge-fund billionaire declared himself a resident of Florida. He also moved the hedge fund's official headquarters to Florida, resulting in an annual estimated revenue loss of hundreds of millions of dollars.

² Beware: New York provides that you may still retain your domicile in New York, even if you were only there for 31 days in a year. NY Tax Law § 605(b)(1)(A).

- _____ Serve on local Charitable Boards; shift your localize charitable deductions to the new state
- _____ Change voter registration to your new state and terminate your former voter registration
- _____ Do wills, medical directives and powers of attorney under your new state's laws
- _____ Engage a local doctor, dentist and/or chiropractor; have medical records moved to your local doctor
- _____ Move your religious affiliation and membership to a local group in your new state; Make local contributions
- _____ Have your federal tax returns go to the new state address – never have them go to your former address!³
- _____ Have credit cards, brokerage statements and other financial related mail go to your new state address
- _____ Have any minor children attend schools in your new state
- _____ If you have pets make sure the pets are located in your new state with a local vet treating the animals; have vaccinations and shots done by the local vet.⁴
- _____ If you have own an interest in any S corporations, Partnerships or LLCs that allocates you income that is taxable in the former state, determine if the former state's tax laws permit the entity to pay local based taxes for all non-residents and eliminate the requirement that the owners file a local non-resident return.
- _____ Focus your social, economic and other activities in the new state of residency.
- _____ If possible, move your business and investment activities to the new state.

³ State and federal tax authorities often share taxpayer information, such as addresses.

⁴ See: Matter of Blatt (Determination DTA NO. 826504) where the location of the taxpayer's beloved dog was a principal reason cited by the court that the domicile had been changed from New York City to Dallas.