

Does Your Bar License Make You Californian?

By Robert W. Wood

Perhaps this sounds like a silly question. Most California bar members probably live and pay taxes in California anyway. But it also could sound scary if you are a member of several state bars, or if you move from one state to another. State taxes can take a large chunk out of your income.

Indeed, California's 13.3 percent top rate is the highest in the nation. And California tax authorities are prickly. Most any accountant or tax lawyer will tell you that resolving tax problems with the California tax authorities is usually harder than resolving tax problems with the Internal Revenue Service. The California Franchise Tax Board has a long reach and an aggressive stance with it comes to state taxes.

So does New York State. And for once, we want to talk about New York State taxes since the particular aggressive tax stance is coming out of New York. Of course, California may be next.

Like California, New York takes a harsh view of people who are in the state and enjoying all it has to offer but not paying tax. You are welcome to visit, of course. But the longer you are in the state and the more money you seem to derive from it, the more likely you should be paying state taxes for the privilege.

One can face tax domicile issues on the way *into* the state, and on the way *out*, but most problems seem to occur on the way out. Classically, if you are about to collect a huge payout of some sort, it can be tempting to move states first. Most of the time, the movement is from a high tax state like California or New York to a lower tax state.

Truth be told, most of the time, the movement is to a *no* tax state like Nevada, Florida, Texas or Washington. Does such a move work? It can, and the steps one should take are mostly informed by common sense.

You pick up and move, change voter registration, drivers' licenses, vehicle registrations, club memberships, and more. Ideally, you sell your old residence and buy a new home in your new state. And ideally, you limit the time you come back to visit.

Yet no matter how good a job you do of moving, changing your domicile doesn't necessarily mean you will pay no tax to your old state. In fact, you still don't avoid tax on the income that is sourced to your old state. Say you own a California apartment building as an investment that produces rental income.

Even if you move to Nevada, you will continue to pay California tax on that rental income, as it is California sourced. But you hopefully will avoid paying California taxes on your wages, bonus, interest, dividends, etc. that are sourced at your new Nevada domicile. On the way in, there can be timing questions about when you arrived, but there are few disputes.

On the way out, though, it is only natural for the old state to look at you hard if you are now shorting your old state. Most residency audits involve questions about whether you really moved with an intent not to return, and *when* you did it. Take Mr. Patrick J. Carr, a lawyer licensed to practice law in New York and New Jersey. See *Matter of Patrick J. Carr*, Determination DTA No. 825989, State of New York Division of Tax Appeals (July 23, 2015).

Carr had practices since 1964, and he left his practice to move to Florida. He kept some legal work and handled it from his home in Florida. As such, he reported his income as a sole proprietor, filing a schedule C to his federal tax return using his Florida address.

He had changed his domicile to Florida, he reasoned, so he didn't pay New York tax. New York tax authorities audited Carr's

residency and determined that he had properly changed his domicile. It is worth observing at this point that this was a huge win.

Often, states like California and New York *do not* reach this conclusion. But here, it was so far, so good for Carr. Still, New York wasn't so sure about the income from Carr's part-time law practice. It agreed with Carr that he had moved to Florida and was now a Florida domiciliary, but was bothered by his New York law license that gave him a right to earn the income.

The New York report states:

"The taxpayer received a large amount of money in tax year 2007 from a case he litigated in Florida. Schedule C income for 2008 and 2009 was relatively smaller compared to 2007. The taxpayer stated that all of his schedule C income from legal services was sourced to the state of Florida.

"However, the taxpayer is not licensed to practice law in the State of Florida. It was determined that he was admitted as counsel *pro hac vice* in the Circuit Court of the 12th Judicial Circuit in Sarasota County, Florida. This means that he was given special permission to help litigate this particular case even though you are not licensed to practice law in the state of Florida.

"Therefore, all of your income is subject to New York income tax, since your income was attributable to a profession carried out in New York State pursuant to Tax Law article 22, Section 631 as explained by the Court's decisions in the *Vigliano* and *Carpenter* cases."

You might expect there to have been an uproar about this case. However, some of it may be moot. In *Matter of Carr*, an administrative law judge rejected the view espoused by the New York tax authorities. The judge concluded that New York's argument was inconsistent with New York law. "Contrary to the division's contention, merely holding a license to practice in New York is not the equivalent of carrying on a profession in New York state," said the ruling.

Asserting tax merely based on the law license wasn't allowed here, but it may not be a stretch to consider the argument. It is worth observing that the judge's determination is non-precedential. Besides, there will often be additional connections beyond the mere law license.

Moreover, one can think of many other business and professional licenses that may import some taxing nexus. There will always be some scrutiny on people who move out of state, be in from California or New York. Some facts will be strong, while others will not.

Having a license may not be enough by itself to give rise to tax, but it is possible that it is enough to bring some scrutiny. And with tax officials, no one should want to be scrutinized.



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