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Moving day

Your new home state can change your tax circumstances

If you're moving out of state, the last thing on your mind may be whether your new home state has a better tax climate than your former — you're more likely concerned with how it affects your family, career and lifestyle.

But it can be beneficial for you to take a closer look at how your new home state may affect your tax liability — especially if you own homes in multiple states. If that's the case, you also must take steps to establish your domicile in one of the states, or you could face unnecessary negative tax consequences.

What are your new state's tax laws?

Before moving to your new state, it's important to become familiar with its tax laws. Consider whether the state has an income, property, sales and estate tax. Many states tax income similarly to the federal income tax system. But some states have no income tax and others don't tax wages, but do tax interest and dividends, which will affect your investment income.

In addition, many states offer tax breaks for pension payments, retirement plan distributions and Social Security payments. Other states have "intangible" taxes based on the value of certain investments or other assets.

If you own homes in two states, you must establish your domicile.

State (and local) income taxes are deductible on your federal income tax return. However, note that, even though these taxes — as well as property taxes — can reduce your federal income tax bill, they also can cause you to be subject to the federal alternative minimum tax (AMT). State and local taxes aren't deductible for AMT purposes, and this may limit the actual benefit you receive from these deductions.

Keep in mind, too, that the property and sales taxes in larger cities and suburbs are typically higher than those in rural areas.

Where do you make your domicile?

If you own homes in two states, you must establish your domicile. In other words, you must make it known in which state you intend to make your true, fixed and permanent home. It also controls where (and, in some cases, if) you pay state income tax, where your estate will be probated and which state's estate tax rate will be applied at your death. Bear in mind that state estate tax rates vary widely and some states currently have no tax.

If you plan to spend a relatively equal amount of time in the two homes, you must establish

your legal domicile in one of the states. A state's taxing authority determines domicile based on factors that demonstrate your intent, such as the amount of personal time you spend in the state, the amount of business you conduct in the state, the value of your property in the state, and your family ties to the state.

Because these factors can be subjective, more than one state can claim that your domicile is in its state. And, of course, if the decision is a close call, you would rather be domiciled in the state that keeps your taxes lowest.

Is your intent clear?

There are a series of actions — some simple, others more involved — that can help ensure that your intended domicile is recognized in the state you wish. The easier steps include obtaining a driver's license in the domicile state and canceling your license from the other state, registering *and* voting in the domicile state, and registering and insuring your vehicles in the domicile state. In addition, consider using your home address in the domicile state as your mailing address and in important documents, such as your living trust, power of attorney and insurance policies.

The more involved — and important — actions to take to establish domicile include spending more time during the calendar year physically present in the domicile state and keeping records of the time spent in the state, filing a declaration of domicile in the state, and opening bank and brokerage accounts in the domicile state and closing your accounts in the other state. It's also important to file resident income tax returns with the domicile state.

Even though the steps listed here may seem daunting and time consuming, accomplishing at least a few from each list can help you effectively establish your desired domicile. Keep in mind that no one single factor is controlling.

Contact the movers … and your tax advisor

Relocating your family to a new state is never an easy decision. But whether it's for a new job, to be closer to family members or just for a change of scenery, don't ignore the financial and tax ramifications of moving to a new state. Ask your tax advisor about the possible advantages, and disadvantages, of moving to a particular state. And if you own homes in two states, your advisor can help you establish domicile in the state of your choice. ◈

Making a difficult decision

Naming a guardian for your young child isn't easy, but necessary

If you and your spouse have recently become parents, congratulations! As you settle into your new life, you'll make many snap decisions with little thought: Is the baby hungry? Does his or her diaper need to be changed? Should I bring the youngster to the doctor to check that cough?

One decision — and an unpleasant one at that — which you need to give considerable thought to is who should be your child's guardian if you and your spouse die unexpectedly. And it's not just *new* parents who need to address this issue. *Anyone* who has minor children and hasn't made

this difficult decision should do so as soon as possible.

Create a list of candidates

If you fail to name a guardian in your will, a court will appoint one. It will base its decision on its assessment of the best interest of your child. But that assessment may be different from your own, and its selection may not be your first choice.

So it's important to name your candidate. This is typically handled through a will, though procedures can vary from state to state — so consult with your attorney.

When it comes to choosing the best candidate, you probably already have a short list — members of your immediate family. This is an excellent start, but don't forget about extended family members and trusted friends.

Consider all the issues

There are several issues to consider in making your decision. For example, your parents as guardians may seem a natural choice, but keep in mind that older parents may not be up to the task of raising a young child.

Don't forget to be practical. Let's say you'd love your sister to be the guardian, but she lives across the country with her husband and two children. Will relocating further traumatize your child? Is your sister's house large enough to accommodate another child? Take your answers into account before naming a guardian.

If you fail to name a guardian in your will, a court will appoint one.

Perhaps the most important issue to consider is whether you and your candidate share similar values, such as:

- Parenting philosophy,
- Religious and moral beliefs,
- Educational values, and
- Social values.

Usually, a family member or trusted friend who shares your values likely is a good candidate. But bear in mind that, even if your brother, for example, doesn't share your religious beliefs, it doesn't mean you should cross him off your list. You likely won't find a person who shares *all* your values.

Make a final decision

After giving it some hard thought, it's time to make a final decision. In addition to your top pick, choose one or two alternatives. If your first choice decides he or she isn't up to the responsibility, you can turn to others.

When asking the person to be your child's guardian, ensure he or she clearly understands your expectations and a guardian's responsibilities. Also, give

the person time to consider your proposal before asking for an answer. This isn't a question to be taken lightly.

Don't procrastinate

It's never pleasant to think that one day you may not be around to care for your child. But this isn't a reason to procrastinate on naming a guardian. Addressing this difficult decision can give you the peace of mind that your child will be cared for by someone of your choosing in the event you and your spouse die while he or she is still a minor. ◈

Separate guardians may be the answer

When there's more than one child, in most instances it's best to name the same guardian for each child to ensure that they'll remain together. However, there can be circumstances when you should consider naming separate guardians. For example, if you have a blended family, you may want to consider one guardian for your children with your ex-spouse and another for your children with your current spouse.

In other cases, it may make sense to name one guardian for your children's care and another for their assets. The person best suited to raise your children may not have the financial acumen to manage their assets — or may simply have a different philosophy about money. Another option is to place your financial assets in a trust for your children's benefit, so that a trustee will have responsibility for managing their financial affairs.

When family business succession planning goes awry, fix it — fast

A family business is unique in that, for it to remain a "family" business, a family member must succeed you after you retire. What if your children or other family members are interested in taking over but they aren't ready to run the business? A sound succession plan is a must in this situation, but even the best-laid plans can go awry. The good news is that there are steps you can take to right the succession ship.

Trouble signs require quick action

During the transition period, proactively take action at the first signs of trouble. Steps to take include:

- Comparing your progress against your succession plan,
- Identifying gaps in the execution of your plan, and
- Considering how your impaired plan is affecting your bottom line, productivity and morale.

The key is to not wait to review your company's situation until after your failed

succession attempt has already bankrupted you and the potential for recovery is grim.

Teamwork produces more perspective

Succession problems can be complex to diagnose and solve. And that's where a team approach can help. By involving all levels of your organization, you can get a more complete perspective on addressing problems and finding solutions.

Keeping key individuals informed and part of the process also helps promote support throughout the rest of the transition. Those who should be involved include your successor, members of your board of directors or advisory board, managers, family and key nonfamily employees, shareholders and investors, and professional advisors such as your attorney and accountant.

Although you may have overlooked some of these important constituents during the planning process, it's not too late to involve them now. Openly admit any oversights and express your commitment to making the situation right going forward. Individuals typically respond more positively if you're honest and accountable for mistakes — so don't sidestep the issues.

Education and experience required

After a thorough overview of your succession plan, you may find your next company leader isn't quite up to the task. In this case, consider retaining control of the business while your next-in-line acquires more experience working in various areas of your business and developing skills through training and advanced education.

Another strategy is to name an interim CEO. You can step back into an advisory role while the interim CEO keeps your business plans moving forward and your successor gets up to speed.

An objective viewpoint is beneficial

If after taking the previous steps your succession plan is still off track, it may be time to bring in outside assistance. Professional advisors are equipped with the experience and skills necessary to shed an objective light on the situation — you could be too close to it, so your judgment may be muddied by emotional bias or family conflicts.

Succession problems can be complex to diagnose and solve.

If the problem is that there isn't enough cash available for your successor (or other family shareholders) to buy you out and the business is threatened, call your financial and legal advisors.

They can help you evaluate and effectively structure funding options, such as selling business assets or stock, gifting stock, obtaining a bank loan, getting seller financing if your successor can't qualify for a loan, using private investment capital, or going public.

A family business management consultant can assist by weighing options from both a family and an employee standpoint and devising strategies for addressing potential conflicts. This may include helping to keep peace by giving ownership to family workers

and other assets, such as property and life insurance proceeds, to other beneficiaries.

Last resort … choose a new successor

The last, but potentially necessary, resort is to revisit your successor choice. After getting input from key individuals at various levels of your organization, your outside advisors and even your customers and suppliers, you may discover you need to find a new leader-to-be.

No one can afford to continue investing in someone who can't successfully drive the business. Your successor may even agree with the decision, choosing to just maintain an ownership stake and turn the management responsibility over to a more qualified individual.

Don't be caught off guard

You love the family business you've successfully run the past several decades, and you love your family. When you're ready to step aside and hand the reins to your successor, don't be caught off guard if the transfer of power doesn't go smoothly. Taking immediate action at the first signs of trouble can put your succession plan back on track and retain family harmony. ◈

Don't lose out on loss deductions

When a business is losing money, the tax code's net operating loss (NOL) provisions can help ease the pain. Generally, businesses are permitted to carry back NOLs two years, deduct them from taxable income in those years and claim a refund. Unused losses may be carried forward up to 20 years.

But these days, many businesses have been operating at a loss for some time and have had insufficient income in recent years to take advantage of NOL carrybacks. To make the break more useful, the Worker, Homeownership and Business Assistance Act of 2009 (WHBAA) temporarily extended the maximum carryback period to five years for most businesses. Earlier last year, the stimulus act offered similar relief to qualifying small businesses (generally those with annual gross receipts of $15 million or less).

WHBAA provides several options for businesses with NOLs, so consult your tax advisor to determine which option would provide the greatest boost to your cash flow.

First, you need to decide which NOL to carry back. If your business uses the calendar year for tax purposes, you can use the extended carryback period for an NOL arising in 2008 or 2009, but not both. If you're on a fiscal year, you can choose an NOL arising in *one* of the following years:

- The year ending in 2008,
- The year beginning in 2008 and ending in 2009, or
- The year beginning in 2009.

If you're a qualifying small business, however, you may be eligible to carry back both a 2008 and a 2009 NOL.

Next, you must decide whether to carry the NOL back three, four or five years.

Whichever options you choose, you must make the election — on your return or amended return for the NOL year (or using another IRS-approved form) — no later than the filing date, including extensions, for your last tax year beginning in 2009.

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