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# Alert | Tax

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# Whistleblower Claims Taxpayer Avoided New York Estate Tax on Change of Domicile to Florida

He may be dead but his troubles are not over. In a unique *Qui Tam* case under the New York False Claims Act, the failure to file a New York estate tax return and pay estate tax was claimed to be fraudulent because the decedent, as of the date of his death, had not actually changed his domicile to Florida from New York.[1] The case was commenced by a former employee of the decedent physician's medical practice. The employee alleged that although the physician had sold his home in New York and taken steps to change his domicile from New York to Florida, all of these acts were fraudulent and intended to evade the New York estate tax. **For individuals who have or are contemplating changing their state tax residence from New York, this development emphasizes the importance of understanding the ways that New York can challenge such a tax planning technique. It also highlights how easy it might be for a third party to tip-off the New York Department of Taxation if the guidelines to change the state of tax residence have not been followed.**

According to the complaint, the physician and his two children took steps to falsify records showing he was a Florida resident who, at the time of his death in September 2013, was domiciled in Florida. Since 2005, Florida, unlike New York, has no estate tax.

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[1] *State of New York ex rel. Doreen S. Light v. Myron Melamed, et al.,* Supreme Court, New York County, Index No. 101451/14.

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The estate was valued at about $15 million at the time of the decedent's death, producing a New York estate tax in excess of $1.7 million. The complaint further alleges that the decedent's plan to avoid the New York estate tax began in 2008 following a meeting with his accountants. The accountants told him that he could save as much as $1.5 million in New York estate taxes if he moved his domicile to Florida where he already owned a home. The complaint also states that the decedent's two children were complicit in their father's actions, hoping to inherit a larger amount at their father's death.

According to the complaint, the decedent did not retire to his Florida home but continued to work in New York, while living in Connecticut after selling his New York house in 2013. Health issues required the decedent to go back to New York for treatment until his death in September 2013.

This case presents many issues. First, the New York State Department of Taxation & Finance did not pursue the relator's claim in an audit or assertion of a tax liability even though it appears that the statute of limitations was open to do so because no tax return had been filed in New York for the estate. Second, the New York Attorney General declined to pursue the matter leaving the whistleblower to have the complaint unsealed and litigation commence as a relator on behalf of the State of New York. Third, domicile issues are complex and involve an evaluation of the subjective intent of the taxpayer. This intent is particularly difficult to discern when a taxpayer's actions occurred almost five years before death. Finally, this case is a tax case but it will be heard in a civil court outside of the normal tax adjudication process.

Perhaps more importantly, the complaint shows how easily a claim can be made by someone without specific knowledge of the facts based only on public information or speculation. For example, anyone who sees an obituary and looks at court records could allege that the estate administration outside of New York is somehow improper. A doorman, neighbor, family member, or anyone else who thinks the person was in New York for a period of time and who is seeking a financial reward or who has an ax to grind could allege facts to assert a claim or engage in costly discovery solely for purposes of harassment. Therefore, those seeking to change domicile for income or estate tax purposes must be extremely careful in taking the necessary steps to make a clean and sufficient break with New York and to keep documentation for at least 10 years. Although the statute of limitations to assess a tax is generally three years after the filing of a tax return, it is ten years under the New York False Claims Act.

This complaint highlights the new ways that tax claims are being pursued by individuals instead of tax authorities. Cases filed under false claims acts and class actions that raise issues of underpayment or overpayment of taxes can impose substantial costs and burdens on companies and individuals that historically were within the province of tax authorities. Unlike New York, in many other states, tax claims are explicitly excluded from false claims act cases. The use of false claims acts for tax issues demonstrates the additional risks imposed on businesses and individuals subjected to claims from competitors, alienated and ex-spouses, former girlfriends and boyfriends, and disgruntled employees and business associates. **Individuals who will or have changed their residence from New York to another state for tax planning purposes should consult with their tax advisor to carefully consider the steps that should be taken to make such a change**.

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