

## IN CASE YOU MISSED IT – January 2021

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Almost every day, federal and state courts issue opinions that affect taxpayers. And the IRS and state taxing authorities often publish guidance on a myriad of topics.

So, each month, this column will review a selection of recent court cases or guidance that tax professionals should know about when advising their clients and preparing tax returns.

For more extensive detail on any of these items, please feel free to reach out to the author.

### IRS Memo released December 11, 2020

E-signature temporarily allowed on many additional forms.

In a continued response to assist taxpayers and their professionals in minimizing in-person contact during the COVID-19 pandemic, the Department of Treasury authorized, on a temporary basis, the use of electronic or digital signatures when signing certain forms that otherwise require a handwritten signature:

- Form 3115, Application for Change in Accounting Method;
- Form 8832, Entity Classification Election;
- Form 8802, Application for U.S. Residency Certification;
- Form 1066, U.S. Income Tax Return for Real Estate Mortgage Investment Conduit;
- Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return;
- Form 706-NA, U.S. Estate (and Generation-Skipping Transfer) Tax Return;
- Form 709, U.S. Gift (and Generation-Skipping Transfer) Tax Return;
- Form 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons;
- Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies;
- Form 1120-C, U.S. Income Tax Return for Cooperative Associations;
- Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts;
- Form 1120-L, U.S. Life Insurance Company Income Tax Return;
- Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return;
- Form 1128, Application to Adopt, Change or Retain a Tax Year;
- Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts;
- Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner;

- Form 8453 series, Form 8878 series, and Form 8879 series regarding IRS e-file Signature Authorization Forms; and

- Form 8038 series, pertaining to tax-exempt bonds.

The Treasury Department noted that electronic and digital signatures can take many different forms based on the technology used and announced that no specific technology must be used during this temporary exception to the otherwise handwritten signature requirement. The exception is effective for forms signed and postmarked between January 1, 2021 and June 30, 2021.

Takeaway: It is important to check the rules before every filing date as things keep changing – while the Service is trying to make things easier, not all of these modifications will not last forever.

#### IR- 2020-274

Additional filings may be needed to meet Qualified Opportunity Fund requirements.

The Service announced on December 9, 2020, that it was starting to send letters to taxpayers that may need to take action related to Qualified Opportunity Funds (QOF). Taxpayers who filed a Form 996 with their income tax return may receive Letter 6250, Self-certifying as Qualified Opportunity Fund (QOF). This letter lets them know that if they intended to self-certify as a QOF they may need to take additional action to meet the annual self-certification requirement, including an amended return or an administrative adjustment request (AAR). If an entity that receives the letter fails to take the necessary action, they may be referred for examination. The Service is also sending out Letter 6251, Reporting Qualified Opportunity Fund (QOF) Investments informing taxpayers that they may not have properly followed the instructions for Form 8949, Sales and other Dispositions of Capital Assets, or telling them that they may not have a gain eligible for a valid deferral election. These taxpayers might also have to file an amended return or an AAR in order to have a qualifying investment and to avoid examination. Failure to take the necessary action can result in taxes, interest, and penalties on gains that were not properly deferred.

Takeaway – Pay attention to all notices that come from the Service – some of them are helpful reminders of additional forms that might have to be filed.

#### New instructions for Form 3903

New box to check for moving expense deduction.

The Service issued new instructions to Form 3903: *Moving Expenses* on December 8 listing the 2020 standard mileage rate for using a personal vehicle to move to a new home. The rate was set for 17 cents a mile. Important to note was an addition of a new checkbox on the form that must be ticked in order to certify that taxpayer has met all of the requirements needed to claim moving expenses.

Takeaway: Although time consuming, it is helpful to read the instructions for various tax forms, especially the "What's New" section.

#### Matter of the Petition of Adams

It is not simple or easy to change your domicile.

A New York administrative law judge (ALJ) held that the taxpayer failed to prove by clear and convincing evidence that his domicile changed from New York City to Florida for the 2012 tax year. The ALJ noted that the taxpayer had presented evidence showing an interest in changing his domicile to Florida, and met many of the primary and secondary factors that the court relies on. His twin brother lived in Florida and he had no relatives within 200 miles of New York. His business activities in 2012 (legal and real estate related) were all

performed outside of New York and were predominantly performed in Florida. He bought an apartment in Florida that was much nicer than his apartment in New York, and moved 95% of his near and dear items there in early 2013. He also changed both his driver's license and voting registration to Florida.

However, he did continue to maintain a residence in New York City and spent 177 days there during 2012.

Tax Law § 605 (b) (1) (A) and (B) and New York City Administrative Code § 11-1705 (b) (1) (A) and (B) set forth the definition of a New York State and New York City resident individual for income tax purposes as follows: “Resident individual. A resident individual means an individual: (A) who is domiciled in this city, unless (i) [h]e maintains no permanent place of abode in this city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this city, or ... (B) who is not domiciled in this city but maintains a permanent place of abode in this city and spends in the aggregate more than one hundred eighty-three days of the taxable year in this city, unless such individual is in active service in the armed forces of the United States.”

As a reminder, nonresidents are taxed only on their New York State or City (as relevant) source income, whereas residents are taxed on their worldwide income. It was undisputed that the taxpayer was only within for 177 days, the case depended on whether or not the taxpayer had successfully changed her domicile during 2012. 20 NYCRR 105.20 (d) defines domicile as: “(1) Domicile, in general, is the place which an individual intends to be such individual's permanent home — the place to which such individual intends to return whenever such individual may be absent. (2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making such individual's fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time, this rule applies even though the individual may have sold or disposed of such individual's former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, such individual's declarations will be given due weight, but they will not be conclusive if they are contradicted by such individual's conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicated that such individual did this merely to escape taxation. \* \* \* (4) A person can have only one domicile.”

Although the taxpayer took steps to change his domicile to Florida, he never sold his New York City apartment. Then he filed his tax returns as a New York tax resident for 2011 and 2013 showing that same apartment as his address. The ALJ noted that retention of a permanent place of abode in

The location of the historic domicile is an important factor to consider in determining whether there was change in domicile. The ALJ held that all of the steps that taxpayer took to change his domicile to Florida could not outweigh the fact that petitioner's own tax filings show he was a resident of New York City for both 2011 and 2013, the immediately preceding and subsequent years to the year in question. This fact combined with the fact that petitioner maintained a residence in New York City for the entire year at issue, and spent a significant portion of the year at issue, 177 days, in New York weighed too heavily against his claim that for 2012 he abandoned his domicile of New York and switched such to Florida and found him taxable as a resident individual of New York State and New York City for 2012.

Takeaway – working from home during the Covid-19 pandemic has caused many taxpayers to rethink their tax domicile and residency. Remember, in order to establish that you moved, you have to actually move and make changes to your life.

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