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Generations Fall 2020 - Domicile Planning in Light of Current Developments

During Day Pitney's recent Palm Beach Family Office Forum, Day Pitney partner Tasha Dickinson moderated a panel including Kelly Smallridge, the president and CEO of the Business Development Board of Palm Beach County, and Day Pitney's A. Michael Wargon.

Kelly led off the presentation by discussing the explosive growth currently underway in Palm Beach County's business and financial sectors, emphasizing the aerospace industry's expansion and creation of high-paying jobs. She then mentioned the significant companies that have decided to make Palm Beach County home and how the area has become a hub for major life sciences and health care companies, including more than 15 hospitals and two world-class research institutes. Kelly highlighted the incredible growth of Modernizing Medicine and Palm Beach's assistance in fast-tracking Amazon's newest fulfillment center expansion in Boca Raton. Thanks to the local tax and regulatory climate, many of the world's foremost investors and hedge fund principals call Palm Beach home, and they have brought their financial operations with them, earning Palm Beach the moniker of "Wall Street South."

Tasha then turned the panel over to Michael to discuss why many successful clients have moved to Florida and how state and local tax changes are currently driving their exodus, particularly from the Northeast. Michael outlined why this trend will bring increased enforcement and why clients moving to Florida can expect audits from the revenue departments of the states they are leaving. Michael discussed some of the widespread misconceptions held by clients when considering the domicile and statutory residency tests applied by many states.

With regard to the statutory residency test, which generally requires access to a permanent place of abode and 183 days or more spent in a state, taxpayers need to recognize that even one minute of a day spent in a state may count as a full day and could cause day counts to exceed 183 days in a year. Unrestricted access to a permanent place of abode is, for these purposes, equivalent to owning or renting a property. With regard to the domicile test, Michael discussed the limited benefits of checklists and how taxpayers need to prove to the state that they have left by providing clear and convincing evidence that they have changed domicile. A qualitative analysis of the home factor, a renewed look at a client's business structure, careful attention to day count, and the location of items "near and dear" all are important concepts to consider when analyzing domicile. Michael offered some very helpful tips for clients facing a domicile audit. These included the hazards of careless conversations, the importance of record keeping (including the use of day-tracking apps), and the advisability of moving and restructuring existing trusts and single-member LLCs.

Tasha then shifted the discussion to focus on COVID-19-specific issues and how they have impacted the local business community. Kelly noted that Palm Beach is busier than ever and has continued to experience exponential growth, despite the fact that the pandemic has hobbled businesses and governments around the country. Michael then discussed some of the more interesting developments and client questions arising in the state tax context as a result of COVID-19 and its related consequences. He discussed the improbability of a temporary move to a vacation home being viewed as a change of domicile and how travel bans and quarantines might impact one's residency analysis. He also addressed nexus and state income tax issues generated by taxpayers working remotely. Tasha then addressed the impact of the upcoming election and how that might affect domicile decisions. Kelly offered her thoughts on whether the upcoming elections might change the trajectory of the region. She believes a change in administration might faintly slow the flow of new residents, but the existing infrastructure and business climate will continue to entice companies and high net worth taxpayers. Michael discussed some of the potential tax policy changes we might expect to see if there is a change in Congress and the White House, including a lowered estate tax exemption and credits for state estate taxes paid and how those changes may impact domicile and residency planning. Moreover, the current administration has made clear that they are not interested in alleviating state budget shortfalls, forcing states with revenue deficits to resort to tax increases and other punitive measures. A continuation of this fiscal policy for a second term will almost certainly drive wealthy clients, an extremely mobile populace to begin with, to low-tax states like Florida. For taxpayers concerned that Palm Beach has already reached its zenith, Kelly maintains that there are still plenty of significant development and expansion opportunities available and the best is yet to come.

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