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## Policy frees up snowbirds to give charitably

**E**ffective April 19, the Illinois Department of Revenue adopted new regulations that provide guidance on residency for snowbirds.

The amended regulations formally instruct the Illinois Department of Revenue to no longer consider a taxpayer's charitable contribution to a not-for-profit 501(c)(3) organization as relevant and applicable in determinations of domicile. This regulation comes at a time when more and more Illinois snowbirds are permanently relocating to Florida to take full advantage of the sunny skies, beautiful beaches and, most importantly, Florida's tax-saving benefits.

With this new legislation, snowbirds can take advantage of Florida's residency perks and continue to donate to their favorite Illinois charities without fear of being subjected to Illinois' tax.

Today, an increasing number of part-time snowbirds are establishing full-time residency in Florida for reasons besides the year-round warm weather. Florida's real appeal comes with its favorable tax savings and asset protection. As a permanent resident of Florida, individuals reap benefits including:

- No state income tax
- No state gift tax
- No state-level estate tax; unlimited exemptions for homestead property (subject to federal bankruptcy limitations)
- Caps on the increase in the assessed value of the principal residence
- No intangible tax
- Recognition of tenants by the entirety titling for a variety of assets

Florida is eager to accept the influx of snowbirds; however, for individuals to retain Florida's tax-free benefits, sufficient ties with Illinois must be severed. Although one may simultaneously have residences in many states, there can only be one

state of domicile at any given time. An individual's domicile holds significant importance because it sets the stage for which state dictates an individual's tax requirements.

The determination of one's domicile becomes problematic for snowbirds who maintain two homes and spend a substantial amount of time in each. Under Illinois law, that individual may still be considered an Illinois resident for tax purposes because the individual's activities in Florida may be viewed as transitory or temporary in nature. Nevertheless, domicile is a question of fact based on an individual's intent to remain in, or return to, a particular state and can be challenged with the necessary documentation.

To successfully change one's domicile, there must be: 1) abandonment of the first domicile; 2) an intention not to return to the first domicile; 3) physical presence in the new domicile; and 4) an intent to make that one's domicile. Illinois courts look to a variety of different factors to prove or disprove Illinois residency or domicile including, but not limited to:

- Spending more time in Florida than in Illinois
- Location of spouse and dependents
- Homeowner exemptions claimed
- Voter registration cards
- Automobile registration or driver's license
- Filing an income tax return as a resident of another state
- Home ownership or rental agreements
- Permanent or temporary nature of work assignments in the state
- Location of professional licenses
- Location of medical professionals, other health-care providers, accountants, attorneys
- Club and/or organizational memberships and participation

### THE BUZZ



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- Telephone and/or other utility usage over a duration of time
  - Credit card statements
- Previously, Illinois also considered charitable giving as evidence of a person's domicile. In *Cain v. Hamer*, 2012 IL App (1st) 112833, 975 N.E.2d 321, the 1st District Illinois Appellate Court provided a judicial road map for an Illinois snowbird seeking to qualify as a nonresident for Illinois tax purposes. Cain involved a married couple who, after spending equal time between their Illinois and Florida residences, began taking steps to change their domicile to Florida. The court found the couple successfully changed their domicile to Florida based on a number of factors including: their relationships with medical professionals in Florida, private club memberships, burial plots in Florida, Florida voter registration and Florida driver's licenses. In addition, the court emphasized that the couple's intent to change their domicile was indicated by the shift in their charitable donations from Illinois to Florida.

Effective April 19, the Illinois

Department of Revenue issued new regulations to provide that annual gifts, bequests and similar gifts to Illinois-based public 501(c)(3) charitable organizations will no longer be used to determine whether the donor is an Illinois domicile or resident. Illinois joins states such as Florida, New York, Massachusetts and Connecticut, which have enacted legislation excluding charitable contributions as a factor for determining an individual's domicile.

This regulation demonstrates the state's recognition of the critical role that public charities play in assisting those in need and encourages individuals to donate to Illinois charities. Dr. Steven Nasatir, president of the Jewish United Fund/Jewish Federation of Metropolitan Chicago, noted, "The Department of Revenue's action benefits charities in Illinois by ensuring donors that their gifts will have no impact on determining their state of domicile. It recognizes the vital services of public charities in improving the quality of life in Illinois."

In addition, the regulation responds to the changes and patterns of charitable giving that exist today. The rationale which once existed to utilize charitable contributions as an indicator of domicile was based on the presumption that individuals were most likely to donate closest to their social, economic and civic life. Today, donors can easily make contributions to local, regional and national charities through modern financial and communication networks.

Overall, this regulation will undoubtedly open the door to greater charitable giving in Illinois as snowbirds can permanently relocate to Florida and continue to support their beloved Illinois charities.

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