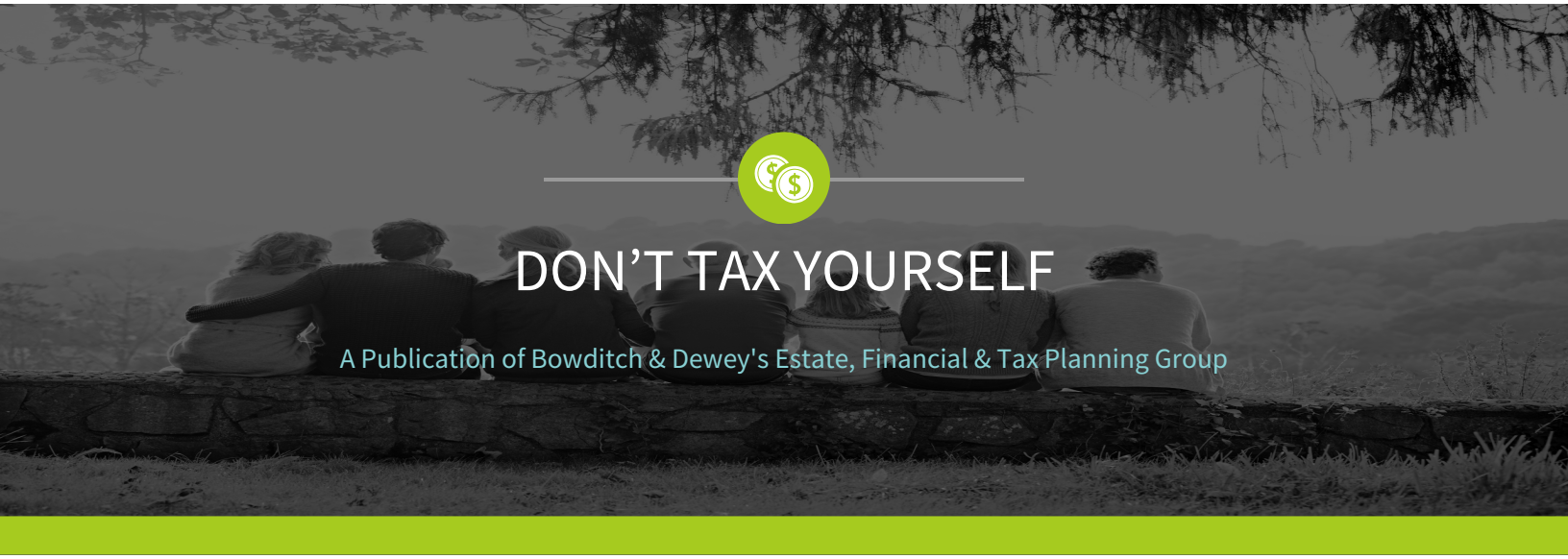

DON'T TAX YOURSELF

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Heading South for the Winter? Tips for Establishing Domicile in Florida

BY ANTHONY J. DRAGGA • OCTOBER 9, 2019

With summer in the rearview, this is a time of year when many Massachusetts residents think about moving to Florida for the winter or relocating on a permanent basis. Better weather is often not the only benefit of such a move, as Florida has no income or estate tax. If you live in Florida for a significant portion of the year (meaning more than one-half of the year), you may want to consider becoming a Florida domiciliary in order to take advantage of these tax benefits.

While establishing residency in Florida to the satisfaction of that state's taxing authorities is relatively straightforward, Massachusetts looks upon such arrangements with greater scrutiny. If a taxpayer buys a home in Florida, registers to vote in Florida, gets a Florida driver's license and files a Florida Declaration of Domicile form, then (in the eyes of most interested Florida parties) Florida residency has been established. Massachusetts, however, will likely take a closer look at your domicile before giving up on its claim for your tax dollars.

Domicile is a person's fixed, permanent and principal home that they reside in, and that they intend to return to and/or remain in. This means that for those who have multiple residences, or may be living somewhere else temporarily, where they live may not actually be their domicile. Massachusetts has adopted a simple standard to determine residency based upon the time a person is physically present in the Commonwealth of Massachusetts. **Under this standard, if you are physically present in Massachusetts for more than 183 days per year and maintain a permanent place of residence in Massachusetts, you will be considered a Massachusetts resident for tax purposes.**

While newly minted Floridians are usually quick to take the steps outlined above to establish themselves as Florida residents, here is a non-exhaustive list of additional steps one should take to evidence intent to establish domicile in Florida:

1. **Banking and Investment Matters**: Be certain that all account statements reflect your Florida address. Notify all investment brokers of your Florida address. If any broker has an office in Florida, you should consider transferring the account to the local Florida office. Finally, have your Social Security check directly deposited

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into a Florida-based bank account.

2. **Estate Plans**: Execute new estate planning documents reflecting your Florida domicile.

3. **Community Involvement and Memberships**: Charitable and political organizations should be informed of the Florida address change and instructed to direct future correspondence to your Florida home address. Also, request that your name be removed from official membership rolls of any social, religious or political organizations in Massachusetts, and consider joining similar organizations in Florida.

4. **Know and Understand the 183-Day Test**: The burden of proof is on the taxpayer to show that she was not present in Massachusetts for more than 183 days, and any part of a day spent in Massachusetts is counted as a Massachusetts day. For example, if a taxpayer wakes up in Massachusetts and catches a flight to Florida at 9 a.m., this counts as a full Massachusetts day for purposes of the statutory residency test, even though the same day counts as a Florida day for purposes of the domicile time analysis. Many taxpayers overlook this fact.

This is not intended to be an exhaustive list of steps which, if taken, will ensure tax treatment as a Florida resident. For more information, check out the Massachusetts Department of Revenue page outlining legal residency in Massachusetts. Finally, it is recommended that you contact an estate planning attorney to discuss the possible benefits of changing your domicile to Florida should you wish to do so.

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