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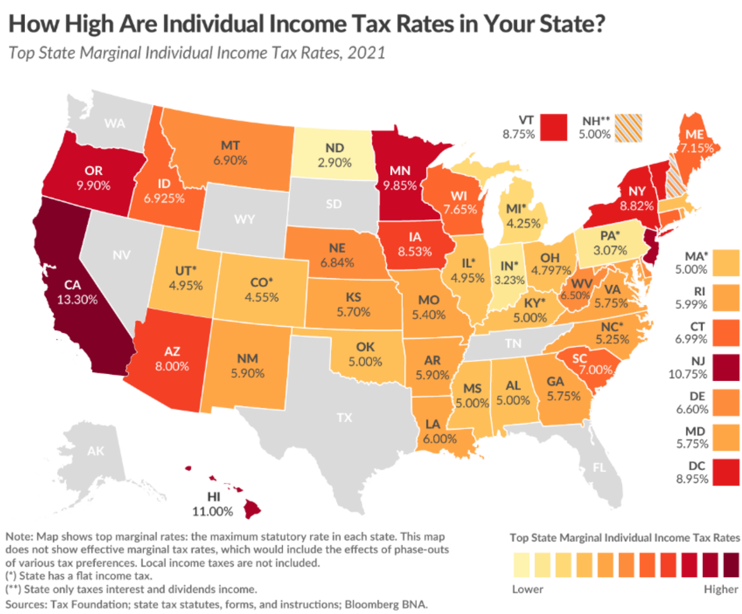
ESTABLISHING RESIDENCY



Where you live can have a dramatic effect on your overall tax situation. Income tax rates vary by state, with a handful of states currently having no income tax. Currently, there are also many localities and cities that have also implemented income taxes. Professional athletes are subject to taxation in each jurisdiction in which they perform services, making residency selection an important planning tool.

The team will typically withhold state taxes in the state where the player is assigned. In cases where the team state is a "no income tax" state, the team will not withhold any state tax, which could result in surprise and lost deductions when the resident return is filed. State taxes need to be considered for your resident state and the state or states you play in during the season. Both need to be planned to maximize the benefit and reduce your overall tax liability.

How big of a business is it for a state?

The LA Times states that California raked in $102 million in taxes from visiting athletes in 2006-07, the last year for which records are available. "States are focusing their resources on where they can get the money," says Joseph Henchman, tax counsel and director of state projects for the Tax Foundation, an educational group based in Washington D.C.

For example, last October, it was reported that California is still pursuing a 2002 1st round pick[2] for tax, penalty, and interest totaling $433,121 over a residency dispute.

HOW TO ESTABLISH RESIDENCY

Once you decide where you want to live and start setting up your home base, you will need to do several things to ensure that you are considered a resident there. States are auditing professional athletes more and more for trying to avoid state tax. If you are going to establish residency in a new state, these steps will help you do it right and justify your case if you are audited.

The first step in the process is to establish that you are a

[2] Out of respect, we have chosen to keep this player's name confidential.

resident of the new state. Through our experience, we have found that the following steps help the most when audited by a state:

1. Driver's License in new state
2. Register car in new state
3. Documentation to substantiate where you live in new state:
    - Rental/lease agreement
    - Home Purchase closing statement
    - Utility Bills
    - Renter's/Homeowner's Insurance
    - Bank Statements with new address
4. Bank statements showing when earnings were received. If you move in April, earnings from February could go towards original state.
5. Copies of credit card statements to show transaction locations in off weeks (Yes, they can and will subpoena these).
6. Copies of bank/debit card statements. They will be analyzed like your credit card statements.

Once you have established yourself as "residing" in the new state, the next important factor in justifying residency is going to come down to how much time you spend in each state.

I have heard many different rumors/myths/wrong information/bad advice circulating through the years when it comes to this.

Having gone through state audits with clients, here are the facts:

Two main calculations will be considered when it comes to how much time you spend in each state.

First, if you spend 183 days or more in a particular state, that state can require you to pay state income tax. So, if you are trying to NOT reside in California, you need to make sure that you spend less than 183 days in California, whether for work or not.

Second, where are you staying when you are not on the road? There is no rule about how much time you need to spend where, but you need to show that you are residing in your new state. Let's use the example of moving from California to Nevada. If you only spend an occasional few days in Nevada and spend most of your off time in California, even if you stay under the 183-day rule, you will have difficulty justifying that you are a resident of the new state. This is why going through the above steps to establish your home base is crucial.

You can insert any two states in there that apply to you. Essentially you will need to do two things: (1) establish that you are a resident of the new state, and (2) prove you did not spend over half the year in your old state.

When establishing residency in a new state, it is essential to be proactive with your record keeping. Keep track of when you moved with a rental agreement or record of purchasing your new home. Keep bank statements showing the transactions in the new state. Keep track of what days you are where for that first two years so that you don't have to go back and try to figure it out. An audit likely will not happen for a couple of years, as most state tax agencies are behind a few years. Keeping track of these details in real-time makes the audit process much smoother.

We have gone through state residence audits with multiple clients over the years. Some are straightforward and just require providing clarification on off-weeks and some administrative hurdles. For others, it can be more in-depth.

For a high-profile client, the state of NY wanted to classify him as a resident, even though he genuinely was a resident of Florida. All of the steps had been taken to establish residency in Florida, and documentation was provided. The state of NY even subpoenaed his phone records to determine his location each day of the year and credit card and bank statements to see where spending took place each day of the year. This was legal for them to request, and he had to comply, ultimately proving that he was not a resident of New York and was, in fact, a resident of Florida. The tax bill difference would have been multiple millions of dollars.

Ultimately, you need to consider many things when deciding where to live. Some will be tax-related, some will be baseball-related, and some will be family and lifestyle-related. What is suitable for one player will differ from another. Use all these considerations when making the best decision for you.