

Interim statement regarding the definition of domicile for capital gains excise tax allocation purposes

This interim guidance statement expired on July 29, 2024 and was replaced by WAC 458-20-301 Capital gains excise tax—Definitions, deductions, exemptions, and allocation of gains and losses.¹

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Purpose

Beginning January 1, 2022, a capital gains excise tax is imposed on the sale or exchange of long-term capital assets.¹ The tax is imposed on individuals (natural persons). Gains or losses from the sale of long-term capital assets are part of an individual's Washington capital gains² if they are allocated to Washington. You must allocate your gains and losses from sales or exchanges of long-term capital assets consistent with the allocation rules in RCW 82.87.100. Within these rules, the term "domicile" is used. This interim guidance statement provides basic examples of how the allocation rules function and explains the meaning of "domicile" for purposes of the Washington capital gains excise tax.

Background

RCW 82.87.100 describes how to allocate long-term capital gains and losses from sales or exchanges of long-term capital assets. Generally, there are three scenarios where long-term capital gains or losses are allocated to Washington:

- (1) The taxpayer sold or exchanged intangible personal property and the taxpayer was domiciled in Washington at the time of the sale or exchange.
- (2) The taxpayer sold or exchanged tangible personal property and the tangible personal property was located in Washington at the time of the sale or exchange.
- (3) The taxpayer a) sold or exchanged tangible personal property that was located in Washington during the year in which the sale or exchange occurred, or the preceding taxable year, b) the taxpayer was a Washington resident³ at the time the sale or exchange occurred, and c) the taxpayer is not subject to income or excise tax on the capital gain by another taxing jurisdiction.⁴

Examples found in this interim guidance statement identify facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances. The examples do not consider any exemptions, deductions, or credits that could apply.

Example 1: Intangible property

- Facts: Tym, an individual, sells stock (intangible personal property) that resulted in a long-term capital gain. Tym is domiciled in Washington at the time of the sale.
- Result: Tym must allocate the gain to Washington for purposes of the capital gains excise tax.

Example 2: Tangible personal property located in Washington at time of sale

- Facts: Maya, an individual, sells a truck that resulted in a long-term capital gain. The truck (tangible personal property) is located in Washington when it is sold.
- Result: Maya must allocate the gain to Washington for purposes of the capital gains excise tax regardless of her domicile.

Example 3: Tangible personal property located in Washington during year of sale

- Facts: Same facts as Example 2, except that the truck was not in Washington at the time of sale. Instead, the truck was located in Idaho at the time of sale. However, the truck was located in Washington during the year of sale. Washington was Maya's domicile at the time of sale. Maya is not subject to income or excise tax on the capital gain in any other jurisdiction.
- Result: Maya must allocate the gain to Washington for purposes of the capital gains excise tax because the property was in Washington during the year of sale, Maya is a Washington domiciliary, and the gain is not subject to an income or excise tax in another taxing jurisdiction.

What is domicile?

In order to determine whether you are subject to the Washington capital gains excise tax, you must determine what gains and losses are allocated to Washington. In order to properly allocate gains and losses, you will in many instances need to know if you are considered domiciled in Washington.

In general, domicile means a residence in fact, coupled with the intent to make the place of residence one's home.⁵ It is the place that you intend to return to even if you visit or reside elsewhere. Thus, actual presence in a location at any given time is not determinative as to a person's domicile. What is determinative is a residence and the intention to make that residence your permanent home. An individual can have only one domicile at a time. Additionally, a Washington domiciliary who intends to move at a future date is still considered domiciled in Washington.

Changing domicile

Your domicile, once established, is presumed to continue.⁶ Therefore, if you have been domiciled in Washington, you will have the burden of proving your domicile has changed to a location outside of Washington. To establish a new domicile, you must be physically present at the new place of intended domicile and have an intention to make that new place your permanent home.⁷ This means that, for instance, selling your former home or acquiring a new one is not conclusive in establishing domicile.

Domicile – Determination of intent

An intention to make a place a permanent home is determined by facts and circumstances on a case-by-case basis.⁸ The following is a nonexclusive list of factors the Department will consider in evaluating an individual's domicile:

- Length of time spent in a location;
- Expressed intent;
- Place of business, profession, or employment;
- Location of bank accounts;
- Residence and address for federal income and state tax purposes;
- Sites of personal and real property owned by the individual;
- State of motor vehicle and other personal property registration;
- State of motor vehicle driver's license;
- Location of schools attended by children;
- State of voter registration;
- Location of professional or business licenses;
- Payment of in-state tuition as a Washington resident;
- Claiming Washington as a residence for obtaining a hunting or fishing license, eligibility to hold public office, or for judicial actions;
- Mailing address.

No single factor is dispositive.

Example 4: Determination of domicile

- Facts: Diana is a life-long Washingtonian. Diana owns a home in Seattle. Her family and relatives live in Washington, and her children attend grade school in Washington. Diana was recently offered a position as a flight attendant. As a flight attendant, Diana will fly around the world and be away from her Washington home for most of the year.

- Result: Diana is a Washington domiciliary. Many factors indicate Washington is Diana's permanent home, including the length of time she lived in Washington, home ownership in Washington, social ties in Washington, and her children's attendance of Washington schools. Diana will continue to be a Washington domiciliary even though she will not be present in Washington for most of the year. The nature of Diana's work and presence outside of the state does not prove that Diana intends to make a location outside of Washington her permanent home.

Soldiers and Sailors Civil Relief Act

Federal law may apply to service members in determination of domicile. Generally, under 50 U.S.C. § 574 (Soldiers and Sailors Civil Relief Act), a member of the armed forces does not acquire a new domicile solely because that individual was stationed elsewhere during a period of active duty.

Allocation - Presumption of domicile

For allocation purposes, if you were a Washington domiciliary at any time during a particular year, the Department will presume that you were a Washington domiciliary at the time you sold or exchanged any personal property during the same year.

Example 5: Presumption of domicile and allocation

- Facts: Brendan is a long-time Washington domiciliary and a casual stock investor. In September, his work assigns him to a one-year project located in Texas. In October, Brendan moves to corporate housing located in Texas. In December, Brendan sells a significant portion of his stock, resulting in a large long-term capital gain. Brendan does not report his long-term capital gain from the sale of his stocks to Washington because he claims that he was a Texas domiciliary at the time he sold his shares.
- Result: Brendan was a Washington domiciliary in the year he sold his stock. Therefore, the Department will presume that Brendan was a Washington domiciliary in December when he sold his shares. Brendan must include the long-term capital in his Washington capital gain unless Brendan can prove that Texas was his permanent home at the time of the sale.

This interim guidance statement will remain in effect until the Department issues final guidance or cancels the interim statement.

¹RCW 82.87.040.

²The capital gains excise tax is imposed on an individual's "Washington capital gains." See RCW 82.87.040.

³A "resident," as defined in RCW 82.87.020, means (1) an individual domiciled in Washington or (2) an individual that maintained a place of abode in Washington for any portion of a taxable year and was physically present in Washington for more than 183 days during the taxable year. "Taxing jurisdiction" means a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country. RCW 82.87.100.

⁴See RCW 82.87.100. In the case of a loss, this element is met if the loss is not included in the taxpayer's income or excise tax base in another taxing jurisdiction.

⁵In re Estate of Lassin, 33 Wn.2d 163, 165, 204 P.2d 1071 (1949).

⁶Ex parte Mullins, 26 Wn. 2d 419, 445, 174 P.2d 790, 804 (1946) ("It is elemental that every [person] . . . must have a domicile somewhere, and that the presumption is against a change of domicile; therefore, the burden of proof rests upon the one alleging such change."); Sasse v. Sasse, 41 Wn. 2d 363, 366, 249 P.2d 380, 382 (1952) ("[...] the burden of proof is upon the one asserting his change of domicile.").

⁷Stevens v. Stevens, 4 Wn. App. 79, 82, 480 P.2d 238, 239 (1971) ("To establish a domicile requires the physical presence at the place of intended domicile accompanied by the intention of making that place one's home.").

⁸In re Marriage of Strohmaier, 34 Wn. App. 14, 17, 659 P.2d 534, 536 (1983) ("Intent regarding domicile is generally determined by objective events, not the party's subjective state of mind. A proper subject of inquiry is whether the facts support the self-serving declaration of intent in such a way that the intent can be said to be genuine.") (citations omitted).



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