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Pennsylvania Inheritance and Estate Tax
No. I NH-05-002
Residency

ISSUE

For purposes of Pennsylvania Inheritance Tax, was a ninety year old woman suffering from dementia able to change her domicile to Pennsylvania when her son moved her from her assisted living facility in New York into an assisted living facility near his home in Pennsylvania?

CONCLUSION

For purposes of Pennsylvania Inheritance Tax, a ninety year old woman suffering from dementia was unable able to change her domicile to Pennsylvania when her son moved her from her assisted living facility in New York into an assisted living facility near his home in Pennsylvania

FACTS

Decedent died on March 10, 2005. She resided in New York her entire life, until her 2002 move to an assisted living facility in Pennsylvania. Prior to the move, she resided in an assisted living facility in New York, in the section for residents with dementia. In 2002, her son exercised his health care proxy over her, and acting as her power of attorney, moved her to an assisted living facility ten miles from his Pennsylvania home. Once again, she resided in the section of the facility reserved for patients with dementia. Purportedly, she was unaware of her new location, and had no input in the move. The contact information for her physician was provided to the Department, to provide confirmation of her condition. In 1999, decedent's son changed her address of record to his in Pennsylvania, so he could better manage her affairs. From the time of her move to Pennsylvania in 2002, he prepared Pennsylvania Income Tax returns on her behalf.

Decedent owned no real property. Her only tangible personal property was a reclining chair and her clothing, which were donated to the assisted living facility upon her death. Three bank accounts were maintained in her name, in Pennsylvania banks.

DISCUSSION

For Pennsylvania Inheritance Tax purposes, domicile is defined as one's fixed, true and permanent home to which he intends to return during absences. See, *Smith v. Smith*, 206 Pa. Super. 310, 213 A.2d 94 (1965). Domicile is presumed to continue until another domicile is affirmatively proven. The burden of proving a change of domicile rests upon the person making the allegation. *Loudenslager Wills*, 430 Pa. 33, 240 A.2d 477 (1968). The change must be established via the use of clear and convincing evidence. *Obici Estate*, 373 Pa. 567, 97 A.2d 49 (1953).

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The domicile change involves the occurrence of both a physical presence in the place where domicile is alleged to have been acquired, and an intention to make it his home without any fixed or certain purposes to return to his former place of abode. *Publicker's Estate*, 385 Pa. 403, 123 A.2d 655 (1956) and *Estate of McKinley*, 461 Pa. 731, 337 A.2d 851 (1975). Here, decedent showed no clear intent to make Pennsylvania her domicile. She made no



arrangements to move to Pennsylvania; indeed she was unable to make any arrangements on her own. She also was physically unable to leave the assisted living facility to which she was moved by her son. These facts support the contention that, at the time of her death, decedent remained a domiciliary of New York.

As Pennsylvania Inheritance Tax is not imposed upon intangible personal property of a nonresident decedent, her only assets of value, no Pennsylvania Inheritance Tax return is required to be filed by her estate, and no inheritance tax due. 72 P.S. §§ 9101, 9106, and 9107.