



October 10, 2006
Pennsylvania Inheritance Tax
No. INH-06-003
Estate of Non-Resident Decedent

ISSUE

Whether an individual suffering from dementia is considered a resident of Pennsylvania for Pennsylvania Inheritance Tax purposes, where the individual resided out-of-state until approximately three years before his death, when he was moved to Pennsylvania against his wishes by family so that he could be cared for?

CONCLUSION

For purposes of Pennsylvania Inheritance Tax, an individual suffering from dementia that is moved to Pennsylvania solely for managed care, is unable to change his domiciliary to Pennsylvania, absent additional facts that warrant a conclusion that the individual sought to remain in Pennsylvania permanently.

FACTS

In 2002, a decision was made by Taxpayer's children to relocate Taxpayer from New York to Pennsylvania into a health care facility so that Taxpayer's children could monitor his care more closely. At the time of the move, Taxpayer suffered from diagnosed dementia, and was later declared incompetent by a physician in 2005. Taxpayer passed away in Pennsylvania in 2006.

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's Estate, 430 Pa. 33, 240 A.2d 477 (1968). The change must be established via the use of clear and convincing evidence. Obici's Estate, 373 Pa. 567, 97 A.2d 49 (1953).

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, Taxpayer showed no clear intent to make Pennsylvania his domicile. Further, Taxpayer did not possess the physical and mental capabilities to leave Pennsylvania. These facts support the contention that, at the time of his death, Taxpayer remained a domiciliary of New York.

Furthermore, Pennsylvania Inheritance Tax is not imposed upon intangible personal property of a nonresident decedent, but is imposed on tangible property located within Pennsylvania. 72 P.S. §§ 9101, 9106, 9107. Therefore, any cash or personal effects located within the Commonwealth and owned by Taxpayer are subject to Pennsylvania Inheritance Tax and reportable on a non-resident decedent return.