INCOME, ESTATE AND GIFT TAXES IN THE DISTRICT OF COLUMBIA

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I. DC INCOME TAX

A. Individuals:

The District of Columbia defines a resident for DC income taxes as follows:

> "an individual domiciled in the District at any time during the taxable year, and every other individual who maintains a place of abode within the District for an aggregate of 183 days or more during the taxable year, whether or not such other individual is domiciled in the District, excluding any elective officer of the government of the United States or any employee on the staff of an elected official in the legislative branch of the government of the United States if the employee is a bona fide resident of the state of residence of the elected officer, or any officer of the executive branch of the government whose appointment was made by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure in office is at the pleasure of the President of the United States, or any Justice of the Supreme Court of the United States, unless the officer, employee, or justice is domiciled within the District at any time during the taxable year. In determining whether an individual is a "resident", such individual's absence from the District for temporary or transitory purposes shall not be regarded as changing his domicile or place of abode."

There are 2 tests for being deemed a resident of the District of Columbia for income tax purposes: (1) domicile test or (2) 183-day test.

(1) *Domicile Test*:

The DC Code does not define the term "domicile". Domicile generally means physical presence and the intent to remain indefinitely. An individual who is physically present in DC, but who has a domicile in another state must prove that he or she has a "fixed and definite intent to return" to such other state.[1] A mere "sentimental attachment" to the other state is not sufficient to prove domicile in such other state.[2]

[1] William T. Griedewald v. D.C., D.C. Super. Ct. Tax Div., Docket No. 2387 (October 26, 1976).
[2] Halsey v. D.C., Bd. of Tax App. (May 5, 1942).

(2) *183-Day Test*:

If an individual maintains a residence in the District of Columbia for at least 183 days in a taxable year, such individual is a resident of DC for DC income tax purposes.[3] Time spent outside of DC for vacation, hospital stays, business trips, shopping trips and similar trips do not reduce the number of days that the individual maintains a residence in DC.[4] There is an exception for members of Congress who maintain a residence in DC to attend sessions of Congress, unless the individual represents DC. This includes delegates from Guam, the Virgin Islands and Puerto Rico.[5]

The following individuals are excluded from the above rules:

- Elected officers of the U.S. government
- Any employee on the Congressional staff who is a bona fide resident of the state of the elected official
- Justices of the U.S. Supreme Court
- Officers appointed by the President of the United States subject to Senate confirmation whose tenure is at the pleasure of the President.[6]

The following are examples of residency under the above rules:

- John P. Sensenig v. D.C., D.C. Super. Ct. Tax Div. Dkt. No. 2278 (1977) - John Sensenig, a Pennsylvania domiciliary, was appointed by the Governor of Pennsylvania to coordinate state and Federal legislation in the District of Columbia. Rather than commute from Pennsylvania to DC each day, John rented a furnished apartment in DC. John stayed at the apartment 5 nights a week. Because John maintained a residence in DC for more than 6 months of the year, he was subject to DC income tax.

- Charles R. Tanguy v. D.C., D.C. Super. Ct., Tax Div., Dkt. No. 3082 (1982) – Charles Tanguy was a career Foreign Service officer. At one point, he was assigned to work in the District of Columbia. Foreign Service officers are appointed by the President of the United States, confirmed by the Senate and whose tenure in office is at the pleasure of the President. Such individuals are exempt from D.C. income tax if they have not formed the intent to become a DC domiciliary. Mr. Tanguy did not intend to be domiciled in DC. Therefore, he was not subject to income tax while he was assigned to work in DC.

- John A. Alexander, Jr. v. D.C., D.C. Ct. of Appeals, No. 8032 (1977) – John Alexander was born in the District of Columbia and lived there until he accepted a position in Japan under a 3-year employment contract with the Navy. Mr. Alexander then renewed the contract for an additional 2 years. Following the end

[3] D.C. Code Ann. §47-1801.04(42).
[4] DC Municipal Regulations §105.6.
[5] 4 U.S.C. §113.
[6] D.C. Code Ann. §47-1801.04(42).

of the contract, Mr. Alexander looked for other employment in Japan. Then he returned to DC under a 1-year employment contract with the Naval Research Laboratory. The Court held that Mr. Alexander abandoned his DC domicile when he moved to Japan and therefore was not subject to income tax in DC.

- Flynn v. D.C., D.C. Tax Ct., Opinion No. 1086, Dkt. No. 2084 (1970) – Ellen Flynn lived in Miami, Florida from December 1948 until April 1968. During that time she worked for Pan Am Airways. She married Mr. Flynn in DC in 1966. Mr. Flynn worked for the Washington Post. Mrs. Flynn had a daughter who was born in Florida and lived in Florida until she graduated from high school in 1967. Mrs. Flynn continued to live in Florida while her daughter was in high school. Mrs. Flynn visited DC frequently to see her husband and stayed at his apartment when in DC. While in Miami, Mrs. Flynn lived in her own apartment and paid her own rent. In April 1968, Mrs. Flynn transferred to Washington and continued to live in DC. The District attempted to tax Mrs. Flynn on her income between 1966 and April 1968. The Court held that Mrs. Flynn did not become a resident of DC until April 1968. Therefore, she was not subject to income tax in DC until after April 1968.

B. Estates

An estate is a resident of the District of Columbia if the decedent was domiciled in DC at the time of his or her death.[7] The residence of the fiduciary does not affect the status of the estate's residency classification.[8]

INCOME TAXATION OF TRUSTS IN DC

A. General Principals of Income Taxation of a Trust in the District of Columbia

The District of Columbia taxes the income of any property held in a "resident trust", including income accumulated in trust for the benefit of unborn or unascertained persons with contingent interests, income accumulated or held for future distribution under the terms of the trust agreement, income which is to be distributed currently to the beneficiaries and income that may either be distributed to the beneficiaries or accumulated, in the Trustee's discretion.[9] DC does not impose tax on a nonresident trust's income, but it may impose a franchise tax.[10]

B. Classification of Trusts as Resident or Non-Resident in the District of Columbia

For DC income tax purposes, a trust is considered a resident of the District of Columbia in four scenarios:

[7] D.C. Code Ann. §47-1809.01
[8] D.C. Code Ann. §47-1089.02.
[9] D.C. Code Ann. §47-1809.03.
[10] D.C. Code Ann. §47-1808.01.

(1) the trust was created by the Will of a decedent domiciled in the District of Columbia on the date of such decedent's death;
(2) the trust was created by an individual who was domiciled in the District of Columbia at the time the trust was created;
(3) the trust consists of property of a person domiciled in the District of Columbia; or
(4) the trust resulted from the dissolution of a District of Columbia corporation.[11]

The residence or situs of the Trustee of the trust is not relevant in determination of the trust's residency in the District of Columbia.[12] If the creator of the trust was not domiciled in the District of Columbia when the trust was created, the trust is a nonresident trust.[13] DC does not tax the income of nonresident trusts.

i. *Residency Based on Domicile of Decedent in the District of Columbia at Death*

Under the first scenario, when a trust is created under the Will of a decedent who was domiciled in the District of Columbia at the time of such decedent's death, such trust is considered a resident of the District of Columbia for DC income tax purposes.[14] The D.C. Code does not define the term "domicile". Domicile generally means physical presence and the intent to remain indefinitely.[15] The mere intent to change one's domicile will not establish a new domicile without an actual change in residence.[16] An individual who is physically present in the District of Columbia, but who has a domicile in another state must prove that he or she has a "fixed and definite intent to return" to such other state.[17] A mere "sentimental attachment" to the other state is not sufficient to prove domicile in such other state.[18]

In *District of Columbia v. Chase Manhattan Bank*, the District of Columbia Court of Appeals held that a trust created under the Will of a decedent who lived in the District at death is sufficient nexus to treat the trust as a resident trust for DC income tax purposes.[19] In that case, the decedent was domiciled in the District of Columbia at the time of the decedent's death, but the Trustee, trust assets and trust beneficiaries were all located outside of the District of Columbia. The Court stated that the "Due Process Clause does not prevent the District from imposing such a tax, given the continuing supervisory relationship which the District's courts have with respect to administration of such a trust…"[20]

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[11] D.C. Code Ann. §47-1809.03.
[12] D.C. Code Ann. §47-1809.02.
[13] D.C. Code Ann. §47-1809.01.
[14] Id.
[15] See *Texas v. Florida*, 306 US 398 (S. Ct. 1939).
[16] Treas. Reg. Section 20.0-1(b)(1).
[17] *William T. Griedewald v. D.C.*, D.C. Super. Ct. Tax Div., Docket No. 2387 (October 26, 1976).
[18] *Halsey v. D.C.*, Bd. of Tax App. (May 5, 1942).
[19] *District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539 (D.C. App. 1997).
[20] Id.

ii. *Residency Based on Domicile of Grantor in District of Columbia at Time of Creation of Trust*

The other scenarios upon which DC residency is based is if the trust was created by a person domiciled in the District of Columbia at the time the trust is created or if the trust is funded with property of a person domiciled in the District of Columbia.[21] The Court in *District of Columbia v. Chase Manhattan Bank* specifically did not rule whether the District can treat an *inter vivos* trust as a resident trust solely because the creator lived in the District of Columbia at the time of the decedent's death when the trust became irrevocable.[22] In a footnote, the court stated "[i]n such cases, the nexus between the trust and the District is arguably more attenuated, since the trust was not created by the probate of the decedent's will in the District's courts…[and therefore a]n irrevocable inter vivos trust does not owe its existence to the laws and courts of the District in the same way that a testamentary trust…does, and thus it does not have the same permanent tie to the District."[23] Thus, such rule may not apply to revocable trusts even if the settlor of such trust was domiciled in the District of Columbia at the time of his or her death.

Looking to other jurisdictions, it may be possible for a Trustee of an *inter vivos* trust to take the position that a trust created by a District of Columbia domiciliary may not be subject to DC income tax if the trust has no Trustees in the District of Columbia, no assets in the District of Columbia, and no income from sources in the District of Columbia.[24] If the person who created the trust is no longer a resident of District of Columbia and there are no other bases on which to establish that the trust is a District of Columbia resident, then the Trustee may be able to take the position that the trust is no longer a resident of the District of Columbia as well.

C. Filing Requirements, Penalties and Interest for Resident Trusts

In DC, a resident trust is required to file Form D-41, District of Columbia Fiduciary Income Tax Return, when the trust's gross income is at least $100.[25] The return is due by April 15 of the year following the taxable year of the trust, for trusts on a calendar year. An extension to file may be requested by filing Form FR-127F by the due date of the return. The extension may be granted for up to six months, but for no more than 1 year.[26] Any income tax due must be paid in full with the request, as there is no extension of time to pay.[27] Late payments incur a 5% per month penalty for failure to file the return or pay any tax due on time.[28] The maximum penalty is 25% of the tax due.[29] In addition, interest is charged on any late payment at a rate of

[21] D.C. Code Ann. §47-1809.03.
[22] Id.
[23] *District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539, 547 n.11 (D.C. App. 1997).
[24] See *Mercantile Safe-Deposit and Trust Company v. Murphy*, 15 N.Y.2d 579 (1964), aff'g, 19 A.D.2d 765 (3d Dept. 1963).
[25] D.C. Code Ann. §47-1809.03.
[26] D.C. Code Ann. §47-1805.03(b).
[27] This is according to the instructions for Form D-41. However, see D.C. Code Ann. §47-1812.07, which states that the time to pay may be extended for the same amount of time as the extension on the time to file a return.
[28] D.C. Code Ann. §47-4213(a).
[29] Id.

10% per year, compounded daily, starting from the due date of the return to the date the outstanding balance is paid.[30]

There is an additional penalty equal to 20% of any understated amount of taxes due if the unpaid amount is (a) more than 10% of the actual amount due or (b) $2,000 or more.[31] Finally, the preparer may also be subject to penalties ranging from $250 to $10,000 when there is an understatement of tax if:

(a) the refund or amount due is based on unrealistic information;
(b) the preparer should have been aware of a relevant law or regulation; or
(c) relevant facts about the return are not adequately disclosed.[32]

II. DC ESTATE TAX

A. Who is Subject to the DC Estate Tax?

i. *Residents*

DC residents are subject to estate tax in DC.[33] For DC estate tax purposes, a person is a resident of DC if he or she was domiciled in the District of Columbia at the time of his or her death.[34] The DC Code does not define domicile. It typically refers to physical presence and an intent to remain indefinitely. A "mere sentimental attachment will not hold the old domicile".[35]

While DC has not defined domicile by statute, DC has published a list of factors for determining whether an individual was a resident of DC at the time of his or her death.[36] The burden of proving that the decedent was not a resident of DC is on the decedent's estate.[37] The factors are as follows:

(1) The place of domicile set forth in writings made by the decedent, such as the decedent's Will;
(2) The location and nature of the decedent's permanent residence;
(3) The purpose of the decedent's presence in D.C.;
(4) Acts of the decedent indicating domicile, such as registering to vote, registering a vehicle, the place where the decedent files his or her income tax returns, address generally used by the decedent, claiming or filing the homestead exemption, the situs of the decedent's assets, major business interests and sources of livelihood, the decedent's participation in fraternal, religious and social organizations, and the amount of time spent by the decedent in various locations.[38]

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[30] D.C. Code Ann. §47-4201.
[31] D.C. Code Ann. §47-4211.
[32] D.C. Code Ann. §47-4217.
[33] D.C. Code Ann. §47-3702(a).
[34] D.C. Code Ann. §47-3701(10.
[35] District of Columbia v. Murphy, 314 U.S. 441, 456 (1941).
[36] Section 9-3701.1 of the District of Columbia Municipal Regulation (DCMR).
[37] DCMR Section 9-3701.2.
[38] DCMR Section 9-3701.1.

The following cases illustrate the determination of domicile:

- Estate of William Joseph Emmett, Admin. No. 1156-86 (11/5/86) - The decedent had a Maryland driver's license and belonged to several clubs in Maryland. The Personal Representative of the decedent's estate filed the decedent's Will in Baltimore. The decedent, however, was born in DC, had lived in DC most of his life and had lived there at the time of his death. In addition, the decedent represented that he was domiciled in D.C. in an action relating to his parents' estates and in a conservatorship proceeding. Thus, the decedent was found to be domiciled in DC.

- Estate of Rachel B. Young, Admin. No. 1476-82 (5/9/85) - The decedent was a Senator from the State of Ohio. The decedent executed a power of attorney and Will stating that he was a resident of the State of Ohio. However, after leaving government service, the decedent continued to live in DC for 13 years and was living in DC at the time of his death. Thus, the decedent was held to be domiciled in DC.

- Weitknecht v. District of Columbia, 195 F.2d 570 (D.C. Cir. 1952) – The decedent, John H. Edwards, was born in Mitchell, Indiana in 1869. In 1921, Mr. Edwards moved to DC to become Solicitor of the Post Office Department. After 2 years, he moved to the Department of the Interior, where he held positions appointed by the President. After the change in administration in 1933, Mr. Edwards ceased his work in public service. From thereafter until his death in 1945, Mr. Edwards lived in a 3-room apartment in DC. He did not work, but lived off of his investments. Mr. Edwards never married. Mr. Edwards retained ownership of his family home in Indiana and visited there almost every year. On the trips, Mr. Edwards visited friends and family and took care of certain business affairs at a local company. The company paid Mr. Edwards for his services and for his travel and living expense on the visits. Mr. Edwards voted in Indiana, when he voted. While living in DC, he paid his Federal income taxes to the IRS in Indianapolis stating Mitchell, Indiana as his permanent residence. He also paid Indiana intangibles tax in the years 1936, 1937 and 1938. He filed personal property tax returns in D.C. in 1938, 1939, 1940, 1943 and 1944 and paid income tax to DC in 1939 through 1944. On some of such returns, Mr. Edwards stated that DC was not his permanent residence. Mr. Edwards' Will was prepared in Indiana and stated he resided in Indiana. The Court held that, while Mr. Edwards may have had a strong desire to go back to Indiana before he died, the facts indicate that he was domiciled in DC at the time of his death.

- Pace v. District of Columbia, 135 F.2d 249 (D.C. Cir. 1943) – The decedent, Charles F. Pace, was born in Florida. In 1913, he moved to DC to take a job with the Federal government. He then accepted a position as the Financial Clerk of the Senate until his death in 1940. During that time, Mr. Pace sold the family home in Starke, Florida. However, he stored his furniture and household goods in a

warehouse in Florida, which remained there until his death. While living in D.C., Mr. Pace stayed in rented apartments and boarding houses. He never purchased a residence or other real property in DC. His siblings lived in DC and encouraged him to buy property, but Mr. Pace stated continually that he intended to return to Florida after his Federal service concluded. Mr. Pace owned real property and business interests in Florida, many of which he purchased while living in DC. His Florida business affairs were handled through attorneys and agents. Mr. Pace was registered to vote in Florida and voted by absentee ballot. He also paid the Florida poll tax until 1937. Mr. Pace did not belong to any clubs in DC, but was a member of a local church. He subscribed to the Starke newspaper, contributed to civic and charitable organizations in Starke and assisted citizens of Starke with their local problems. Mr. Starke paid DC intangibles taxes in 1937, 1938 and 1939 and filed his Federal income tax returns in Baltimore. Mr. Pace's Will recited that he was a resident of DC. The Court held that the factors weighed more in favor of Florida domicile.

- In re Estate of Derricotte, 744 A.2d 535 (D.C. 2000) – Elise Derricotte died on December 8, 1992 without a Will. Ms. Derricotte had unquestionably been domiciled in DC until 1988. At that time, Ms. Derricotte sold her house in DC and moved to Maryland where she remained until her death. She sold her house because it was too big and had to many steps to climb. The apartment to which she moved at the Charter House was a single story building in Silver Spring, not far outside of DC. She signed a 2-year lease. She continually told friends that she was not happy at the Charter House and wanted to move back to DC. She often went house-hunting with friends in DC. Shortly after moving to Maryland, Ms. Derricotte purchased a house in DC and arranged for one of her nieces to live there with her. But the arrangement did not work so she sold the house a few months later. Ms. Derricotte maintained her bank accounts in DC and attended church there. Based on these facts, the Court held that Ms. Derricotte was domiciled in DC at the time of her death.

ii. *Nonresidents*

The DC estate tax may apply to nonresidents. If a person who is not a resident of the District of Columbia owns property having its taxable situs in the District, then there may be DC estate tax due on such property.[39] A "nonresident" is a person who was domiciled outside of the District of Columbia at the time of his death.[40] Property having a taxable situs in the District includes (a) real property situated in the District of Columbia, (b) tangible personal property that is customarily located in the District of Columbia at the time of the decedent's death, (c) intangible personal property if the decedent was domiciled in the District at the time of his or her death.[41] Intangible personal property used in a trade or business in DC has a taxable situs in DC regardless of the domicile of the owner.[42]

[39] D.C. Code Ann. §47-3703(a).
[40] D.C. Code Ann. §47-3701(8).
[41] D.C. Code Ann. §47-3701(12A).
[42] Id.

B. How Much is the DC Estate Tax?

i. *Residents*

If a decedent is found to be domiciled in DC at the time of his or her death, the decedent's taxable estate having its taxable situs in DC will be subject to DC estate tax.[43] For a decedent dying after DC defines a "taxable estate" as "the meaning defined in section 2051 of the Internal Revenue Code, but without reduction for the deduction provided in Section 2058 of the Internal Revenue Code, and calculated as if the federal estate tax recognized a domestic partner in the same manner as a spouse.[44] In other words, the taxable estate for DC estate tax purposes is calculated in the same manner as for Federal estate tax purposes, but without regard to the state death tax deduction under Section 2058.

For decedents who pass away after December 31, 2015, the rate of DC estate tax is 16%, except that the portion of the taxable estate that does not exceed the current "zero bracket amount" is taxed at 0%.[45] If the taxable estate exceeds the zero bracket amount, then the following tax rates apply to the incremental values of the taxable estate above the zero bracket amount:

(A) 6.4% on the taxable estate over $1 million but not over $1.5 million;
(B) 7.2% on the taxable estate over $1.5 million but not over $2 million;
(C) 8% on the taxable estate over $2 million but not over $2.5 million;
(D) 8.8% on the taxable estate over $2.5 million but not over $3 million;
(E) 9.6% on the taxable estate over $3 million but not over $3.5 million;
(F) 10.4% on the taxable estate over $3.5 million but no over $4 million;
(G) 11.2% on the taxable estate over $4 million but not over $5 million;
(H) 12% on the taxable estate over $5 million but not over $6 million;
(I) 12.8% on the taxable estate over $6 million but not over $7 million;
(J) 13.6% on the taxable estate over $7 million but not over $8 million;
(K) 14.4% on the taxable estate over $8 million but not over $9 million; and
(L) 15.2% on the taxable estate over $9 million but not over $10 million.[46]

The "zero bracket amount" is the DC estate tax exemption amount. The zero bracket amount is determined as follows:

(A) For decedents dying after December 31, 2015, but before January 1, 2017, the zero bracket amount was $1 million;
(B) For decedents dying after December 31, 2016, but before January 1, 2018, the zero bracket amount was $2 million; and
(C) For decedents dying after December 31, 2017, the zero bracket amount is equal to "the basic exclusion amount set forth in section 2010(c)(3)(A) of

[43] D.C. Code Ann. §47-3702(a).
[44] D.C. Code Ann. §47-3701(12)(C).
[45] D.C. Code Ann. §47-3702(a-1)(1).
[46] Id.

the Internal Revenue Code and any cost-of-living adjustments made pursuant to Section 2010(c)(3)(B) of the Internal Revenue Code."[47]

The last item sounds like the DC estate tax exemption is equal to the Federal estate tax exemption that is applicable in the year of the decedent's death. However, emergency legislation enacted in the District of Columbia in 2018 capped the DC estate tax exemption at $5.6 million, but allows for certain cost of living adjustments. This adjustment was retroactive to January 1, 2018. On September 5, 2018, the DC Mayor signed the 2019 Fiscal Year Budget Support Act of 2018 that made the DC estate tax exemption of $5.6 million permanent, with increases annually in accordance with the cost-of-living adjustment provided above. The law became enforceable on October 27, 2018. Thus, the DC estate tax exemption is 2019 is equal to $5,681,760 for decedents who die between January 1, 2019 and December 31, 2019.[48]

If the decedent owned any real or tangible personal property outside of the District of Columbia, the DC estate tax will be reduced by the proportion that the value of such property bears to the amount of the gross estate of the decedent.[49]

ii. *Nonresidents*

The DC estate tax applicable to nonresidents is calculated in the same manner as for residents.[50] However, the total amount of DC estate tax is then multiplied by a fraction, the numerator of which is equal to that part of the decedent's gross estate that has its taxable situs in the District of Columbia and the denominator of which is equal to the value of the nonresident decedent's gross estate.[51]

III. GIFT TAXES

The District of Columbia does not impose a gift tax.

[47] D.C. Code Ann. §47-37021(14).
[48] See District of Columbia (DC) Estate Tax Instructions for Estates of Individuals booklet.
[49] D.C. Code Ann. §47-3702(a-1)(2).
[50] D.C. Code Ann. §47-3703(b-1).
[51] Id.