

## Establishing FLORIDA TAX RESIDENCY for SEASONAL RESIDENTS

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Florida is perhaps the most popular retirement destination in the United States - and with good reason. It boasts a wonderful climate, beautiful beaches and numerous tourist attractions. However, Florida's status as a taxpayer "friendly" state is also a significant factor in prompting retirees to establish a Florida residence.

Among Florida's tax breaks for residents are:

- No state or local income tax.
- No state death tax.
- A 3% maximum annual increase on homestead property tax assessments

Any person whose only home is in Florida automatically qualifies for Florida's tax breaks (although the homestead exemption requires a separate application). However, when a person has one residence in Florida and another elsewhere (the "northern state"), Florida's tax advantages will only apply if the person can establish the Florida residence as the primary residence (or "domicile").

There are a number of steps that are useful for establishing a Florida primary residency under the "intent" tests, including:

- Obtain a Florida driver's license.
- Register to vote.
- File a Declaration of Domicile with the county Clerk of Courts - by this document the person swears that he is a resident of Florida
- Have one's estate plan (Will, Trust, etc.) updated for compliance with Florida law and to reflect that Florida is the state of primary residence - because each state has special estate planning rules pertaining to its residents and the northern states often examine whether a Florida estate plan exists as a part of the "intent" determination



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lish the Florida residence as the primary residence (or "domicile"). The critical matter is to convince the northern state, not Florida, that his or her primary residence is Florida. This is a particular concern for the person who is maintaining a home in a northern state with high taxes.

Failure to properly establish Florida as one's primary residency may give the northern state grounds to tax that person's entire income or estate - and which taxes may not be imposed until years after the person "moved" to Florida. In fact, a recent Wall Street Journal article noted that there has been a net migration of 2.3 million people over the past 6 years to "no tax" states, such as Florida, and that some states, such as Massachusetts, have established "Domicile Units" to audit persons who claim non-residency but still maintain a connection to the

- Focus one's major activities and affairs on Florida, including social affiliations, accounts, location of heirlooms, and billing addresses

In short, to establish a Florida residency, one's life and affairs should be postured such that an independent observer would conclude that the person's primary home is in Florida.

For most, establishing Florida as the primary residence is the right economic decision. However, it should be done with the utilization of Florida and northern state legal counsel to ensure that a proper residency plan is implemented and, more importantly, and to avoid a surprise future tax bill from the northern state. ☐

northern state.

Having Florida as one's primary residence is basically a matter of qualifying as a non-resident of the northern state under its non-residency tax law. Many northern states



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utilize a "day-counting" test, with regard to the number of days a person spends in the northern state, to make the initial residency determination. However, even if the "day-counting" test is avoided, many northern states have a back-up "residency intent" test that must also be met. Furthermore, since the northern state cannot examine a person's internal residency intent, objective factors are evaluated by the northern state to determine the person's residency intent.

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