

Establishing a Florida Tax Residency for the Seasonal Resident

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Florida is well-known as one of the most desirable retirement destinations in the world – and with good reason. It boasts a wonderful climate, miles of beautiful beaches, and numerous tourist attractions. However, perhaps the greatest factor attracting newcomers to Florida is the significant tax benefits for its residents.

Among Florida's tax breaks are:

- No income tax
- No death tax
- A 3% maximum annual increase on homestead property tax assessments

NO INCOME TAX

Florida is one of only 7 states that impose no income tax – and it is the only “no-tax” state particularly well-suited for retirees. Several other no-tax states are Alaska and South Dakota.

Interestingly, Florida's no tax policy is long-standing, being officially incorporated into the State Constitution in 1885.

Unfortunately, most states do impose an income tax – and which may be in the 6% to 8% range or even higher. For example, New Jersey's top tax rate is 10.75%. Thus, by establishing Florida residency one obtains a “pay raise” by eliminating income taxation from the state of origin. For many retirees Florida residency is particularly useful for eliminating state taxation on IRA distributions and investment income.

NO DEATH TAX

Another important tax benefit for Florida residents is that, in practical effect, Florida imposes no death tax.

Although Florida Statutes do provide a “pick-up” death tax for estates that owe a federal estate tax, no additional death tax is generated due to Florida residency. The federal estate tax generally allows an off-setting dollar-for-dollar credit for state death taxes. Florida law tracks this federal credit system and taxes an estate only to the extent the federal system allows a state tax credit.

Thus, under Florida's tax system the overall estate tax is not increased. Instead, the federal estate tax is divided between the IRS and Florida. And if there is no federal tax liability then Florida charges no tax at all.

However, many states do impose additional death taxes – even if there is no federal estate tax liability.

HOMESTEAD PROPERTY TAX

Florida has a history of providing property tax relief for residents dating back to the Great Depression.

Florida's most important property tax benefit is the “Save Our Homes” exemption provided for in the Florida Constitution. This exemption provides that the assessed value of a Florida resident's home may only be increased annually by the lesser of (i) 3% from the prior year's assessment, or (ii) the change in the consumer price index – regardless of the actual value of the home. This exemption is inapplicable to a non-resident's home.

In short, the benefit of Save Our Homes qualification is that a Florida resident may pay thousands of dollars less in property taxes than the next door neighbor with a comparable “vacation” home.

ESTABLISHING FLORIDA TAX RESIDENCY

Obtaining Florida's tax breaks is automatic for a person who only lives in Florida. However, when a person also owns a non-Florida home it is critical to establish the Florida home as the “primary” home to obtain Florida's tax advantages. This is particularly important for the wealthy person who owns a home in a “northern state” with high taxes.

If one fails to properly establish Florida as the primary residence, the northern state may tax the person's entire income or estate retroactively and assess interest and penalties.

Recent studies report a net migration of 2.3 million people over the past 6 years to Florida and other no tax states. As a result, a number of northern states have greatly increased their efforts to tax Florida persons who also own a home in that state.

For example, Massachusetts has established a “Residency Unit” for the purpose of auditing persons who claim Florida residency but also own Massachu-

setts property. Also, some states have adopted policies authorizing tax agents to search personal websites – such as Facebook – to seek personal information inconsistent with a taxpayer's reported residency status. At present at least 3 northern states permit personal website searches and other states, including Wisconsin, are exploring this option.

In any event, the critical matter is to be able demonstrate to the northern state that the primary residence is Florida.

Having a Florida tax residence is principally a matter of qualifying as a non-resident of the northern state under that state's law. Many states utilize an annual day-counting test to make a residency determination, backstopped by a residency “intent” test if the day-counting test is avoided. The intent tests evaluate objective factors to determine residency.

A number of steps are useful for establishing Florida residency under most intent tests, including:

- Obtain a Florida driver's license
- Register to vote
- File for the homestead exemption
- File a Declaration of Domicile with the county Clerk of Courts
- Have one's estate plan (Will, Trust, etc.) updated for Florida law compliance
- Focus one's major affairs and relationships in Florida, including social affiliations, accounts and professionals (i.e. CPA and attorney)

In summary, establishing Florida residency is the right economic decision for most, however, it must only be done with the utilization of Florida and northern state counsel to ensure that one's Florida residency status is properly secured.

The comments expressed herein are intended for general informational purposes only and should not be relied upon as legal advice. Please consult legal counsel to obtain specific advice for your situation.



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