

Repeal of tax on intangibles makes Florida appealing choice

Jeffrey A. Baskies

When estate planners think of Florida, we usually envision a haven for our retiring clients, like "Del Boca Vista" on *Seinfeld*. Now, a new law makes Florida even more appealing as a domicile. On July 27, Governor Jeb Bush signed into law a bill that repeals the state's annual intangible personal property tax. The repeal will be effective as of Jan. 1, 2007.

For those of us with clients relocating to Florida, the intangibles tax has been a nuisance for years, creating a disincentive for people and businesses to move to the state. Indeed, the Governor had been an outspoken proponent of its repeal.

In general, Florida residents benefit from a very tax-friendly jurisdiction. There is no state income tax. There are frequent tax holidays and refunds. There is no state estate tax, and the "Save our Homesteads" law caps annual increases in property values for real property taxes at the lesser of 3 percent or the Consumer Price Index.

And now, there is no intangible personal property tax!

Prior to passage of the new measure, Florida imposed a tax on residents for the value of their intangible assets, including stocks, bonds, mutual funds, options, notes receivable, interests in LLCs, stock in corporations and other similar assets.

However, many forms of investments were exempt, including Florida municipal bonds, intangibles inside retirement accounts, life insurance or annuities, and other forms of investments. Indeed, there was a practice among financial advisors of "going to cash" at the end of the year for many clients just to avoid the intangibles tax. For clients with significant intangibles, Florida Intangible Tax Trusts (so-called "FLINTS") were created so clients could put intangibles into irrevocable trusts and avoid the tax.

As a result of the planning opportunities that existed to avoid the tax, over the years there had been a slow erosion of the tax base, which was exacerbated as the rate was reduced in stages and the exemption was increased. For many new residents, a degree of planning (perhaps a FLINT) and the wide variety of investments that avoided the tax, coupled with a \$500,000 per couple exemption and the relatively low rate, result in a fairly minimal impact.

But now, residents no longer need to worry about the tax at all.

What if your clients want to move?

So what if your clients decide that the great weather coupled with the favorable tax situation in Florida makes it an attractive place to relocate to?

Here's a checklist for clients seeking to establish a change of domicile:

- Purchase or rent a residence in Florida and move in.
- File a claim for a homestead exemption from real property taxes assessed against that residence.
- Record a "Declaration of Domicile" with the Clerk of the Circuit Court in the county of

residence.

- Register to vote in Florida and have your name stricken from the voting rolls where you previously lived.
- Execute a new will or codicil in which you state that you are a resident of Florida.
- Declare Florida to be your place of domicile and residence on all forms or documents that require a recital of residence, such as Social Security Administration papers, passports, contracts, deeds, leases, credit cards, etc.
- Notify all non-Florida social and religious organizations of which you are a member of your change of domicile and, if possible, assume non-resident membership status or resign. Your listing in any directories for non-Florida organizations should give your Florida address. If it is practical, also join a Florida organization or church and, if so inclined, become active in community affairs.
- Obtain a Florida driver's license and surrender the license issued by your prior state of domicile. You should also register your automobile in Florida.
- Remove the contents of any safe deposit boxes outside of Florida, surrender the boxes and move the contents to Florida boxes. Try to have Florida banking and investment arrangements.
- File federal income tax returns using your Florida address and mail them to the Internal Revenue Service Center in Atlanta. Don't file income tax or gift tax returns in the prior state, unless you are required to do so, and then file as a non-resident using your Florida address.
- If possible, terminate business activities in your prior state.
- Consult with an accountant, a lawyer and a doctor in Florida, and have your medical records sent to the Florida doctor.
- Make your Florida home the base from which you leave on extended trips and to which you return after the completion of a trip. Do most of your entertaining there. Avoid spending too much time in the prior state, which could subject you to taxation as a resident.
- Keep a calendar so you can show when you were in Florida each year. Phone, utility and credit card bills may all be indicative of where you were living, so make sure your calendar is accurate.

None of these techniques alone necessarily makes one a Florida resident. Obviously, if a client sells her home "up north," moves permanently to Florida and does all of the above, there is no question she is a resident.

However, many clients still have homes "up north" or still visit and spend time in their states of former domicile - most of which are less tax-advantageous. If they do not plan their residency properly, they may wind up suffering an income or estate tax audit in their former state and owing not only taxes but interest and penalties. Therefore, clients looking to avoid the taxing authorities of the states they are leaving are well advised to consult tax advisors both there and in their new domicile to ensure they are doing all they can to protect their claim to new residency.

Jeffrey A. Baskies, Esq., the former president and CEO of Lawyers Weekly, is a partner practicing estate planning at Ruden McClosky in Fort Lauderdale, Fla., where he is board certified as a specialist in wills, trusts and estates law by the Florida Bar. You can contact him at Jeff.Baskies@ruden.com

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