**Steve Leimberg's Estate Planning Email Newsletter - Archive Message #1147**

**Date:** 11-Jul-07
**From:** Steve Leimberg's Estate Planning Newsletter
**Subject:** **Florida - A Smart Move? Changing Domiciles - A Checklist**

**Jeffrey A. Baskies** is a founding partner of the new law firm – **Katz Baskies LLC** – located in Boca Raton, Florida. Jeff concentrates on trusts and estates, tax and business law. Jeff, a long-time LISI commentator, is board certified by the Florida Bar as a specialist in Wills, Trusts and Estates law, is AV© rated by Martindale-Hubbell, and was listed as one of ***Worth*** magazine's "Top 100 Attorneys in America" in that magazine's inaugural and second annual ranking of lawyers. In addition to his experiences practicing law, from 2000-2004, Jeff was also the President and CEO of Lawyers Weekly (a national legal newspaper company).

Jeff tells LISI members that Florida's Governor and Legislature have practiced their magic in an effort to lure new residents.

But he warns that, even though changing domicile to Florida still has many benefits, if your clients are considering changing their domicile to Florida, they should be aware that not everyone will save money as a result of the recent property tax cuts!

Jeff also provides LISI members with a great summary and checklist of

**HOW TO CHANGE YOUR DOMICILE!**

## EXECUTIVE SUMMARY

Thursday, June 21, Florida Governor Charlie Crist signed what he called "the people's tax cut" with formal ceremonies in Tallahassee, Tampa and South Florida.[i]

Governor Crist is quoted as saying this new law

*"will make property taxes drop like a rock."*

In addition, he said the

*"people have the power to further drop their property taxes like a boulder come January 29."*

Those are strong words, and they make it sound like Florida has plumbed a fountain of youth cure for its property-tax problems and thrown its doors open to new residents.

However, a closer read indicates very little actual change for many Florida property owners and perhaps even increased property taxes in the future for those who buy valuable homes in Florida.

## FACTS:

**SO WHAT HAPPENED?**

Actually, *two* laws were recently passed and signed by the Governor. While they both impact property taxes, their benefits have been confused and muddled.

**Tax Roll-Back.**

The first law – House Bill 1B and Senate Bill 2B - presented a "tax roll-back" which should impact *every* taxpayer: Florida residents, snow-birds, owners of rental properties, business owners, etc.

Essentially, this provision requires cities and counties to roll-back their tax rates to the levels they were at 5 years ago.

Some counties had very little increases over that period of time, while other had up to 9% increases during that time period. So the savings will vary by city and county. It is expected that in Broward County (Fort Lauderdale, Hollywood), for example, the roll-back will be 5%, while in Palm Beach County (Boca Raton, Palm Beach) the roll-back will be 9%.

Clearly this will save money for tax-payers. The legislature estimated the savings will be in the range of $15 billion over five years.

Except for the impact on cities and counties who either have to cut services (many are threatening to lay off fire-fighters and police) or find other ways to make up for their new revenue shortfalls, it does appear the tax roll-back the Governor signed yesterday will help all tax-payers. Indeed, the roll-back of part of the property taxes to rates in place 5 years ago should save a few hundred dollars on average for all Florida property-tax payers. As reported in the South Florida Sun-Sentinel, a legislative analyst estimated the rollback will save the average tax-payer $174 on this fall's tax bill.[ii]

**Super-Homestead Exemption.**

The second law – HJR 3B and SJR 4B - is a proposal to create a "super-homestead" exemption that will require a vote on January 29, 2008 – the vote was approved in HB 5B and SB 6B. This second law proposes a change to the Florida constitution, and as a result it requires 60% of the voters to approve the measure in order to take effect.

The new super-homestead law would increase the current $25,000 homestead property tax exemption to instead exempt:

> 75% of the first $200,000 of value, and
>
> 15% of the next $300,000 in value.

The $500,000 cap would grow over time as well.

Note, however, if passed, this second measure will only impact Florida residents. The homestead exemption is for primary residents only, and it will *not* help those with vacation homes, investment properties, rental properties or business owners.

If the "super-homestead" passes, it will benefit those who own primary homes in Florida and whose homes are moderately priced or inexpensive.

The new exemption will effectively increase the exemption on a $500,000 home from $25,000 to almost $200,000. That could be a $2,000-3,000 annual savings.

If passed, this super-homestead exemption will really help families or retirees moving to Florida on a fixed income and buying relatively inexpensive homes. For example, the Sun-Sentinel interviewed a family in West Palm Beach who paid $250,000 for their home in 2005. The prior owner's tax bill was only $2062, but their first year's re-assessment (after their purchase) increased their tax bill all the way to $4,650.

First, this family should see about a $350 savings because of the tax roll-back. But if the super-homestead exemption passes (and if they opt into it – see discussion of Election, below), their tax rate might drop all the way to $1,600 [iii] or so, which is even less than the prior owners paid.

**Election.**

While it is far too early to tell if the super-homestead modification to the constitution will pass in January, if it does, then those who already have a homestead exemption and currently are protected by the Save our Homes 3% per year limit on taxable value to their homes will have an election to make.

The Save Our Homes law was passed by a referendum in 1992 and became effective in January of 1995. The law is found in Article VII, Sec. 4(c) of the Florida Constitution, and Florida Statutes, Section 193.155.

Basically, for a homestead (a primary residence), the law applies a cap on the amount of the increase in a property's assessed value. The cap limits the amount of the annual increase in assessed value of qualified homestead properties to the lesser of 3% or the increase in the CPI Index.

Over the last ten years, clients owning properties not benefited by the Save Our Homes cap have seen their property taxes double (at least).

If this change passes, residents will have a choice of either staying under the old regime or moving to the new super-homestead. This will not be an easy choice for some.

For those who just moved and maybe have not benefited by the Save Our Homes cap, and for those who own homes that are in the $300,000 or less value and don't expect to stay in them for many years, it appears opting into the super-homestead will probably save them money. Clearly it will save money in the short term, and it likely will stay pay off in the long term.

However, for residents who have lived here a long time and have benefited by the SOH cap, or for those owing higher value homes they expect to stay in for a while, the long term benefit of the SOH cap will probably mitigate against opting for the super-homestead exemption.

For those who have clients who will consider moving here after January of 2008, once the amendment becomes final (if its approved) there will no longer be an election. For those who will buy valuable homes and keep those for many years, this "tax savings" plan may well prove to be a huge misnomer. Instead, they will not have the SOH cap to benefit them and the future increases in their property value may cause much higher increases in their property taxes then the savings generated by the super-exemption.

**JEFF BASKIES' DOMICLE CHANGING CHECKLIST:**

There are generally two types of clients who wish to evidence a change of domicile to Florida. There are those who sell their old home, move to Florida and stay here full-time. Those cases are easy, and the change of domicile is manifest.

But others purchase second homes in Florida or move while retaining ties to their former state of domicile. For them, adherence to some or all of the following steps is suggested to help ensure that a change of domicile to Florida is effected.

Here's my client-oriented checklist:

- Purchase or rent a residence in (Florida) and move in.
- If you purchase a residence, file a claim for homestead exemption from real property taxes assessed against your (Florida) residence (to evidence your change of domicile and to avail yourself of the exemptions).
- Record a "Declaration of Domicile", as permitted by (Florida) law, 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 of your former state.
- In (Florida), 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 in 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. If possible, the address to be published in any directories for non−(Florida) organizations should be changed to show your (Florida) address. If it is practical, also join a (Florida organization), temple or church and, if so inclined, become active in community affairs.
- To the extent that you engage in political activities, make an effort to see that these are centralized in (Florida). As stated above, you should register to vote in (Florida).
- Obtain a (Florida) driver's license and surrender the license issued by your former 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.

- Set up (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, Georgia).

- Stop filing income tax and gift tax returns in your former domicile, except when required on particular income originating in such state, and then file as a non–resident using your (Florida) address.

- If possible, limit business activities in your former domicile.

- Consult with an accountant and a lawyer in (Florida) (at least as co–counsel).

- Consult a physician 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 at your (Florida) residence and try to arrange for the holding of family gatherings and reunions there. If the subject ever comes up in conversations with friends, adhere to the position that (Florida) is your home.

- After the change in domicile, it is especially important that you avoid spending significant amounts of time in your former domicile state, particularly without interruption by returns to (Florida). Time spent in a permanent place of abode in your former domicile may subject you to taxation as a resident. You should discuss this with a knowledgeable attorney in your former domicile, and limit your visits there to the extent advised in order to avoid unnecessary problems.

- Keep a calendar so you can show when you were in (Florida) each year and can prove your time outside your former domicile. Phone bills, utility bills and credit card bills all may be indicative of where you were living, so make sure your calendar is accurate.

- If possible, dispose of your former principal residence in your former state (by sale, gift to children, Qualified Personal Residence Trust, etc.) unless you can clearly show that it is used only as a vacation home for less time than the residence in (Florida) is used. New York courts, I'm advised, have held that if an individual has more than one home and other evidence of domicile is not conclusive, the home first acquired will be considered the domicile. Thus, disposition of your former residence may become particularly important, particularly if it was purchased first, and/or if it is significantly larger in size or more valuable than your (Florida) residence.

## COMMENT:

### CHANGE OF DOMICILE TO FLORIDA: STILL A GOOD IDEA?

Other then high property taxes and high property insurance rates, it seems Florida is still a good state for clients to consider when changing domicile.

Moreover, the Governor and legislature obviously now realize these two issues need addressing and if this round of reform does not produce the real savings intended, there may be another round.

So looking at Florida as a whole, and considering some existing and some new changes (over the past few years), Florida still appears to be an appealing domicile.

- First, effective January 1 of 2007, Florida repealed the state's annual intangible personal property tax.
- Second, for those who reside in Florida now (or move here before the new amendment passes – or if it does not pass), Florida has the uniquely valuable "Save our Homes" exemption to real estate property taxes that particularly favors its residents.
- Third, Florida recently enacted a new progressive Trust Code that is modeled after the UTC with modifications, and it is believed to be a progressive and unified (and generally beneficial) new set of laws. The new Florida Trust Code becomes effective July 1, 2007 (in a few short days).
- Finally, Florida residents still enjoy several substantial benefits: there is no income tax, no capital gains tax, no estate tax, decent weather (most of the time) and spring training baseball (including the Red Sox!)

Florida's status as a "tax haven" coupled with its property tax benefits for residents only, have made it an appealing choice for many clients who now reside in high tax states.

Changing domicile to Florida is not very difficult. However, clients should be cautioned to consult with competent counsel in both jurisdictions to ensure (a) effective change of domicile to Florida and (b) effective departure from a prior domicile (there likely will be final income tax returns and other steps required). Nevertheless, for clients considering a change to a more tax-favored jurisdiction, the benefits of moving to Florida appear to be significant.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!**

# Jeff Baskies

Edited by Steve Leimberg

## CITE AS:

Steve Leimberg's Estate Planning Newsletter # 1147 (July 11, 2007) at http://www.leimbergservices.com

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P.S.

**Estate Tax Return Zero Filing Requirements**

Since Florida has no estate tax, the requirements for estates that file a Florida Estate Tax Return for Residents, Nonresidents, and Nonresident Aliens (Form F-706) with no tax due have changed. Effective July 1, 2007, Florida law no longer requires the estate of a decedent who died after December 31, 2004, to file a Florida estate tax return (Form F-706) if a state death tax credit or a generation-skipping transfer credit is not allowed by the Internal Revenue Code. (The amount of a decedent's Florida estate tax liability depends upon the amount of certain federal estate tax credits provided in the Internal Revenue Code.)

This provision does not apply to estates of decedents dying after December 31, 2010.