

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #958

Date: 27-Apr-06
From: Steve Leimberg's Estate Planning Newsletter
Subject: Florida Legislature Repeals Intangibles Tax

Ding Dong, the wicked witch is dead....

LISI Commentator **Jeffrey A. Baskies**, a partner in the Fort Lauderdale, Florida office of **Ruden McClosky** and frequent **Estate Planning Journal** author wanted LISI members to be among the first to know.

Consider the estate planning implications of Florida's latest tactic to make it more appealing as a domicile.

EXECUTIVE SUMMARY

"The insidious intangibles tax is no longer with us, which is great,"

Governor Bush said, in an Associated Press quote.

Last night (April 26), the Florida Senate voted 30-9 passing a bill to repeal the state's annual intangible personal property tax. Previously, on March 23rd, the Florida House voted overwhelmingly (100-20) to repeal the annual intangible personal property tax. Governor Bush is expected to sign the bill into law immediately. The repeal will be effective as of January 1, 2007.

FACTS

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.

The "Save our Homesteads" law caps annual increases in property values for real property taxes at the lesser of 3% or the CPI. (Article VII, §4(c) of the Florida Constitution.)

Now, there is no intangible personal property tax either!

Prior to passage of this new bill repealing the intangibles tax, Florida imposed a tax on residents for the value of their intangible assets (generally, stocks, bonds [excluding Florida municipal bonds], mutual funds, options, notes receivable, interests in LLCs or stock in corporations and other similar assets). (For a discussion of how the intangibles tax worked and what assets were subject to it, see the Dept. of Revenue's website: www.myflorida.com/dor.)

However, many forms of investments were exempt from the tax including Florida municipal bonds, intangibles inside retirement accounts, life insurance or annuities, and other forms of investments.

Also, the intangibles tax rate has been reduced over the past several years to .5 mills in 2006 (that's \$500 per every \$1 million of taxable intangibles). And there is a \$250,000 exemption per resident.

So, given the exemption (\$500,000 per couple), the wide variety of investments that avoided the tax (including client's retirement plans which for many held most of their intangible assets), and the relatively low rate, the

intangible tax had a relatively minimal impact on all but the richest of residents (who generally didn't pay it either – see discussion below on intangible tax trusts). For example, a married couple with \$3,500,000 in intangible assets subject to the tax only owed \$1,500 in taxes.

But even for clients subject to a substantial amount of intangible tax, the tax was simple enough to avoid. The clients merely had to set up irrevocable trusts and move their taxable intangibles into the name of the trust before the end of the year. The trustee could even be the client's spouse, or anyone else trusted with the funds, including residents of Florida. These so-called FLINTs (Florida intangible tax trusts) or FLITEs (Florida intangible tax exempt trusts) were sanctioned by the DOR and a basic roadmap was set out right in the statute and regulations. See Chapter 199, Florida Statutes and Rule 12C-2.0063 of the Florida Administrative Code.

Now, the good news for Florida residents (and financial advisers – although not so much for Florida estate planners) is that residents no longer need to bother creating and funding such trusts.

COMMENT:

The repeal of the Florida Intangible Tax seems a natural step in the progression of Florida's favorable tax policy. Florida obviously wants to be considered a tax-favorable haven for its residents and wants to attract new residents. Florida uses the tax-favored status to lure both retirees and working people. For example, Governor Bush has touted the tax-favored status of Florida in his efforts to recruit new businesses to Florida. Thus, the repeal of the intangible tax fits in the Governor's mission of an inexorable march toward tax freedom.

Now, when coupled with the lack of an income tax and the lack of an estate tax, Florida looks even more favorable as a residence when compared to the places many of its residents are moving from – the northeast and the mid-west. In states like New York, New Jersey and Massachusetts, for example, it is compelling for residents to shift to Florida to avoid the compound effect of paying 5-10% + in annual income taxes and 10%+ (16% even) in state estate taxes.

Also, given the meteoric rise in many Florida property values, the move to become a Florida resident has also been pushed by the Save Our Homes cap on real property taxes. Many of our non-Florida clients have decided they need to become Florida residents just to stem their ever-growing real property taxes.

HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!

Jeff Baskies

Edited by Steve Leimberg

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