

# LEGAL FORUM

## Seasonal residents can take steps to secure a Florida tax residency

Florida is well-known as one of the most desirable retirement destinations in the world — and for many good reasons.

However, the greatest factor attracting many newcomers to Florida is its numerous tax breaks.

First and foremost, Florida is one of only seven states that impose no income tax.

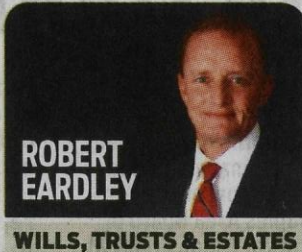
Importantly, Florida's "no income tax" rule is set forth in the state constitution. Therefore, to impose an income tax would require a constitutional amendment ratified by voters, an unlikely event.

Many other states impose a substantial income tax. For example, New Jersey's and New York's top rate is 8.97 percent, the rate for both North Carolina and Wisconsin is 7.75 percent, and Ohio's rate is 5.92 percent.

For many retirees, a Florida tax residency is particularly beneficial because it eliminates "Northern" state taxation on investment income and IRAs — even if the portfolios and IRAs remain titled in the Northern state.

A second tax benefit is that Florida does not assess a state death tax on a Florida resident's estate. Interestingly, Florida does have an estate tax "on the books," but as of this writing the tax is inactive because of overriding provisions in the federal estate tax law implemented in 2010.

It is possible a future change in the federal es-



tate tax law will cause Florida's now-dormant estate tax to come to life. However, even if this happens, a Florida resident will not have a greater overall death tax liability.

This is because the Florida death tax, if restored, taxes an estate only to the extent that the federal estate tax system allows a dollar-for-dollar offsetting tax credit against any federal estate tax.

Thus, under Florida's death tax regime, no additional death taxes are generated; instead, a portion of the federal estate tax is reallocated to Florida coffers.

A third tax benefit is the homestead property tax relief granted to residents.

Although homestead status affords a \$50,000 reduction to assessed value, the more important property tax benefit is the "Save Our Homes" exemption provided in the state constitution.

This exemption provides that the assessed value of one's home may be increased annually only by the lesser of 1) 3 percent from the prior year's assessment, or 2) the change in the consumer price index, regardless of the actual value increase of the home.

In short, the benefit of "Save Our Homes" qualification is that a Florida resident might pay less in property taxes than the next-door neighbor with a comparable "vacation" home.

A number of steps are useful for establishing a Florida tax residency:

- obtain a Florida driver license
- register to vote
- file for the homestead exemption
- file a Florida Declaration of Domicile
- update the estate plan for Florida law compliance
- focus major affairs and relationships in Florida

Florida's tax breaks are automatic for a person who lives only in Florida. However, for the person who also has a non-Florida residence, it is critical to establish Florida as the primary home to obtain Florida's tax benefits.

For the seasonal Floridian, becoming a Florida tax resident is essentially a matter of qualifying as a nonresident of the Northern state under that state's law.

For income tax residency purposes, many Northern states utilize an annual 183 "day-counting" test to make a residency determination, backstopped by a residency "intent" test if the day-counting test is avoided.

The intent tests generally evaluate numerous objective factors (i.e., in which state is the safety deposit box) to determine one's "true" home and residency.

Studies report a net mi-

gration over the past six years of more than 2 million people to Florida and other no-tax states.

As a result of this and other factors, a number of Northern states are experiencing budget difficulties and are increasing efforts to tax Floridians.

For example, several years ago, Massachusetts established a "Residency Unit" for the purpose of auditing people who claim Florida residency but own a Massachusetts residence. Also, several states have adopted policies authorizing tax agents to search taxpayers' individual websites, such as Facebook, to seek personal information inconsistent with a purported Florida residency status.

If a person fails to establish Florida as the primary residence, the Northern state will deem that person its tax resident and will have jurisdiction to tax the person's entire income and estate.

Establishing a Florida tax residency is the right economic decision for most people. However, Florida residency should be carefully implemented, utilizing a Florida and Northern state legal counsel to ensure one's Florida tax residency status is secure.

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