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ESTATE PLANNING

Florida's Favorable Tax Laws

A New Jersey resident could save thousands in taxes by moving to the Sunshine State

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Moving from New Jersey to Florida now offers a lot more than year-round warm weather and a relaxed lifestyle. The move may save you thousands in income taxes and state death taxes, both of which have become increasingly costly to New Jersey residents and do not exist in Florida. Only Florida residents may take advantage of Florida's favorable tax laws. Whether or not you qualify as a Florida resident depends on whether your circumstances and actions demonstrate your intent to establish Florida as your domicile.

You may not realize that your estate could pay significant taxes to New Jersey because of recent changes in the state estate tax laws. The Economic Growth and Tax Relief Reconciliation Act of 2001 phased out the federal state death tax credit, which in turn, caused New Jersey to amend its estate tax law to avoid a significant loss in revenue.

The New Jersey Estate Tax was amended to impose a tax upon the estate of every resident decedent which would have been subject to a federal estate tax under the provisions of the Internal Revenue Code in effect on December 31, 2001. This means estates of New Jersey resident decedents that are in excess of $675,000, which pass to someone other than a spouse, pay a New Jersey estate tax at rates that can reach as high as 16 percent for estates in excess of $10,040,000. The New Jersey Estate Tax does not apply to nonresident estates.

New Jersey also imposes an inheritance tax on property transferred by resident decedents at death to beneficiaries other than the decedent's parents, grandparents, children and other issue. Thus, bequests to brothers, sisters, sons and daughters-in-law, friends and all other beneficiaries are subject to a New Jersey Inheritance Tax at rates ranging from 11 percent to 16 percent. The inheritance tax only applies to nonresident decedents who own real estate in New Jersey and who transfer said property to a nonexempt beneficiary.

The good news for taxpayers is that a few states, such as Florida, are swallowing the revenue loss as a result of the repeal of the federal state death tax credit. There is no state estate or inheritance tax in Florida.

The tax reasons to move to Florida do not end with so-called state "death" taxes. Florida imposes no individual tax on income, including capital gains. New Jersey, on the other hand, imposes an income tax which taxes wages, tips, bonuses, commissions, income received from the operation of a business, interest income and dividend income.

New Jersey gross income tax rates have recently increased, effective July 14, 2004, but retroactive to Jan. 1, 2004, with respect to taxpayers earning in excess of $500,000 per year. The tax rate for income in excess of this amount is 8.97 percent. A married New Jersey taxpayer with $1 million of income will pay $72,657.50 in New Jersey income tax, whereas if they resided in Florida (and the income was not from New Jersey sources), the tax would be zero. Payment of state income taxes may be deducted for federal tax purposes if the taxpayer itemizes his deductions, thus reducing his federal income tax, but even this deduction is subject to limitations.

New Jersey residents also are taxed on the income received from withdrawals of their IRAs and pension accounts. Older residents who move out of New Jersey to Florida, and then begin taking withdrawals that are taxable on a federal level, are protected from New Jersey tax because New Jersey is prohibited from taxing the pension income of nonresident individuals.

Florida is not a complete state tax haven, however, as residents are subject to a tax on "intangible assets" such as stocks and mutual funds. Beginning in 2006, Florida's Intangible Personal

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Property Tax rate will be reduced from $1 to $.50 per $1,000 of market value. The exemptions for assets held outside IRA and 401(k) accounts are $250,000 for individuals and $500,000 for joint filers. However, there are estate planning techniques which can circumvent the imposition of the intangibles tax. These techniques are relatively inexpensive and efficient to put into place.

To take advantage of the favorable tax laws in Florida, a New Jersey resident must change his domicile to Florida. A person's domicile is the place where he has his true, fixed and permanent home and principal establishment and to which, whenever the person is absent, he has the intention of returning. A taxpayer may have several residences and maintain resident status in multiple states, but can have only one domicile.

Domicile is determined from all of the facts and circumstances, but intention is the decisive factor in the determination of whether a residence is a domicile. The process of resolving domicile is a case-by-case inquiry, which depends on several objective factors, including but not limited to the following:

- the state in which the taxpayer has registered his automobile or other vehicles;
- the place to which the taxpayer returns from trips;
- the state in which the taxpayer is registered to vote;
- the address listed by the taxpayer on federal and state income tax returns and whether a state return is being filed as a resident or nonresident;
- estate planning and other legal documents that reference domicile and the jurisdictional laws that apply;
- family ties;
- the location of bank, brokerage accounts and safe deposit boxes;
- the extent and value of tangible property located in the claimed domicile;
- where garbage is picked up;
- location of pets;
- the location of the remains of deceased family members;
- the location of charitable organizations in which the taxpayer is active;
- resident memberships in clubs, churches, political activities; and
- local newspaper and magazine subscriptions.

In addition to the objective factors listed above, there must be a subjective intent to make the new home permanent or for a substantial (or indefinite) period. The intention must also be to make the new place a home in fact and not just to acquire a new domicile for legal purposes. A new domicile cannot be acquired simply by desiring to have a particular place so designated. Conversely, when the permanent home is changed, the domicile may also be deemed to have changed although there never was an intention to have the legal domicile changed.

Once the place of domicile is determined, a record should be established to prove the place of domicile and prevent disputes from arising at a later time. In Florida, for example, domicile papers should be filed in the courthouse of the county in which you reside. If a person should subsequently wish to shift domicile to the other home, great caution should be exercised. The change should not be made unless one, by their acts, can clearly substantiate the change. Otherwise, he may only be inviting both jurisdictions to claim the place of domicile. This is especially true where the new location will result in more favorable tax laws, since the claim will then be asserted that the move was made only for tax advantages, but did not really accomplish a change of principal home.

Where a temporary move is made, but an intention later develops to make the new home permanent, the change should be recorded.

When a person has two homes, additional problems may arise. Sometimes there is a question as to which home is the principal residence. It is then necessary to look into factors which establish the place of principal residence. These factors will consist of the time spent in each place, the relative values of the homes, the amount of money spent for furnishings in each residence, the activities carried on in each state, and the past history of the associations with the houses. To prevent conflicting claims from arising, you should create records which would indisputably show which is the principal home.

When planning a change of domicile, it is important to ensure that there will be no inconsistent records of domicile. It is also necessary to avoid living in one locality, but claiming domicile in another. Equally vital is the importance of thinking through and determining where the domicile really is located, and then making the appropriate records to provide this. One of the main causes of conflicts regarding domicile is the changing of domicile, especially if the change is made by an older person. To prevent any effective challenge to the new domicile, all moveable property as well as securities and bank accounts should be relocated to the new jurisdiction. It will then be difficult for the former domicile to levy on the property.

In sum, a change in domicile from New Jersey to Florida could provide substantial tax savings, including but not limited to state estate taxes and state income taxes, and it can reduce Florida real estate taxes on Florida real estate. However, great care must be exercised to ensure that you have taken the correct measures to effectively change domicile from New Jersey to Florida or you may risk an adverse determination if challenged by the state taxing authorities. ■