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Beyond Sun and Fun: Assessing the Advantages of Florida Domicile -- 2009©

By

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Table of Contents:

Biography	3
I. Introduction	5
II. Tax Advantages and Concerns	5
A. Florida Intangible Personal Property Taxes	5
B. Florida Estate Tax	6
C. Real Estate Taxes	6
D. Real Estate Conveyance Tax	7
E. Sales and Use Taxes	7
F. Gift Tax	7
G. Generation-Skipping Transfer Tax	7
III. Estate Planning Concerns	8
A. Is My Previous Plan Valid?	8
B. Will My Previous Plan Work As I Intended?	8
IV. Changing Your Domicile	8

BIOGRAPHY

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Brad Galbraith is the managing partner at Galbraith Associates, P.C. where his practice focuses exclusively on providing creative, cutting-edge estate planning, tax planning, and business planning advice to business owners and other wealthy individuals.

Brad began developing his extensive professional background as a Certified Public Accountant. After switching to the practice of law and witnessing the ineffectiveness and inefficiency of traditional planning methods, he endeavored to find a better way to assist his clients with estate, tax and business planning. What resulted was a model designed to provide clients with comprehensive, personalized estate, tax and business succession plans that withstand the test of time.

Today, Galbraith Associates is nationally recognized as a premier estate and tax planning law firm. Consequently, Brad is a frequent presenter on estate and tax planning topics to CPAs and attorneys at conferences and continuing education events throughout the United States.

Professional Qualifications

Brad Galbraith is Board Certified in Wills, Trusts and Estates by the Florida Bar Association; a member of the American Association of Attorneys – Certified Public Accountants; the Collier County Bar Association; the Florida Bar Association; the American Bar Association; the Estate Planning Council of Naples; the Florida Institute of Certified Public Accountants; the Indiana State Bar Association; the Indianapolis Bar Association; and the Indiana CPA Society. He is admitted to practice law in Florida, Indiana and Missouri, as well as the U.S. Tax Court. Brad also maintains his Indiana CPA license. Additionally, Brad is the co-author of an extensive continuing education program for CPAs, which is published and distributed nationally. That program, titled Estate Planning For CPAs, has been presented to thousands of CPAs throughout the United States.

Education

Brad Galbraith graduated from Indiana University with a bachelor's degree in accounting. After passing the CPA exam and working for Deloitte & Touche, CPAs, in Chicago, he attended the Indiana University School of Law in Indianapolis. While in law school, Brad received a number of honors and was the Executive Managing Editor of the *Indiana Law Review*. After graduating *Summa Cum Laude*, he began his career as an attorney.

Personal Profile

Brad has four children, Maxwell, Cameron, Benjamin and Tatiana. Additionally, Brad is active in several national and local charitable and religious organizations, as well as organizations that support the arts.

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I. INTRODUCTION

One of the most common questions asked of me when people learn that I am a legacy planning attorney with offices in both Indianapolis, Indiana and Naples, Florida is “Are there advantages to becoming a resident of Florida?” Beyond the obvious lifestyle benefits afforded those who live in a warm climate, Florida domicile can provide a vast array of benefits. From my perspective as a legacy planning attorney, the income tax, property tax, estate tax and asset protection planning advantages of Florida domicile make Florida the ideal place to live, whether you are still working or are retired.

I appreciate the opportunity to provide this comprehensive article to you, and I hope the information provided herein fuels your desire to make Florida your home. While I must caution against simply relying upon this article when analyzing the financial benefits of Florida domicile or when making your personal domicile decisions, my office will be pleased to schedule a meeting with me to assist you in assessing the advantages of Florida domicile.

II. TAX ADVANTAGES AND CONCERNS

The most widely recognized financial benefit of Florida domicile must certainly be the extremely favorable tax environment. The fact that there is no Florida state income tax requires little explanation to communicate the benefits. However, it is appropriate to delve into the details of the taxes that may affect you if you choose Florida as your state of domicile.

A. Florida Intangible Personal Property Taxes

While Florida does not have an income tax, until recently it imposed a tax on certain assets owned by persons domiciled in Florida. The Florida Intangible Personal Property Tax was assessed on January 1 of each year. This tax was legislatively repealed in 2006 and no longer applies as of January 1, 2007.

B. Florida Estate Tax

As is true of most all states, Florida imposes an estate tax upon the death of an individual domiciled in Florida. The tax is the difference between the amount on the U.S. Estate Tax Return allowed as a credit for death taxes paid to a state and any death taxes actually paid to states other than Florida.

Recently, the U.S. Congress passed sweeping tax cuts that included a phase-out of the credit for state death taxes paid by an estate. In other words, no credit will be allowed on the Federal Estate Tax Return for state death taxes paid. Because Florida's estate tax is designed to "pick-up" the credit, Florida no longer collects state estate taxes.

It is important to note that Florida's state constitution requires a constitutional amendment to add or modify a statewide tax. While other states may pass laws that will result in additional state estate tax liabilities, Florida is extremely unlikely to do so because of the constitutional amendment required. Thus, the practical effect of this phase-out in Federal law is that Florida no longer collects state estate taxes.

C. Real Estate Taxes

Florida does not assess real estate taxes on real property. However, every county and municipality in Florida collects real estate taxes on the value of real estate within its borders. These taxes are assessed each year based upon the property values on January 1. The counties and municipalities each determine their own rate of tax. The taxes are due by April 1 of each year for the prior calendar year and, if paid early, may result in a discount of as much as 4%.

For those domiciled in Florida, a \$50,000 exemption from real property tax is available for their primary residence. In order to claim the homestead exemption, the homeowner must claim the home as their primary residence and be domiciled in Florida on January 1. For those who qualify, an application for the homestead exemption must be filed no later than March 1 in order for it to apply to taxes assessed for that particular year.

In order to apply for the homestead exemption, the qualifying homeowner must appear in person at the county property appraiser's office. Generally, in order to apply for the exemption, you must produce a copy of the warranty deed or tax bill for your property, your social security number, your Florida driver's license, automobile registration showing the license plate number, and your voter's registration card. If the property is owned jointly, both owners must appear in person to claim the exemption.

The most significant financial benefit provided to those who file for the homestead exemption results from the "Save Our Homes" (SOH) Amendment to the Florida constitution. The SOH amendment caps the percentage increase of the assessed value

of any residence that qualifies for the homestead exemption at 3% per year. As a result, those claiming the homestead exemption are able to avoid significant annual property tax increases that have been experienced by many who do not qualify for the homestead exemption.

D. Real Estate Conveyance Tax

Every county in Florida requires that documentary stamps (often referred to as “doc stamps”) be affixed to all deeds before they can be recorded. In most counties, the cost of the stamps for the conveyance deed is equal to .70% of the consideration given for the sale.

Additional documentary stamps are required when the property is mortgaged. Those stamps cost an additional .35% of the face amount of the mortgage. In addition to the documentary stamps, the State of Florida imposes an intangible tax on the recording of the mortgage equal to .2% of the face amount of the mortgage.

The documentary stamp costs for the conveyance deed are paid by the seller, and the documentary stamp costs and intangible tax associated with the mortgage are paid by the purchaser.

E. Sales and Use Taxes

Because the State of Florida does not have an income tax, much of its revenue is generated by sales and use taxes. The Florida sales tax is assessed on the sale of all tangible personal property. Several exceptions apply. The tax rate is 6% of the purchase price. Sales taxes do vary from county to county as each county may also charge a sales tax.

Unlike many other states, Florida also collects a tax on many services within the state or out of state for use in Florida. The tax rate is equal to 6% of the cost of the service.

F. Gift Tax

Unlike many states, Florida does not impose a gift tax.

G. Generation-Skipping Transfer Tax

Florida imposes a generation-skipping transfer tax on transfers to beneficiaries who are two or more generations below the transferor. This tax is similar to the federal generation-skipping transfer tax. Proper estate planning can eliminate exposure to the generation-skipping transfer tax.

III. ESTATE PLANNING CONCERNS

In addition to the many tax advantages provided to those who are domiciled in Florida, there are also a number of estate planning advantages that are available to those who plan ahead. Furthermore, there are a number of estate planning issues that should be addressed when you change your domicile to Florida.

A. IS MY PREVIOUS PLAN VALID?

The most common estate planning concern of those who change their domicile to Florida is whether their previous estate will and trust remain effective in Florida. Your out-of-state will and trust remain valid after you change your domicile to Florida provided the documents were executed according to the requirements of the state in which you were domiciled at the time it was signed. Regardless, before changing your domicile you should have your plan reviewed by an attorney licensed by the State of Florida.

B. Will My Previous Plan Work as I Intended?

Despite the fact that your plan may remain valid upon changing your domicile to Florida, it will not necessarily work as you intended. For example, transfers of homestead property in Florida are subject to restrictions imposed by the Florida constitution. As a result, despite careful drafting of a provision in your out-of-state will or trust concerning your homestead property, any such provision will most likely be invalid in Florida. Again, proper planning can avoid such an unexpected result.

Additionally, Florida law provides a spouse with an election to take a substantial amount of a deceased spouse's property despite provisions to the contrary in that person's will or trust. This spousal election can be an important planning factor, especially in second marriage situations. Proper planning can avoid this result. However, to be assured that the spousal election does not result in problems, this issue must be addressed before becoming domiciled in Florida.

IV. CHANGING YOUR DOMICILE

As an initial matter, you must understand that your state of "domicile" is not necessarily the same as your state of "residence." While you can have only one state of domicile, you may have residences in several states or be a "resident" of more than one state. To establish domicile in Florida, you must maintain a residence within the state and you must intend to make Florida your permanent home.

You have likely heard that there are many more requirements to establish Florida domicile. Technically, that is not true. Instead, because domicile is a question of whether you intend to make Florida your home, courts often look to more objective factors to determine your true intent.

The following objective factors are often relied upon by courts when determining a person's true intent to become domiciled in Florida. Therefore, among other actions, you should complete the following activities when changing your domicile to Florida:

- a. file a Declaration of Domicile in your Florida county of residence,
- b. register your automobiles in Florida,
- c. obtain your Florida driver's license,
- d. register to vote in Florida,
- e. apply for the Florida homestead exemption,
- f. use your Florida address in correspondence with the Social Security Administration, State agencies, and the Internal Revenue Service, and
- g. execute estate planning documents that recite your Florida domicile.

Although persons domiciled in Florida are not subject to Florida income taxes or inheritance taxes, failure to properly change your domicile to Florida can result in claims by your former state of domicile that you are still subject to that state's income and inheritance taxes. Therefore, in order to avoid future conflicting claims by taxing authorities, it is crucial to clearly establish your new domicile in Florida and to eliminate any argument that you are domiciled in another state.