

Establishing a Florida Domicile for the Seasonal Resident

By Robert H. Eardley



Florida is perhaps the most desirable retirement destination in the country, and for good reason. Among Florida's many positive features – besides year-round sunshine and beaches – are its tax breaks.

Florida's tax breaks include: (1) no individual income tax including on investment accounts and IRAs in other states; (2) no estate tax; and (3) homestead property tax relief.

Interestingly, Florida's prohibition on individual income tax is in the Florida Constitution. Therefore, it is likely in place for the long term because the Florida Constitution may only be amended by a statewide vote.

Florida homestead laws provide a \$50,000 reduction from assessed value and qualifies the property for the "Save Our Homes" exemption, which caps valuation assessment increases to a maximum of 3% annually. In order to obtain the homestead property tax exemption with the Save Our Homes cap, an application (DR-501) must be filed, often with the Property Appraiser's office.

The words "residence" and "domicile" are often used interchangeably. However, they have distinct meanings for tax purposes. Residence means a location where one possesses a dwelling. However, domicile means the residence which, in layman's terms, is one's home. And acquiring Florida domicile is the gateway to Florida's benefits.

Surprisingly, Florida does not have a domicile test. This is because Florida has little stake in the outcome – since it imposes no income or death taxes. Therefore, obtaining Florida domicile is best viewed as a matter of qualifying as a Florida domiciliary under the law of one's northern state.

A number of steps are useful for establishing Florida domicile, including:

- Obtain a Florida driver's license
- Register to vote
- File for the homestead exemption
- File a Florida Declaration of Domicile

While these steps will help establish your intent to be a Florida domiciliary, the critical next step is to obtain specific counsel to avoid being considered a domiciliary of a northern state.

For example, many states utilize both a 183-day presence test and an intent test to determine domicile. The 183-day test is straightforward and one's presence in the state for 183 days triggers domicile. The intent tests vary from state to state and evaluate personal factors – and these tests will apply even if one is outside the northern state for more than 183 days. Therefore, it is crucial to know the northern state's domicile tests.

For instance, Wisconsin's top income tax rate is 7.65% and it applies an intent test to determine domicile. To ascertain domicile, the Wisconsin Department of Revenue's Legal Residence (Domicile) Questionnaire asks obvious questions, such as did the taxpayer obtain a driver's license in the new state, but it also asks more probing questions, such as whether (1) the Will still lists Wisconsin as the state of residence, (2) the taxpayer purchased a Wisconsin resident fishing license or has renewed any Wisconsin professional licenses.

In light of budget difficulties, some northern states have enhanced efforts to collect domicile-based taxes. For example, Massachusetts has a special domicile unit within its audit division that focuses on high income earners who maintain a seasonal Massachusetts residence. Further, some states are using increasingly unexpected methods to determine domicile, such as reviewing taxpayer Facebook pages.

And if Florida domicile is not proven to the satisfaction of the northern state, then northern state taxes will be owed, possibly retroactively with interest and penalties.

In summary, establishing a Florida domicile is the right decision for most people. However, it should be implemented with the utmost caution and only with the use of qualified counsel.

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