HIGHTOWER
Great Lakes

Key Considerations with Contemplating Shifting Residency to Florida for Income Tax Purposes

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Introduction

When approaching the age of retirement, it is common for individuals to contemplate where they would like to spend their golden years. Often people consider moving to geographical locations that have warmer climate such as the state of Florida. When doing so, it is important to think about how such a move will impact an individual's tax situation. While Florida is a state that does not have a state income tax, which could be attractive for purposes of establishing residency, it is important that proper steps are taken to officially declare residency.

Below is an overview of key items to think about when considering such a move.

Need to Fully Establish Residency as a Full-Time Florida Resident

First and foremost, if establishing residency in Florida one must take the necessary steps to sever ties from their former state of residency. There are two tests to overcome before being able to declare the switch in residency.

Statutory Resident Test

This is the perception that an individual lived in Florida for 183 days or more. The burden of proof is on the taxpayer to show the number of days they lived outside of their former state and that they intend to make Florida the center of their social, economic and civic activities.

Domiciliary Test

This test focuses on five distinct areas which provide evidence that an individual has officially established their domicile or principal home for legal purposes in Florida. A taxpayer needs to:

1. Establish a physical residence in the state of Florida
2. Show the number of days an individual was physically in Florida
3. Show that the principal place of business has been relocated to Florida
4. Perform a review of the people who are "near & dear" to them
5. Show the location of family members

Florida offers the option to complete a form called the Declaration of Domicile. Once completed it should be signed, notarized, and filed at the local courthouse in the county which an individual is seeking to declare residency. Taking this action can go a long way toward demonstrating that a taxpayer has left their former state to become a Florida resident. The limitation on this form is that it may not be recognized by other states.

Establishing Stronger Ties to Florida helps to Sever Ties to Former States

There are several ways a taxpayer can show evidence and demonstrate they are a resident of the state of Florida. Key steps to take are listed below.

- Apply for the Florida homestead exemption
- Do not apply for the homestead exemption in former state
- Register to vote in Florida in as many elections as possible
- Obtain a Florida driver's license and surrender your former state form of identification
- Change the title and registration of automobiles to Florida
- Declare Florida as residence on all forms that request it such as passports, credit applications, etc.
- Update your legal documents such as estates, wills, and/or other directives using a Florida professional
- Reflect the Florida address on any partnerships, other business interests, or investments and insurance policies
- Notify old post office of a change in address
- Transfer primary bank accounts to a Florida bank
- Open Florida safety deposit boxes and close old ones
- Maintain membership in Florida based social, religious, and professional organizations
- Use Florida based professionals such as dentists, doctors, attorneys, etc

Creating evidence to support your residency is vital to being able to defend against a claim from a former state that you have not officially severed ties from that state. Audits and residency challenges are on the rise as many states could potentially lose out on significant amounts of tax revenue from people moving away.

Transitioning of a Business to Florida

Transitioning of a business entity to the state of Florida is one way to show you have established residency. This transition can be done through taking steps to legally move the business by registering with and obtaining a business license from the Florida Secretary of State. Once registered, set up an account with the Florida Department of Revenue to pay employment and/or sales taxes. The primary business bank accounts should also be moved to a bank in Florida.

Potential Tradeoffs to Establishing Residency in Florida

While moving to Florida and establishing residency may appear to have significant tax benefits from not having to pay income taxes in Florida, there are still tradeoffs to consider relating to making such a move.

Filing of Income Tax in Former State

Even though a taxpayer could effectively demonstrate they have officially declared residency in Florida they could, in certain cases, still be subject to state income taxation in their former state. For instance, in the year one declares the change in residency to Florida, they still would need to file a part-time resident state tax return in their former state. Further, to the extent a taxpayer has income they continue to earn in their former state, they would still need to file a non-resident state tax return. Below is an example of how income tax could still be paid to another state even when residency is established in Florida.

Example

A husband and wife spend time living in both Florida and Indiana. The husband has officially established residency in the state of Florida and operates his business in Florida. The wife has established residency in the state of Indiana and operates her business in Indiana. The couple files their federal tax return as married filing joint.

- **Tax Treatment:** This is a situation where even though the income is combined for federal tax purposes there needs to be an allocation or split of the income between what is earned by the husband in Florida and what is earned by the wife in Indiana. The income earned by the husband would be considered not subject to state income taxes under Florida tax code. The income earned by the wife would be considered taxable in the state of Indiana and an Indiana state income tax return should be prepared for this share.

The above example is just one scenario in which a taxpayer may still have ties to their former state and not be able to completely avoid having to pay income taxes. The general rule is that taxes are paid in the state in which income is earned. This is a key consideration for income earned through rental properties or leasing of a part-time home in a former state. By entering into these types of business transactions, the income from such activities would be subject to state and local taxes where the property is located.

Loss of Homestead Exemption in a Former State

For property tax purposes, several states offer credits on assessed property taxes for property which a taxpayer declares to be their primary residence. The amounts of the credits/exemptions are established on a state by state and/or county by county basis. By changing residency from a former state to Florida, a taxpayer could be in a situation where their homestead exemption in Florida could be smaller than their former state and therefore, they may be subject to higher property taxes than originally anticipated. Another component to this potential tax increase relates to the loss of the exemption in the former state. For instance, in the state of Indiana, property tax on a primary residence in which the homestead exemption is taken is capped at 1% of the property value for residential property according to current state code. If the exemption is no longer applied, then the property tax payments can be two or three times greater than what had previously been assessed. This may or may not have been offset by electing the homestead exemption in the state of Florida.

Sales Taxes

Depending on where you chose to live in the state of Florida, a taxpayer could potentially pay higher sales taxes which could be up to 7.5% (a base state sales tax rate of 6%, plus 1.5% for local tax). This sales tax rate is applied to goods and services which are a significant portion of living expenses incurred by an individual. Other states may have a lower sales tax rate. For example, a taxpayer living in Indiana would pay a 7% state sales tax rate which could be a lower rate depending on where the taxpayer would reside in Florida. This should be looked at comparatively to know the implication of whether a taxpayer would be paying additional taxes that are not in the form of income taxes. This may be significant depending on a taxpayer's living and employment circumstances.

Other Tradeoffs

While it is certainly nice to avoid having to pay income taxes, there are other tradeoffs that should be thought about which are more intangible in nature and have costs of quality associated with them. Currently, the population of Florida has surpassed 20 million people. While it is a large state, there are certain areas of concentration that can lead to over-crowding. This leads to higher demands for services from a larger pool of patients in the health care industry, which can affect the overall quality of health care. This is just one example of a non-tax consequence consideration that should be thought through before ultimately deciding to declare residency in Florida.

When making the decision to move to Florida and become a resident, it is critical to evaluate a wide spectrum of facts and circumstances which each have their own social or economic impacts for an individual. It is important to think through this decision and decide to move forward by taking the crucial steps to prove that you have fully and completely severed yourself from your former state. By following the steps laid out above and thinking through the tradeoffs, an individual should be able to make an informed decision when determining where they want to live.

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