

Editorial Opinion

Guest commentary

Details count in tax, residency questions

By Laird A. Lile, Esq.

Naples

A recent article in the Naples Daily News focused on residents of other states who become permanent residents of Florida, in part or whole because of the tax advantages our state offers. Some additional information related to these legal considerations may be useful.



Laird A. Lile

The laws of the former state are often more important than Florida law during this process. In fact, while at first blush the focus appears to be on becoming a Florida resident, the real objective — at least from a tax perspective — should be terminating residency in the former state. While Florida advisers can appropriately advise regarding Florida law, obtaining counsel in the former state often is necessary to understand and implement the steps required for achieving the true objective.

Many estate planning professionals in Naples have some expertise about becoming a Florida resident; and while that's the easier part of the task, it's almost never the whole story. For example, you may hear that "requirements" for Florida residency include residing in Florida at least six months and a day, having an investment professional in the state, registering to vote here, recording a Declaration of Domicile, securing a library card and registering an automobile with the state of Florida.

While each of these actions might be helpful indicators of Florida residency, none is specifically required — that's right, none. Rather, the residency requirement in Florida is based on the subjective intent to make Florida your permanent residence. The actions previously outlined are simply objective confirmations of the necessary subjective intent.

Perhaps even more important is to recognize that becoming a resident of Florida does not automatically mean the former state will release its tax shackles and set the former resident free of

fiscal obligations to that state. In fact, an individual might be domiciled in Florida yet still taxed as a resident in the former state. Some states look to the number of days in that state, while others look to the existence of owning a residence in that state.

The recent article included a list of considerations under Minnesota law. The requirements of Ohio, New York, Massachusetts, Illinois and Michigan, by way of example, may be similar, but certainly are not identical to one another. The existence of unique issues in the former state supports the need for a knowledgeable professional from that state to be part of the adviser team when dealing with these important issues.

The state taxes impacted by residency generally include state income tax, real estate tax and estate and inheritance taxes.

Florida does not presently have, and likely never will have, a state income tax on individuals. Even Florida residents will be taxed on some income that is considered sourced in those other states, such as rent from real estate or even pensions earned while in those states.

While Florida residents are entitled to special breaks on real estate taxes on their primary residence, tax-related exemptions in the former state are typically no longer available when residency is established in Florida.

Avoiding the estate or inheritance tax imposed upon residents of the former state will often provide the most significant tax savings (generally not to the new Florida resident but rather to the beneficiaries of the estate of the new Floridian). Most states with an estate or inheritance provision will tax real estate in those states, even when owned directly by nonresidents. A change to the form of ownership may avoid those taxes.

Becoming a Florida resident is not difficult. However, threading the needle to avoid state taxes in a former state can be fraught with tax perils and involves the laws of the other state, not Florida.

Lile is a board-certified wills, trusts and estates attorney.