

FLORIDA COUNSEL REPORT

Moving to Florida: Beware of Tax Traps

A common over-sight of persons moving to Florida is failing to take their trust. They may have packed their trust and taken it with them, but the trust situs remains in their original state. This is usually a mistake.

The fact that a client has moved to Florida who may be the settlor, beneficiary, or trustee of the original trust will not generally mean that the governing law of the original state has moved here as well. Clients moving to Florida are well advised to have all their trusts reviewed by a Florida attorney regarding such issues as: (1) transfer of governing law or place of administration; (2) change of trust from non-grantor to grantor status; (3) change of trustees or their successors; (4) transfer of insurance policies; (5) other desired revisions.

As an example, one common problem is if the trust names a non-Florida trust company or law firm as trustee or successor trustee. Under Florida law, a law firm or trust company not licensed in Florida cannot act as trustee or personal representative of a will unless it qualifies as a trust company in Florida. Also note: A non-Florida attorney cannot act as Personal Representative or Executor unless he or she is closely blood related to the testator.

Tax Traps

Failure to make proper revisions in the trust for a person moving to Florida may result in tax exposure in their former state. Florida is one of only seven states that do not impose a fiduciary income tax.

Other states impose a tax at top rates from 3% to 10.3%. See Jeffrey A. Kern and H. Allan Shore, *So You Left Your Trust at Home When You Moved to Florida*, The Florida Bar Journal, May, 2009.

Here is a sampling of how some states determine their jurisdiction to tax a trust.

Illinois & Pennsylvania: These states tax the fiduciary income

of a trust if the sole connection to the trust is a resident settlor of a living trust or resident testator of a testamentary trust.

Michigan: Taxes a living trust on the basis of a resident settlor unless all beneficiaries, all trustee, and all administration of the trust takes place outside the state. Michigan taxes a testamentary trust solely on the basis of a resident testator.

Massachusetts. Tax jurisdiction based on residence of trustee. Can be avoided by assuring all Trustees reside in Florida.

Connecticut. Similar to Illinois; however in the case of a living trust, with a resident settlor, the trust must have a resident beneficiary for Connecticut to impose its tax.

New York. Taxes on sole basis of the resident settlor or testator with the exception for a resident trust where all of the following are satisfied: (1) all trustees are domiciled outside of New York; (2) all trust assets are located outside of New York; (3) there is no New York source income. Note: One dollar of New York source income can trigger New York jurisdiction.

How to Avoid the Tax Traps

With the exception of Massachusetts, where the tax can be avoided simply by securing a Florida trustee, avoiding the claims of the original states can best be avoided by the settlor or testator clearly establishing Florida residence. Therefore, if the client has moved to Florida, some - not necessarily all - of following steps should be taken to establish Florida residence:

Note: Factors marked *** are highly advisable.

- File a Declaration of Domicile
- File for the Florida homestead property tax exemption***
- **Execute a new Florida will and restate or amend trust documents*****

Note: The new trust should have specific language concerning:

(1) Florida law to control validity and construction; (2) principal place of administration; (3) determination of situs; (4) transferring situs; and (5) substituting trustee upon change of trust situs.

- Refer to Florida residence in all estate planning documents***
- Register to vote in Florida and in fact vote***
- File federal income tax return with the IRS in Atlanta, Georgia***
- Change address on passport***
- Obtain Florida auto driver's license (and, if feasible, relinquish

license

from other state)***

- Obtain Florida license plates (and relinquish plates from other state)
- Open a Florida Bank Account***
- Affiliate with Florida organizations
- Change credit cards to Florida address
- Transfer safe deposit box contents to Florida box
- Affiliate with a church, temple or mosque in Florida

If the client is unable or does not wish to establish Florida residence, the options are limited. One option is to restrict trust investments in assets producing tax-free income or growth, or distributing accumulated income and capital gains of the trust if possible.

Moving an Irrevocable Trust to Florida. Florida law allows for decanting, modification or reformation of the irrevocable Trust. Please stay tuned: this will be the subject a future newsletter.

Sincerely,



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