
Choice of Domicile: Ohio or Florida

At Smith and Condeni LLP we have many clients seeking advice on whether Ohio or Florida is the better choice for their domicile or residence. These clients include both current and former Ohio residents who own property in Florida or who spend substantial time in Florida each year. This article points out some of the things a client should consider when making this decision.

You may have a home in Ohio, one in Florida, and even one in Italy, but you only have one domicile. Domicile becomes important when one recognizes that there is currently no income or estate tax in Florida. Income tax rules are a primary consideration for many Ohioans. Additionally, Ohio levies estate taxes from 6% to 7% on property interests owned by a decedent which exceed \$338,333. For example, a decedent with assets of \$1,000,000 would pay \$44,700 in Ohio estate tax compared with \$0 taxes paid to Florida.

Income Tax Considerations

Domicile has several important tax implications. Florida does not have an income tax which can be a huge savings compared to the Ohio income tax. For income, but not estate tax purposes, Ohio has recently revised its three domicile presumptions depending on a taxpayer's "contact periods" in Ohio during a taxable year. One contact period in Ohio occurs when an individual is away overnight from his or her non-Ohio residence and, while away, spends some portion, no matter how minimal, of each of two consecutive days in Ohio. The new rules are effective for taxable years beginning on or after January 1, 2007.

An individual with at least 183 contact periods in Ohio in a taxable year is presumed to be domiciled in Ohio that year. Only clear and convincing evidence to the contrary will rebut this presumption. An individual who has no more than 183 contact periods in Ohio during the year but is not conclusively presumed to be not domiciled in Ohio is also presumed to be domiciled in Ohio, but the presumption is rebuttable by a preponderance of the evidence to the contrary. This situation might occur when one fails to file the required statement described below. An individual who has no more than 182 contact periods in Ohio during a taxable year is conclusively presumed **not** to be domiciled in Ohio for that year. This presumption is irrebuttable unless the individual fails to file a statement with the Tax Commissioner on or before the 15th day of the fourth month following the close of the taxable year verifying (1) that the individual was not domiciled in Ohio during the entire taxable year, (2) that the individual had an abode outside of Ohio during the entire taxable year, and (3) the location of each abode located outside of Ohio. It does not appear to be permissible to extend the time allowed to file this statement even though the non-resident taxpayer may have filed for an extension to file his or her Ohio income tax return. Further, if an individual files a false statement, not only is he or she guilty of perjury, but he may also lose the benefit of the conclusive presumption of nonresidency.

In addition, the contact period exceptions that formerly existed for family funerals and for charitable work or medical hardship have been eliminated while the Tax Commissioner can apparently still challenge the number of contact periods an individual has with Ohio. This is when it is important to prove the number of contacts with Ohio, or the lack thereof, by use of writings or recordings of diaries, calendars, airline tickets, credit card receipts, cancelled personal checks, photographs, expense reports and the like. When considering a change in domicile, first compare non-resident Ohio income tax savings with any potential taxes levied in Florida to determine if the estimated savings are worth the cost and effort of satisfying the contact period requirements. Should you decide to attain non-resident status, you must commit to spending not more than 182 days in Ohio per year and must not only carefully track the number of contact periods spent in Ohio, but must also obtain the crucial evidence needed to prove your travel and contacts.

Estate Tax Considerations

For estate tax purposes, Ohio determines domicile with a “facts and circumstances” test. Retention of corroborating evidence is crucial for Ohio residents to establish that a change of domicile has been made. The Ohio Estate Tax Division’s Form 20 Checklist highlights the factors important in determining whether an individual is domiciled in Ohio or not. If you intend to establish Florida domicile, you should, at a minimum, focus on the following areas:

- Driver’s license and automobile registration
- Domicile evidenced by federal, state, and local income tax filings
- Revision of Wills and Trust instruments to reflect changed domicile
- Voting in the state of domicile
- Established social contacts in the state of domicile
- Reducing real and tangible personal property holdings in Ohio
- Reducing business activities in Ohio
- Reducing time spent in Ohio

Additional Considerations

Because of its rapidly fluctuating real estate values, Florida real estate tax law provides a “homestead exemption” to prevent Floridians from being taxed excessively. Not only is the “homestead” or residence exempt from most creditor claims for those domiciled in Florida, the exemption reduces the assessed value of the property by \$25,000 and limits increases in the assessed value to 3% per year. The cumulative effect of the cap on the property’s fair market value can be significant over time if you have a substantial investment in Florida real estate. Again, this exemption is only available to those domiciled in Florida and is not available to those “snowbirds” who retain their Ohio residency.

We Can Help

Florida can be sunny and inviting during bleak Ohio winters. That alone should not control your decision whether or not to become a Florida resident or domiciliary. Deciding whether or not to change your domicile involves weighing all the competing factors and making the choice that is right for you. Your Smith and Condeni attorney can help. We have a licensed Florida attorney on staff to listen to your concerns and answer your questions. Call us today to schedule an appointment.