May 2013 Tax Alert

TAXATION: What Snowbirds need to know about taxation

Retirement. It doesn't get much better than the warm sand and green golf links. After fleeing the freezing cold of Ohio for the azure blue skies, you receive your yearly tax forms. In this month’s tax alert we will discuss what snowbirds need to know about taxation and how they can limit their tax liability. Remember, rules vary from state to state so check with your local tax professional before filing your taxes.

A. Who are Snowbirds?
Typically, Snowbirds are retirees who own or lease a second home in a warm location during the winter. Snowbirds generally migrate from the U.S. Northeast, U.S. Midwest, or Pacific Northwest to spend a large portion of colder months in warmer locales such as Florida, Arizona, and Texas. The advantages of being a snowbird are plentiful and vary from person to person, but often cited is the tax advantages available in these southern states:

- no income tax
- no estate tax
- property tax protections and exemptions.

This memo will address generally the advantages and disadvantages facing a snowbird migrating to Florida, Arizona, or Texas and whether they will be eligible for the state’s tax advantages.

B. If Florida is home, what is the legal difference between “residency and “domicile”?
To make the most of Florida's tax advantages a Snowbird must maintain legal domicile in the state of Florida. Domicile is a term defined by the courts and used primarily by lawyers. The United States Supreme Court in Gilbert v. David, defined domicile as
residence in fact combined with the intention to make the place of residence one's home for an indefinite period.

Domicile is the legal relationship between a person and a particular place that contemplates two factors:
- residence, at least for some period of time, and
- intent to reside in that place permanently or at least indefinitely.

In other words, domicile is the place where a person has his true, fixed home and is the place from which whenever he is absent, he intends to return.

A Floridian who is simply a resident cannot take advantage of the state's tax credits and exemptions like an individual with legal domicile. Residence is a concept encompassed within the definition of domicile; the primary distinction between the two is that while a person may have more than one residence, he can have only one domicile.

A Florida resident may declare legal domicile in the state in accordance with Florida Statute 222.17 by filing a form with the County Clerk. This form is one of many factors that determine a legal change of domicile. The Florida courts have consistently considered several factors to affirm that the change is legal. The factors are not weighted, so the more factors a resident meets, the more persuasive the court will find the change.

1. Compare the amount of time you spend at your Florida residence with any other residence
2. Sell real property in other states because ownership of real property elicits obligations in that state and makes a change of domicile less convincing
3. Transfer your accounts to Florida: bank accounts, brokerage accounts, and safe deposit boxes.
4. Operate your business from Florida and limit business activity from the former state of domicile
5. Make a declaration of your Florida domicile by filing a form with the County Clerk
6. Apply for a Florida homestead exemption at the county property appraiser office
7. Get Florida driver's license and Florida license tags
8. File for Florida intangible personal property tax returns
9. Register to vote in Florida and notify election authorities in previous place of residence of change
10. Use your Florida address as your permanent address on all documents and transactions.
11. Execute a new will declaring your Florida domicile
12. File federal income tax return with appropriate IRS office, using Florida address
13. Notify the taxing authority in your former state of domicile that you have changed your domicile
14. Stop filing resident income tax returns with your former state of domicile
15. Transfer religious and club memberships to Florida

C. Florida Tax Advantages
There are four advantages to Florida’s tax structure that benefit those domiciled in the state.

1. Florida's constitution prohibits the levying of income tax on individuals by either the state or any municipality therein.
2. Florida's constitution prohibits taxation upon the estate or inheritance of any individual; the state does not impose a gift tax. Additionally, in January 2007 Florida repealed its Intangible Property Tax.
3. Florida’s Homestead Protection provision protects homeowners against creditors. Any person claiming domicile in Florida who owns or rents a homestead in the state is eligible. There is no limit on the value of the assets protected by the provision. However there are a few exceptions to the protection:
   a. IRS liens
   b. voluntary liens
   c. mechanics liens.
4. Florida’s Homestead Property Tax Exemption helps to offset the higher than average property taxes individuals pay. Every person who owns and resides on real property in Florida on January 1 and makes the property his or her permanent residence is eligible to receive a homestead deduction up to $50,000.
   a. The first $25,000 applies to all property taxes, including school district taxes.
   b. The additional exemption up to $25,000 applies to the assessed value between $50,000 and $75,000 and only to non-school taxes.

D. Florida Tax Disadvantages
The disadvantages to Florida's taxing structure are the higher than average sales and the property taxes. The state sales and use tax rate is 6%. Additionally, a discretionary sales surtax (also called county tax) is imposed by many Florida counties and applies to most transactions subject to sales tax. Florida property taxes are based on the fair market value of the property and often are higher than many mid-western states and southern seaboard states.

E. Arizona and Florida Use Similar Statutory Language
Snowbirds commonly flock to locations in the state of Arizona as well. Arizona and Florida appear to use similar statutory language. A closer look reveals Arizona has technically different definitions, similar factors to establish the change, but fewer obvious tax advantages.

First, Arizona’s Revised Statute §43-104 defines the term "resident" as every individual who is in the state for other than a temporary or transitory purpose. There is a
presumption under Arizona law that every individual who spends, in the aggregate, more than nine months of the taxable year within the state is a resident. Evidence that the individual is in the state for a “temporary or transitory” purpose may overcome this presumption. Arizona statutes do not define the terms "temporary" and "transitory."

Second, Arizona presumes that domicile is established after residence. However, actual residence is only one factor, therefore this presumption is not conclusive. Generally, domicile is the place where an individual has his true, fixed, permanent home and principal establishment and to which he has the intention of returning whenever he is absent. Domicile, once established, is presumed to continue until change is shown. The burden of proof to rebut this presumption is on the person contending to the contrary. Intent to change domicile is evidenced by:

1. Physical presence of an individual, and his or her spouse and children, if any, in the new locality;
2. Registration of an automobile;
3. Application for a driver's license or renewing or relinquishing an old one;
4. Location of bank accounts and business connections;
5. Purchase of a home and/or sale of an old home;
6. Payment of personal or real property taxes;
7. Payment of state income taxes;
8. Registering to vote in the location of the new domicile and notifying voter registration officials in the old locality of such change of domicile;
9. Consistent use of new permanent address on all appropriate records and correspondence.

F. Tax Advantages to Arizona
Similar to Florida, Arizona does not levy an estate tax or a gift tax. Similarly, Arizona provides a Homestead Protection against creditors. The provision protects homes up to but not exceeding one hundred fifty thousand dollars in value. While this protection is significant it is not as comprehensive as Florida's unlimited asset protection. Like Florida, Arizona's asset protection has exceptions: IRS liens, voluntary liens, and mechanics liens and in addition Arizona makes an exception for child support or spousal maintenance.

1. First, A.R.S §42-11111 provides an exemption for widows, widowers and totally disabled persons. For qualified individuals, the exemption has the effect of reducing the assessed value of the real property by up to $3,000 with a corresponding reduction in property tax.
2. Second, A.R.S §42-17302 provides a program of tax deferral. Under the deferral program, payment of property taxes is not required until the real
property is sold or the individual dies or the property becomes income producing.
3. Third, under Proposition 104, which passed in 2000, qualified individuals are granted a property tax freeze. While both Florida and Arizona provide property tax exemptions, Arizona’s exemptions are more difficult to qualify for and the benefits are not as clear cut.

G. Tax Disadvantages to Arizona
The Arizona levies an income tax ranging from 2.59% to 4.54% of state taxable income. The state also levies a 6.6% sales tax to which the county and city add sales tax depending on location.

Arizona assess its property tax differently than Florida, thus the effects of taxation differ. In Florida property tax is based on the fair market value of the property, but in Arizona the property tax is based on the assessed value of the home. Each county in Arizona has a county assessor who determines the value of a property. Typically the assessed value is less than the fair market value, but the property tax exemptions offered by Arizona are more restricted than Florida and offer less relief.

H. Does Registration in Texas differ from declaring domicile in either Florida or Arizona?
Texas does not use the terms domicile and resident like Arizona and Florida do. In some ways becoming a Texas resident is a simple process, but in other ways the state is more demanding than Arizona or Florida. Unlike either Florida or Arizona, an individual who has moved to Texas, has 30 just days to register their vehicle. This process is the primary determination of residency.
1. The vehicle registration process requires a state mandated inspection of your vehicle; the registrant must have a valid driver's license and proof of auto insurance.
2. Next the local county tax-assessor/collector’s office provides vehicle registration stickers and license plates. This can be an expensive process; the base registration fee in Texas is $51.75 and sales tax fees on a vehicle can be $90 or the difference between your previous state's sales tax and the Texas sales tax.
3. Additionally a new resident is required to obtain a Texas driver license from the Texas Department of Public Safety within 90 days of moving to Texas.
4. Last, Texas will look to voter registration as a strong indicator of residency. To register to vote an individual must be: a U.S. citizen; a resident of the Texas county; 18 years old; not a convicted felon, and not declared mentally incapacitated by a court of law.
I. **Tax Advantages to Texas**

The tax advantages of Texas render it similar to Florida in that it levies neither an income tax nor an inheritance tax.

The Texas Homestead Protection provision is in Art. XVI, Sec. 50 of the Texas Constitution and like the Florida provision it is unlimited. To qualify a natural person must claim their primary residence is a homestead in Texas. Unlike Florida or Arizona, Texas homesteads are subject to some size restrictions, but only for very large parcels. The exemptions to the Texas provisions also are slightly different:

1. purchase money
2. ad valorem taxes
3. owelty of partition (divorce)
4. home improvement loans
5. home equity loans,
6. reverse mortgages.

There are three types of property tax exemptions available from the state.

1. All residence homestead owners may receive a $15,000 homestead exemption from their home's value for school taxes. If a county collects a special tax for farm-to-market roads or flood control, a residence homestead owner may receive a $3,000 exemption for this tax.
2. Individuals age 65 and older and/or disabled residence homestead owners may qualify for a $10,000 homestead exemption for school taxes, in addition to the $15,000 exemption for all homeowners.
3. Additionally any taxing unit may offer an additional exemption amount of at least $3,000 for taxpayers' age 65 or older and/or disabled.

J. **Tax Disadvantages to Texas**

The disadvantages of Texas are in the state-levied sales tax at 6.25%. In addition local sales and use taxes levied by cities, counties, transit and special purpose districts can add up to 2% to the sales tax, making the combined total on purchases as high as 8.2%.

Texas does not levy a property tax, but local taxing units (counties, cities and school districts) assess and collect property taxes on all real and income-producing tangible personal property not exempt by state or federal law. The property tax bill is based on fair market value of the home, which varies dramatically depending on location.

K. **Ohio Tax Facts**

Ohio falls short of Florida, Arizona, and Texas when it comes to tax advantages. Ohio has consistently and, relative to other states, rather heavily taxed the income of its residents. Even nonresidents are subject to Ohio's income tax on their Ohio sourced income. To encourage snowbirds to remain longer and spend more money, Ohio has extended the aggregate period of time an individual may spend in Ohio during a given
taxable year without being treated as an Ohio resident for Ohio income tax purposes from approximately four months to approximately six months. Even after considering these recent tax reduction measures, however, Florida and Ohio remain miles apart when it comes to individual income taxes.

Though Ohio does not call it a "gift tax", O.R.C. §5731.05 imposes a tax on certain lifetime gifts made by Ohio decedents requiring that the value of a decedent’s gross estate include the value of all property or interest in such property of which the decedent has at any time during his or her life made a transfer "in contemplation of death". For these purposes, any transfer made by the Ohio decedent within three years of his or her death is deemed to have been in contemplation of death and is therefore taxable.

In an effort to be on an equal playing field with these states the Ohio Estate Tax was repealed effective January 1, 2013. This legislative change occurred with the passage of the 2012-2013 Budget Bill, House Bill 153. There is now no estate tax on estates of individuals who die on or after January 1, 2013.

Ohio legislators, knowing that Florida and Texas homestead laws protect primary residences and unlimited assets from lawsuit creditors, have recently made an effort to match those protections. Ohio’s Homestead Protection provision has increased to protect assets up to $125,000. Lawmakers believe that HB 479 will remove that motivation to sell or downsize Ohio homes. Ohio snowbirds must determine for themselves whether this protection can measure up to the various advantages that Florida, Arizona, and Texas offer them.

Ohio’s Homestead Exemption is a statewide program that allows qualifying Ohio homeowners to shield $25,000 of the market value of their homes from property taxes. This is an additional reduction in real estate and manufactured home taxes beyond any other property tax deductions and rollbacks an individual may already be getting. Eligible homeowners live in their homes as their primary residences and must fit into at least one of the following categories:

1. at least 65 years old (or will turn 65 in the current calendar year)
2. certified totally and permanently disabled as of Jan. 1, 2007
3. the surviving spouse of a qualified homeowner who was at least 59 years old on the date of their spouse’s death

Ohio levies a 5.5% sales tax, which is increased by the taxes levied by counties and municipalities throughout the state. Additionally, Ohio residents are subject to property taxes levied by the state.
THE SNOWBIRD’S SOLUTION?

The advantages of a southern nest certainly seem to outweigh the tax responsibilities of maintaining a legal domicile in Ohio. While Ohio is working diligently to equal the playing field, each snowbird must consider the pros and cons of a legal change of domicile for themselves. Be sure to check with your legal and financial advisors each year to make sure you are paying taxes in the correct state. As the tax codes of the state become more and more complex this won’t always be an easy task.