

# advisory

## WHY YOUR DOMICILE IS A KEY FACTOR IN ESTATE PLANNING

Having an up-to-date estate plan is important for many reasons, one of which is to ensure you have properly planned to minimize the federal and state estate tax. The federal estate tax exemption in 2019 is \$11.4 million per person, or \$22.8 million per married couple. Although many people do not need to be concerned about federal estate tax, there are 12 states that impose a state estate tax and six states that impose an inheritance tax. Maryland imposes both.

Each state's estate tax exemption is a different amount. For example, Rhode Island has a state estate exemption of approximately \$1.56 million, New York's exemption is \$5.49 million and the exemption for Massachusetts is \$1 million. The two key factors that determine if you are subject to state estate tax is where you are domiciled at the time of your death and if you own real property in a state with a state estate tax.

### Domicile – “The Rhode Island – Florida Connection”

You are deemed to be domiciled in a state if you are physically present in a state with the intent to stay in that state indefinitely. In Rhode Island, the issue of an individual's “subjective intent” has also been a part of the equation for courts and state taxing authorities since a 1998 Rhode Island Supreme Court ruling. In the case\*, the Court examined a number of objective factors to establish subjective intent of a taxpayer who sold his company to his children in exchange for cash and a promissory note, and upon his death, the state attempted to impose an estate tax on his estate as a Rhode Island domiciliary even though he was never in the state more than 183 days a year for the last five years of his life. The factors cited by the Court in ruling in favor of the taxpayer having rightly established domicile in Florida included the following:

1. Florida condominium furnishing as valued for insurance purposes in excess of \$150,000 compared to \$50,000 valuation of Rhode Island furnishings;
2. Florida condominium contained silverware and paintings;
3. Florida condo more expensive than RI condo;
4. Changed wills to recite “of Florida”;
5. Repeated references to Florida as permanent or official home in resignation correspondence to various Rhode Island civic and business groups;
6. Actually voting in Florida;
7. Joined churches and country clubs in Florida;
8. Volunteered with charitable groups in Florida;
9. Active in Florida politics;
10. When the TAXPAYER returned to Rhode Island for board meetings, his spouse remained in Florida; and,
11. All but one checking account in Florida.



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Individuals have been flocking to Florida for years. Rhode Islanders are no exception. In addition to warmer weather, Florida offers other benefits including no income tax, no state estate tax, favorable asset protection laws and the added advantage that homestead, life insurance, annuities, IRAs, and 529 Education Savings plans are all protected from creditors. If you are a Rhode Islander bound for Florida and intend to make the Sunshine State your domicile, you would be wise to follow the four steps below:

1. **Declaration of Domicile:** This form is filed at the County Clerk's office. By filing this Declaration, the filer is swearing that her place of abode within the State of Florida is her domicile. The Declaration must be filed with the recorder of deeds for the County in which your home is located. Significant creditor protection is available under the Florida Constitution. Although the filing is not strictly speaking required to obtain this protection, filing the Declaration shows an intent to maintain a Florida residence as a permanent home. Florida law does not exclude concurrent ownership of a second residence in another state provided that the primary residence is claimed only in Florida.
2. **Driver's License:** You will also need to apply in person for a Florida Driver's License. This requires a visit to the local Department of Motor Vehicles office for the county in Florida in which you reside. You must bring with you the following items: (i) your existing license which you will have to turn in; (ii) proof of identity in the form of a birth certificate or pass port. Note, last names must match so you will need your marriage certificate if the name on the license is different than the name on your identity document; (iii) a social security card; and (iv) 2 of the following, a deed with your name on it, a Florida Voter Registration Card, a utility bill with your name on it, or current Florida homeowner's insurance certificate with your name on it.
3. **Homestead Application:** If you own a home in Florida there are several property tax advantages to filing a Homestead Application. Property tax relief is available in the form of exemptions based on age, disability and a general exemption. The Homestead Exemption will entitle you to property tax exemptions allowed in the county that your home is located in that you are otherwise eligible for (e.g. age, military) and to protection under the Florida "Save Our Homes" law. This law limits annual increases in the assessed value of property with the Homestead Exemption to three percent or the change in the Consumer Price Index, whichever is lower; and,
4. **Register to Vote:** You should register to vote in Florida and actually vote in elections.

It should be emphasized that establishing Florida as your home will not necessarily avoid state income tax as most states have their own rules when it comes to taxing income. Case in point is Rhode Island's stipulation that a person who is not domiciled but maintains a permanent place of abode and is in the state for an aggregate of more than 183 days of the taxable year (unless the individual is in the armed forces of the United States) is considered a resident for income and estate tax purposes. This does not mean that you must be in Florida for more than half the year; rather, you just cannot be in Rhode Island for more than 183 days a year. In addition, even if you are out of the state for the required period of time, Rhode Island will still impose an income tax on income that is derived from or connected with Rhode Island sources. Importantly, this does not include income from passive investments such as publicly traded securities or distributions from retirement accounts.

## **Real Property**

If you are domiciled in a state with no state estate tax and you own a home located in a state with a state estate tax, then you need to plan to minimize the state estate tax. For example, if you are domiciled in Florida but own real property in Rhode Island and your total estate is valued over the Rhode Island state estate tax exemption amount of \$1.56 million (approximately) then you will likely be subject to Rhode Island state estate tax if you pass away in 2019.

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One planning opportunity to avoid Rhode Island estate tax in this situation is to create a multi-member LLC and transfer your Rhode Island real property to the LLC. As a result, you should be deemed to only own your share of the LLC interests, which is considered intangible property instead of the home that is owned by the LLC. Under Rhode Island law, if a person is domiciled in another state and he or she owns intangible property then it should not be subject to Rhode Island estate tax.

However, this type of planning will not work in other states such as New York or Massachusetts because their state laws differ. It is important to speak with a knowledgeable advisor about your specific situation. They can help ensure you have done all you can to show you are domiciled (or plan to be domiciled) in your new state, as well as update your estate planning documents and advise you on how best to minimize any state estate tax, if necessary. PLDO's team of tax and trust and estate lawyers have decades of experience and a sophisticated understanding of all the legal and financial aspects of this area of the law. For assistance, please contact PLDO Partner Gene M. Carlino and Senior Counsel Jason S. Palmisano in our Florida or Rhode Island offices at 561-362-2034 or 401-824-5100 or email [gcarlino@pdlolaw.com](mailto:gcarlino@pdlolaw.com) and [jpalmisano@pdlolaw.com](mailto:jpalmisano@pdlolaw.com).

\* *Arthur J. DeBlois, Jr., et al. v. R. Gary CLARK, in his capacity as Tax Administrator.* No. 98-336-M.P.764 A.2d 727 R.I. 2001



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