

## Moving to Florida?

**Quick-Take:** Simply changing residence to Florida does not automatically avoid paying Michigan income taxes.

**Background:** Many individuals plan to retire to Florida. They often start this process of changing their domicile prior to their actual retirement, by buying a Florida home, furnishing that home, and starting the slow process of changing their domicile over a few years' time. Those individuals are often motivated by the fact that there is no Florida income tax which will not erode their required minimum distributions once they reach their required beginning date (age 73.) . So why not start the move a few years before they reach retirement age, or before they sell their business? Snowbirds now flocking to Florida may be even more motivated to purchase a Florida home, knowing that many (or most) Canadians are selling their Florida homes in anger, which is depressing home prices in many parts of Florida. These snowbirds may be enticed to buy a Florida home now with the thought of moving to that Florida home in a few years' time. But simply changing a physical residence to Florida does not result a change in domicile (on which state income tax exposure turns.)

**Domicile:** State income tax liability turns on domicile, not residency. Domicile is technically described as the place which an individual *intends* to be that individual's home, which means the place to which that individual *intends to return* whenever that individual may be absent. An individual can have only one domicile. If the individual has two residences, that person's domicile is the one residence that he/she regards and uses as their permanent home. The length of time customarily spent at each residence is important, but it is not necessarily determinative.

**Intention:** Domicile, once established, continues until the individual moves to a new location with the *bona fide intention* of making that individual's fixed and permanent home there. No change of domicile results from a move to a new location if the *intention* is to remain there only for a limited time, which may apply even though that individual may have sold or disposed of his/her former home.

**Burden of Proof:** The burden is on the person who asserts a change in domicile to show that the required *intention* exists. An individual's declarations of domicile are not conclusive if they are contradicted by that individual's conduct. The mere fact that the individual registers and votes in another state is important, but again it is not conclusive, particularly when the facts otherwise suggest that the individual attempts to escape state taxation

**Florida Law:** Florida looks to a permanent residency. [Florida statute 196.015.] Permanent residence is a factual determination made by a property appraiser. The Florida statute provides that *intention* to establish a permanent residence in Florida is made, in the first instance, by the property appraiser. While one factor is not conclusive of the establishment (or non-establishment) of permanent residence, several factors are to be considered by the property appraiser in making that determination as to the *intent* of an individual to claim a homestead exemption to establish a permanent residence in Florida. Those factors include:

- (i) A formal declaration of domicile by the applicant that is recorded in the public records of the county where the exemption is sought.
- (ii) Evidence of the location where the applicant's dependent children are registered for school.
- (iii) The place of the applicant's employment.
- (iv) The applicant's previous permanent residency in a state other than Florida (or another country) and the date that non-Florida residency was terminated.
- (v) Proof of the applicant's Florida voter registration using either the applicant's voter information card address or other 'official correspondence' from the supervisor of elections that provides proof of voter registration, which matches the physical location address where the exemption is sought.
- (vi) Issuance of a Florida license tag on any the applicant's motor vehicle.
- (vii) A valid Florida driver license or a valid Florida identification card *and* evidence of the relinquishment of driver licenses issued from other states.
- (viii) The address that is listed on the applicant's federal income tax returns.

- (ix) The location where the applicant's bank statements and checking accounts are registered.
- (x) Proof of payment for utilities at the property for which permanent residency is claimed.

While this Florida statute is helpful it is important to remember that just meeting Florida's permanent residency criteria may not be sufficient to satisfy the change of domicile requirements that are used by other states. A recent New York court case demonstrates just how challenging it can be to prove a change-in-domicile.

***In the Matter of John Hoff and Kathleen Ocorr-Hoff, New York Tax Appeals Tribunal, No. 85029***

**Facts:** John and Kathleen married in 2008. In 2011 the Hoff's purchased a home in New York where they were lived and worked. In 2014 the Hoff's purchased a home in Naples, Florida, which they then furnished, using some valuable items from their New York home. In 2018 the Hoff's made their Naples home their permanent domicile; in doing so, they filed a formal Florida declaration of domicile. The Hoff's also registered to vote in Florida, and they changed their drivers' licenses to Florida. In 2019 the Hoff's changed the registration of their vehicles from New York to Florida and then executed new estate planning documents claiming Florida as their domicile. However, at that time, the Hoff's continued to use New York accountants and attorneys who were admitted to practice in both New York and Florida. In addition, in these years the Hoff's continued to use medical providers in both New York and Florida. In 2018 the Hoff's reported to New York that they had moved out of the state on October 29, 2018, and they spent 186 days in New York and 121 days in Florida, which prompted them to file a New York part-year resident income tax return, using their Naples mailing address. They did the same on their 2019 New York state tax return (reporting 164 days spent in New York and 153 days in Florida (and 47 days in other locations.) During 2018 and 2019 John was president and held a 100% interest in an S corporation located in New York.

**Dispute:** An audit conducted by the New York State Division of Taxation concluded that the Hoff's spent 186 days in New York in 2018 and 131 days in Florida. For 2019, the audit reflected 164 days in New York and 153 days in Florida. The Division concluded that the

Hoffs continued to be New York residents in 2018 and 2019 subject to state income taxation and that they owned \$59,648 in state income taxes plus penalties and interest. The Hoffs appealed.

**Tax Appeals Tribunal:** The Tribunal concluded that the Hoffs had not change their domicile from New York in 2018 and 2019. The Hoffs had failed to satisfy a clear and convincing burden of proof standard that they had given up their New York domicile and acquired a new Florida domicile as their fixed and permanent home. The facts that the Tribunal recited in its decision included: (i) The Hoffs had continuing business activities in New York in 2018 and 2019 using a New York business address. (ii) Mr. Hoff remained employed with his prior New York company for several years after its sale. (iii) The Hoffs retained their New York home and the length of time, i.e., the number of days that they spent at their New York home. (iv) The location of their family members continued in New York, along with some of their “*near and dear items*;” (v) The location of their social and community ties, e.g., two separate New York country club memberships during 2018 and 2019; and (vi) They maintained their medical care providers in New York.

The Tribunal concluded that the Hoffs efforts in meeting their burden of proof merely evidenced a gradual progression of steps over 2018 and 2019 to make Florida their permanent home and they failed to meet the burden of proof to evidence that they had “*an absolute and fixed intention to abandon their New York domicile and acquire another domicile.*”

**Conclusion:** Just buying a home or condominium in Florida is not enough to avoid paying state income taxes. Jumping through the hoops to meet the Florida permanent residence requirements is also not enough. Snowbirds who are eager to purchase a Florida home will need to pay close attention to the rules surrounding proof of domicile if they want to enjoy Florida’s favorable tax rules.

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