

TAX PERSPECTIVES

Challenges and Strategies

for Owners of Real Estate in Multiple Jurisdictions

Many individuals and families now own more than one property, their primary residence and a secondary residence, most commonly a vacation home. Often, this secondary residence is located outside the owner's state of primary residence.

These owners should be aware that upon death, their secondary residence may be subject to estate and/or inheritance taxes in the state where the secondary residence is located. Certain planning techniques may help to minimize these tax consequences.

The following are important factors to consider with regards to ownership of real property outside your home state.

A SECONDARY RESIDENCE MAY HAVE STATE ESTATE AND INHERITANCE TAX CONSEQUENCES

States such as New Jersey, Pennsylvania, Connecticut, Massachusetts and New York have estate and/or inheritance tax regimes. Consequently, if you own a secondary residence in any of these states, that ownership may trigger the imposition of estate and/or inheritance tax in that state upon your death, even if you do not reside in that state.

In addition, in many states, the term "real property" includes ownership of a condominium (but generally not the shares of a cooperative apartment) and gas and oil interests. It should also be noted that tangible personal property located in the secondary residence, such as fine art and antiques, may also be subject to estate and/or inheritance tax in that state.

CERTAIN OWNERSHIP STRUCTURES CAN HELP

Any individual who owns real or tangible personal property in a state other than his or her home state would be well advised to consult with a local trusts and estates lawyer to determine what can be done to reduce or avoid federal or state estate taxes. Of course, it is preferable to have this conversation prior to acquiring title.

For example, if an individual were to transfer title of the property to a limited liability corporation or a family limited partnership, these structures may avoid the imposition of estate taxes upon that individual's death. Another strategy would be for that person to transfer title of the property either outright to a beneficiary or into a qualified personal residence trust. Please keep in mind that these strategies may have gift tax consequences.

NON-RESIDENT NON-CITIZENS HAVE SPECIAL ESTATE TAX CHALLENGES

A major estate tax problem arises if a non-U.S. resident non-U.S. citizen owns real property (or certain types of tangible personal property) in the U.S. Each U.S. resident currently has a \$2 million applicable exclusion amount in 2008. For the most part, this means that they can pass up to that amount to their beneficiaries estate tax free. This amount will increase to \$3.5 million in 2009. Unfortunately, if an individual is a non-U.S. resident non-U.S. citizen, the amount that can be sheltered from estate tax is only \$60,000.

Applicable Exclusion Amounts Offer Little Relief for Non-U.S. Resident Non-U.S. Citizens

Year	U.S. Resident	Non-Resident Non-Citizen
2008	\$2 million	\$60,000
2009	\$3.5 million	\$60,000

- NEW YORK
- WASHINGTON, DC
- MIAMI
- LOS ANGELES
- SAN MATEO
- WILMINGTON
- LONDON
- HONG KONG
- GRAND CAYMAN

CREATE A TRUST TO AVOID PROBATE

In addition to the secondary residence being subject to estate and/or inheritance tax in the state where it is located, if the property is owned in your individual name, it will be necessary for the executor of your estate to commence an ancillary probate proceeding (a second probate proceeding in the state where the property is located) in order to pass title to the beneficiaries named in your Will. If you die without a will, an intestacy proceeding may be required to pass title to your heirs-at-law.

One of the common methods of avoiding ancillary probate is to transfer title to any such property to the trustee of a revocable trust. Although such a transfer will not avoid imposition of estate taxes, it will avoid ancillary court proceedings and facilitate a more timely transfer of the property to your beneficiaries.

ADEQUATE INSURANCE CAN PROTECT PROPERTY

Another factor to consider is making sure that adequate homeowner's insurance is in place to cover any loss at the secondary residence. If the secondary residence is

a vacation home, you should consider advising the insurance carrier if the home will be vacant or unoccupied for long periods of time. If a loss does occur when you are not at the residence and you failed to notify the carrier that the property would be vacant or unoccupied, the carrier may deny liability.

A LOCAL POWER OF ATTORNEY MAY FACILITATE TRANSFERS

You may also want to check with a local attorney in the state where the property is located to secure a power of attorney in that state. Even if you have a power of attorney in your home state, it is very likely that you will need one in that state to transfer title to any real property there, if the need should arise.

CONSULT YOUR ATTORNEY

It would be prudent for an individual who owns real estate in multiple jurisdictions to consult with a trusts and estates attorney in the state where the property is located to discuss the options that are available. Fiduciary Trust stands ready to work with you and your attorney to implement an appropriate estate planning solution.

About the Author

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