

Estate planning for non-residents of Rhode Island

By **Claire N. Carrabba**

For many New Englanders, a post-retirement move to a warmer climate is an appealing prospect, especially as the brutal winter months approach.

In addition to offering warmer temperatures, several popular retirement destinations, including Florida, California and South Carolina, do not impose an estate tax or an inheritance tax.

While a move to one of those states may seem like a win-win, local attorneys representing clients who wish to retain ownership of their property in Rhode Island need to be mindful of the ways in which non-residents may be taxed.

Estate taxation for non-residents

In 2016, the estate of a Rhode Island resident must file an estate tax return, and potentially pay an estate tax, if the resident's gross estate exceeds \$1.5 million. The figure is indexed annually for inflation.

The estate of a non-resident must file an estate tax return, and potentially pay an estate tax, if a non-resident's gross estate exceeds \$1.5



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million and includes any real or tangible personal property located in Rhode Island. The estate tax is imposed on any property having an actual situs in Rhode Island, and the rate of tax imposed is between 0.8 percent and 16 percent, depending on the value of the gross estate less any allowable deductions.

As a result, the estate of a resident of Florida who has a gross estate that exceeds \$1.5 million and includes real estate in Rhode Island will owe estate tax to the state of Rhode Island.

The amount of tax owed is determined by (1) calculating the estate tax due as if all property were located in Rhode Island, (2) determining

what percentage of the total estate is comprised of Rhode Island property, and (3) ascertaining what percentage of the estate tax due is attributable to Rhode Island property.

Since the Rhode Island estate tax rate is calculated based on the value of the entire estate, and not just the Rhode Island property, those with greater estates will likely pay more taxes.

Consider the following example: if a Florida resident dies in 2016 with an estate of \$2 million — a \$500,000 home in Florida, a \$1 million home in Rhode Island, and \$500,000 of other assets (bank accounts, tangible property, life insurance, etc.) — the estate will owe a tax of \$17,600 to the state of Rhode Island, assuming no allowable deductions.

In contrast, if a Florida resident dies with an estate of \$4 million — a \$500,000 home in Florida, a \$1 million home in Rhode Island, and \$2.5 million of other assets — the estate will owe a tax of \$54,000.

Potential method for avoiding estate tax

It is possible, however, for a non-resident to avoid paying an estate tax to Rhode Island.

State law defines property having

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an actual situs in the state of Rhode Island as (1) real estate or tangible personal property located in Rhode Island, or (2) intangible property, but only if the decedent was a resident of Rhode Island.

In 2015, the Rhode Island Division of Taxation issued Declaratory Ruling No. 2015-01, which addressed the estate taxation of a membership interest in a limited liability company. The division explained that a membership interest in an LLC is considered personal property, but the member has no actual interest in the underlying LLC property.

The division went on to explain that an LLC interest of less than 100 percent is considered intangible property and, if owned by a non-resident, would not be subject to the Rhode Island estate tax.

Pursuant to Declaratory Ruling No.

It is possible for a non-resident to avoid paying an estate tax to Rhode Island.

2015-01, a non-resident can transfer any Rhode Island real estate to an LLC with multiple members to avoid the payment of Rhode Island estate tax at death.

Before considering the creation of an LLC for estate tax planning purposes, however, it is important to keep the following in mind:

- An interest in a single-member LLC is not afforded the same treatment as an interest in a multiple-member LLC in Rhode Island. In Declaratory Ruling No. 2015-01, the Division of Taxation explains that an LLC with a single member is considered the same entity as its owner unless the LLC affirmatively elects to be

treated as a corporation for federal tax purposes.

- Unlike intangible property owned by a non-resident, intangible property owned by a Rhode Island resident is subject to the Rhode Island estate tax. Therefore, an interest in a multiple-member LLC owned by a Rhode Island resident will be subject to the Rhode Island estate tax at that resident's death.

- An LLC, whether multi-member or single-member, may not be an appropriate tax planning strategy for assets located in other states with an estate tax or inheritance tax.

Before undertaking any tax planning strategies, attorneys should consult with their clients to discuss the cost of such planning, the appropriate steps and the potential consequences, as well as any future changes to the law. **RIWW**



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