Bailey Cavalieri LLC
ATTORNEYS AT LAW

CLIENT ALERT

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SNOWBIRDS COME HOME: TAX POLICY REVISION INTENDED TO REVERSE OHIO WEALTH AND TALENT DRAIN

As one of his last official acts in office, Governor Taft signed H.B. 73 on January 2, 2007 to increase the amount of time an individual may spend in Ohio before being presumed to be a resident for income tax purposes. This signature capped an effort that began in early 2005 when a bill was introduced in the House to reverse legislative changes made in 1993 which had the unintended consequences of many of Ohio's wealthiest citizens taking their time, talent, and treasure to states with no income tax, like Florida, Nevada and Texas. The 1993 changes required any individual who spends more than 120 days in Ohio to be considered a resident for the purposes of paying Ohio income tax. Thinking that most Ohio retired snowbird residents would spend more than 120 days a year in Ohio, the law was intended to preserve the tax base of many of its wealthiest citizens. Instead, what happened is that many cut virtually all ties with Ohio to avoid paying Ohio income tax. This resulted in a significant drop in support for Ohio businesses, charities, and politicians. The new legislation, which changes the residency test from 120 days to 182 days, was intended to allow snowbirds to continue to consider Ohio home for community support purposes without the financial burden of paying Ohio income tax.

The Department of Taxation estimated that the legislation could result in $25 to $30 million in reduced tax revenue per year from the more lenient domicile requirements and suggested alternatives to mitigate that reduction. The General Assembly did not adopt any of the alternatives in favor of encouraging wealthy citizens to stay engaged in Ohio activities without concerns about additional income tax.

The legislation establishes the "bright line" presumption that an individual with 182 or fewer "contact periods" is not domiciled in Ohio for income tax purposes. A person has one contact period in Ohio if the person spends at least some portion, however minimal, of two consecutive days in Ohio while away from an abode located outside of Ohio. The legislation eliminates the 30 day medical hardship exemption which previously existed. A person must file a statement with the Tax Commissioner on a designated form by April 15th after the close of the tax year verifying that the individual is not domiciled in Ohio and had at least one abode outside of Ohio and specifying where that abode is located. The legislation becomes effective on April 2, 2007, and applies to taxable years beginning in 2007. The presumption created by the filing is irrebuttable, unless the individual fails to timely file the statement as required or makes a false statement. Ohio Revised Code § 5747.24.

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The final Legislative Service Commission Fiscal Note and Local Impact Statement anticipates that several thousand Ohioans will be reclassified as nonresidents for income tax purposes, which could result in several millions of dollars annually of lost income tax revenue. The analysis anticipates some offsetting increased sales tax revenue as existing nonresidents return to Ohio for two additional months.

This new legislation is a very positive development from an estate planning standpoint. For those snowbirds spending six months a year in Florida, they now readily pass the new bright line test and can avoid paying Ohio income tax simply by filing a form at tax time in lieu of a return. For those already nonresidents of Ohio, they can spend an additional two months in Ohio and still meet the bright line test. This legislation recognizes that Ohioans will pursue their economic interests and encourages them to continue to support Ohio without being subjected to Ohio income tax.