2015

Residency Report

Minnesota Department of Revenue

March 13, 2015

March 13, 2015

To the members of the Legislature of the State of Minnesota:

I am pleased to present to you this report on residency. Based on discussions during the 2014 legislative session, the Minnesota Department of Revenue initiated a review of the residency law – both the statute and the rule – and the department's application of them. We undertook an internal review of our process and the law, compared other states' laws, and met with over 100 interested professionals to discuss the issues related to residency.

This report provides information about residency and domicile, reflects the feedback from the listening sessions, analyzes other states' approaches in comparison to Minnesota, and describes changes the department is undertaking to update the process with respect to residency determinations.

Our ongoing efforts to apply the residency law fairly and accurately help achieve the Department of Revenue's vision that everyone reports, pays, and receives the right amount: no more, no less.

We look forward to discussing this report with you.

Sincerely,

Cynthia Bauerly
Commissioner
Minnesota Department of Revenue

Contents

Introduction

Based on discussions during the 2014 legislative session, the department initiated a review of the residency law – both the statute and the rule – and the department's application of them.

This report includes information and feedback gathered during listening sessions conducted with over 100 tax professionals including members of:

- Minnesota Society of Certified Public Accountants
- Minnesota Chamber of Commerce
- Minnesota State Bar Association
- Minnesota Association of Public Accountants
- Minnesota Bankers Association

It includes information on:

- The department's listening sessions with tax professionals
- The history of residency
- How the department approaches residency audits and appeals
- How other states determine residency
- The department's next steps the residency process going forward

About Minnesota Revenue's Listening Sessions

The department conducted listening sessions between May and December 2014. We held six listening sessions with over 100 participants to hear what tax, banking, insurance, and financial professionals think about Minnesota's residency law as they relate to Individual Income taxes.

We gathered feedback from several tax professional and business groups, which included over 100 professionals from the:

- Minnesota Society of Certified Public Accountants
- Minnesota Chamber of Commerce
- Minnesota State Bar Association
- Minnesota Association of Public Accountants
- Minnesota Bankers Association
- Minnesota Insurance and Finance Services Council

These groups shared their ideas and suggestions, allowing the department to identify common themes. Those themes fell into two general areas:

- **Administrative/Procedural Feedback.** Things such as the audit process, documentation, training, communication, and educational materials.
- **Policy Feedback.** Things such as modernizing the factors used to determine residency and clarifying the definitions.

The department recognizes feedback is based on personal interactions and experiences, resulting in different feedback from individuals who attended a listening session. For example, one participant may prefer Minnesota to approach these issues as another state does – or to implement a point system – while another participant has the opposite view. Some may want to remove certain factors from consideration while others do not. To accommodate the varied view points and preferences, this report identifies opportunities around common themes.

Finally, we also held follow up meetings with participants in the first quarter of 2015 to discuss what we learned and anticipated next steps.

What is Residency in Minnesota?

Residency is defined in Minnesota Statute 290.01 and in Minnesota Rule 8001.0300. (See Appendix A.) Determining residency depends on a person's circumstances and may involve several factors in law. For example, if you own more than one residence and you travel between them throughout the year, several factors may be considered to determine residency.

Residency is also closely linked to "domicile" – your permanent residence – a legal concept that evolved through court cases over the years to determine where a person has certain rights and responsibilities.

What is Domicile?

The focus of domicile is not where you spend your time, although that is a consideration, but where your "home" is. It is the answer to the question: Where is the focal point of your life? Your:

- Physical presence
- Family and community connections
- Professional and business associations
- Home
- Statements and declarations of legal residence

Domicile is where the law has jurisdiction over a person and where that person is subject to governmental obligations (such as taxes) and benefits. Domicile affects many aspects of your life as a member of society, such as where you:

- File and pay income taxes
- Are eligible to vote or run for public office
- Can collect social benefits like public assistance
- Need to obtain and maintain your professional licenses

Although the concept of domicile is used to determine all of the rights and responsibilities listed above, the definition of domicile may be different for each of them. For example, you may meet a state's requirements for paying taxes as a resident even if you do not meet the requirements to run for public office or vote there.

For tax purposes, Minnesota uses 26 factors to help determine a person's obligations. (For a full list, see Appendix F.) When factors are removed from this list, it becomes more difficult for taxpayers to demonstrate, and for the department to determine, their domicile.

A (Brief) History of Domicile

The idea of domicile dates back to the Roman Empire and has been refined by a number of court cases in the United States and other nations since the early 1800s. Domicile is a common law concept that a person must have a domicile at all times, and that domicile is not relinquished in one place until established in another.

Minnesota published a domicile regulation in 1945, which is now Minnesota Rule 8001.0300, subpart 2. The state added a list of factors used to determine domicile in 1981 under subpart 3.

The Minnesota Supreme Court issued its first tax domicile opinion on July 16, 1953 (*Miller v. Commissioner of Taxation*). The court defined domicile as “bodily presence in a place coupled with intent to make such place one’s home.” The case is a good example of how a legal definition and an individual’s intent come together to identify “where home is.”

The Minnesota Supreme Court later used the term “locus of life” to describe this set of actions and relationships in an opinion issued January 9, 2013 (*Larson v. Commissioner of Revenue*).

The *Larson* decision and another recent high-profile case – *Mauer v. Commissioner of Revenue* (April 7, 2013) – have drawn greater attention to the residency issue. The cases are summarized below.

1. *Larson v. Commissioner of Revenue* – In *Larson*, the court found that a business person retained domicile in Minnesota, despite his assertion that he had moved to Las Vegas, because his actions, business relationships, and the amount of time spent in the state showed a “continued presence in Minnesota.”

2. *Mauer v. Commissioner of Revenue* **–** In *Mauer*, the court found that an NBA basketball referee failed to prove he had established domicile in Florida even after buying a townhome, registering to vote, and registering a vehicle there. The court noted that Mauer spent far more time in Minnesota and continued to maintain his home, and most of his financial accounts, in Minnesota.

These rulings demonstrate that the court considered many factors in reaching a decision. There was no single factor used as a “silver bullet” to determine intent and domicile. For a more detailed analysis of these cases, see Appendix D and Appendix E.

The Audit Process

The specific criteria Minnesota Revenue uses to decide whom to audit are confidential. (See Minnesota Statute 270B.02, subdivision 2.) Information about how we develop and handle audit leads, however, can be shared and is an important part of the residency determination process to understand.

Our audit process has evolved as the internal and external sources of information we use have significantly improved, allowing us to better identify appropriate audit leads. Selection methods have also improved, allowing us to more effectively identify situations that are appropriate for review.

Identifying a possible audit starts by applying a set of selection criteria and using analytics tools to determine possible issues. The system takes the data input and provides a data output. This output is what we call audit leads. Specialists review these leads to determine if they are valid. Many of the initial audit leads are eliminated at this stage. An employee who is an auditor does not have access to the leads that have been deemed “invalid.”

If the department determines an audit lead is valid, it is distributed to an auditor for review. The auditor conducts extensive pre-audit analysis to determine if there is an issue that needs to be audited. This pre-audit analysis is crucial because a human reviewer can identify information to verify whether the lead is valid that the computer cannot. Auditors conduct this analysis for each lead they receive and do not contact a taxpayer unless the lead proves to be valid. Many potential audits are closed at this stage.

If an auditor verifies a lead is valid, the audit moves forward. The auditor sends a letter to inform the taxpayer they have been selected for an audit. This letter requests more information and outlines the taxpayer's rights during the audit. Depending on the situation, the auditor may request a meeting with the taxpayer. The department strives to provide excellent customer service during this process; the goal is to determine whether the appropriate amount of tax has been paid.

During an audit, the department considers information that is provided by the taxpayer and information that is available from other sources. The taxpayer's information helps the auditor complete an accurate audit assessment. The audit process is interactive, with both sides able to ask questions and clarify the information being considered. This is why building a positive auditor/taxpayer relationship is critical to the audit process. (For an outline of the audit process, see Appendix B.)

The final outcome of an audit can be:

- **No Change –** The taxpayer does not owe any additional tax, interest, or penalty.
- **Additional Amount Due –** The taxpayer owes additional tax, penalty, and interest.
- **Reduction in Amount –** The taxpayer owes less tax than indicated on their return(s). This could result in a refund or simply lower the amount due.

The Appeal Process

When all steps of the audit are completed and there is a change in the taxpayer's liability, a tax order is issued. The tax order shows how much additional tax is due, and explains the taxpayer's right to appeal and the time frame for filing an appeal.

Taxpayers can submit an administrative appeal to Revenue or file an appeal in Minnesota Tax Court. They do not need to file an administrative appeal before filing in tax court.

Administrative Appeal

An administrative appeal is an independent review of the taxpayer's case. A department appeals officer reviews the taxpayer's information and other information used in the audit. The appeals officer may either grant or deny the taxpayer's appeal.

Once a decision is reached, the department sends a "Notice of Determination" to tell the taxpayer if their appeal was granted or denied. If the taxpayer disagrees with this decision, they can file an appeal in Minnesota Tax Court within 60 days from the date of the notice.

Minnesota Tax Court

A taxpayer can appeal a tax order directly to Minnesota Tax Court, or they can submit an administrative appeal to the department first and later decide to file in tax court.

The Tax Court will consider evidence the taxpayer presents and evidence the Attorney General presents on behalf of the department. If the Tax Court issues an adverse decision, the taxpayer has the right to appeal to the Minnesota Supreme Court.

How Other States Handle Domicile/Residency

Each state has its own unique tax laws and ways of administering its tax system. There are, however, a number of common factors and considerations when it comes to residency and domicile. For example:

- 33 states use a set of factors to determine domicile for tax purposes.
- 44 states do not limit the factors that can be considered to determine domicile. For example, Minnesota limits the factors by excluding charitable contributions.
- 36 states consider the number of days a person spends in their state and 18 of them use the same number of days (183) as Minnesota.
- 11 states and Washington, D.C., have an agreement to look at domicile factors similarly by categorizing factors as: Home, Time, Items Near and Dear, and Family Connections. **Note:** These states are members of the North Eastern State Tax Officials Association.

How Minnesota Compares with Other States

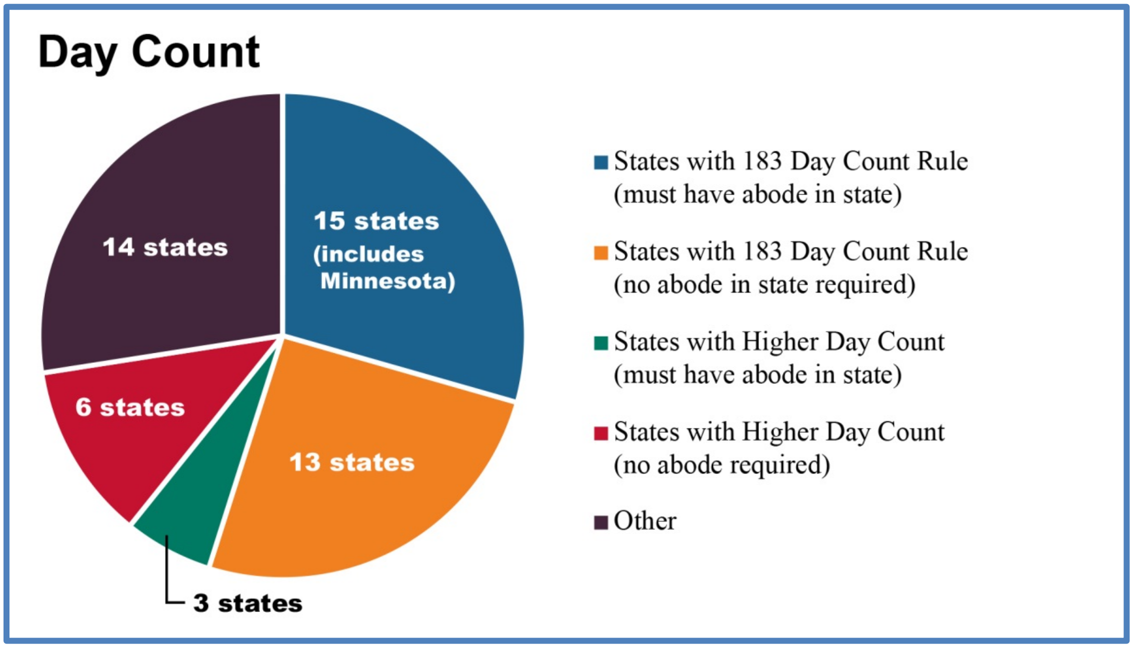
The range of factors and definitions used to determine domicile or residency can make it challenging to make direct comparisons from one state to another.

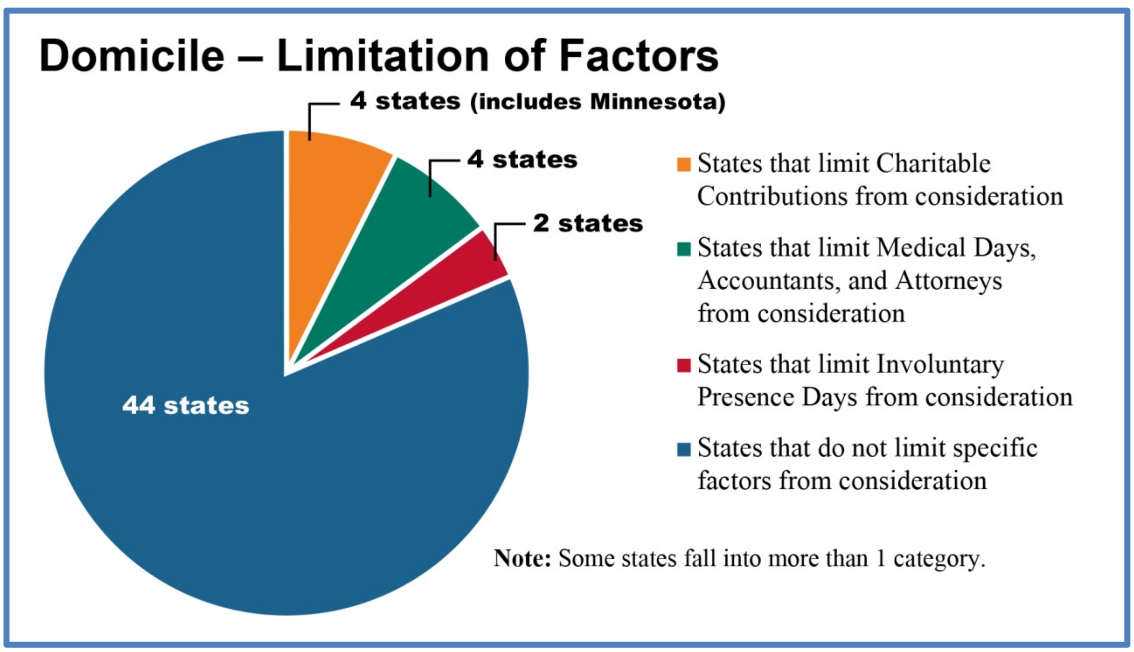
As the graphs below show, Minnesota aligns with many other states that use a set of factors in determining residency. Specifically, we are a part of the majority that uses a day count in our determination. We are among the minority of states that limit some factors in considering domicile. For a detailed look at how other states determine domicile, see Appendix F.

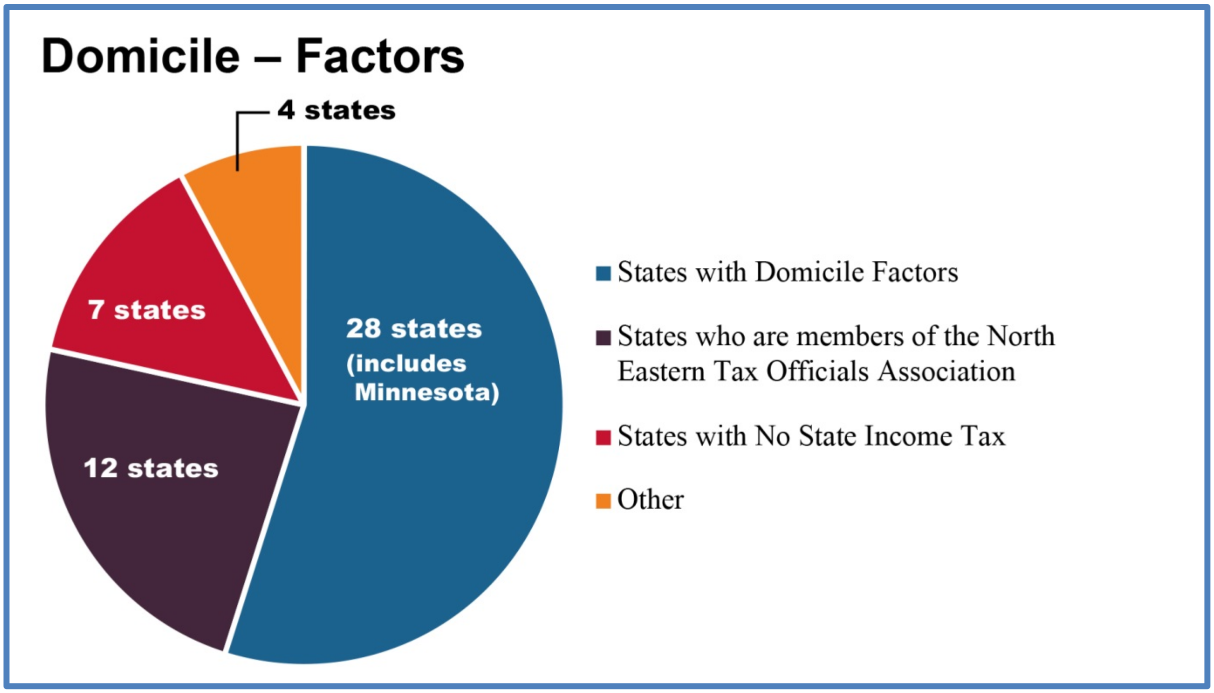
The graphs below show the states' determination of residency in relation to:

- Day count
- Limitation of factors
- Factors

Note: Washington, D.C., is counted as a state for purposes of these graphs.






Domicile – Factors
4 states
7 states
28 states (includes Minnesota)
12 states
States with Domicile Factors
States who are members of the North Eastern Tax Officials Association
States with No State Income Tax
Other

State-to-State: Minnesota and New York Comparison

During our listening sessions, some tax professionals suggested Minnesota should consider handling residency-based audits like New York does. The two states are compared below.

When it comes to defining domicile and residency, Minnesota and New York are similar in several ways. Among them:

- Both states look at the "quality of contacts" a person has with the state when determining domicile.
- Both states evaluate a person's business contacts and use of services in the state, such as medical professionals, business professionals, attorneys, and accountants.
- Neither state considers charitable contributions as a factor in domicile or residency. (New York includes gifts of time as charitable contributions.)

However, Minnesota and New York are different from each other in other ways, such as:

- New York is a member of the North Eastern State Tax Officials Association and has agreed to consider substantially the same factors as other member states when analyzing domicile.
- New York has more day-count rules than Minnesota.
- New York has a broader definition of what qualifies as an "abode."

If Minnesota adopted the same audit methodology as New York, most residency cases would turn out the same as they do now. However, a small number of taxpayers who are not currently required to file and pay Minnesota income tax may have to do so if Minnesota adopted the same rules as New York.

Department's Next Steps

As a result of the valuable information learned while creating this report, the department is making several changes to our process for addressing domicile and residency.

1. We will revise our contact letters and request for information. We will simplify the format, reduce the amount of information we initially request, and include a set of common questions and answers taxpayers have about the audit process.
2. We will modify our questionnaire to collect information in a more efficient manner. We will eliminate questions we can verify through our research.
3. We will modify our procedures and provide additional training to our employees to ensure we have a common, standard approach to requesting and reviewing information for residency audits.
4. We will revise our audit reports to more closely reflect the "intent" component of domicile.
5. We will provide taxpayers and representatives with helpful tips for handling a residency audit.

6. We are updating all website content and centralizing it into a “one stop shop” for residency information.
7. We will issue a Revenue Notice based on the current law and rule that clearly states the following:
   - The mere physical location of a CPA or Attorney providing services is not a factor in determining residency.
   - The department will not look at the location of bank accounts when determining residency.
8. We will update our existing fact sheet and other materials to include a modernized explanation of how we use certain factors to determine residency. Those factors include:
   - **Factor B – Voter Registration.** We will look at where you vote, when you vote, and how you vote (absentee or in-person). If you don’t vote, we will look at where you are registered to vote.
   - **Factor K – Other Professional Licenses.** We will look at the status of your license (active/valid or inactive/invalid) and whether it is for a resident or non-resident.
   - **Factor R - Location of other transactions with financial institutions.** We will look at the location where your transactions occur (ATM, walk-in, where loan application is completed, where the account is opened).
   - **Factor S – Location of place of worship.** We will look at where you physically attend church.
   - **Factor Y – Locations of schools that children attend and tuition status (resident or non-resident).** We will look at how they attend school (face-to-face or online schooling).

Conclusion

Identifying the appropriate residency status of taxpayers is important for the integrity and administration of our state tax system. The changes outlined above will:

- Help ensure consistent, transparent, and fair treatment of all taxpayers
- Make it easier for taxpayers to understand how residency is determined for taxes
- Reduce the time and effort needed for taxpayers who are selected for a residency audit

Appendix A – Minnesota Statute and Rule

Minnesota Statute

Minnesota Statute 290.01, subdivision 7 defines resident as follows:

(a) The term "resident" means any individual domiciled in Minnesota, except that an individual is not a "resident" for the period of time that the individual is a "qualified individual" as defined in section 911(d)(1) of the Internal Revenue Code, if the qualified individual notifies the county within three months of moving out of the country that homestead status be revoked for the Minnesota residence of the qualified individual, and the property is not classified as a homestead while the individual remains a qualified individual.

(b) "Resident" also means any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota, unless:

(1) the individual or the spouse of the individual is in the armed forces of the United States; or

(2) the individual is covered under the reciprocity provisions in section 290.081.

For purposes of this subdivision, presence within the state for any part of a calendar day constitutes a day spent in the state. Individuals shall keep adequate records to substantiate the days spent outside the state.

The term "abode" means a dwelling maintained by an individual, whether or not owned by the individual and whether or not occupied by the individual, and includes a dwelling place owned or leased by the individual's spouse.

(c) Neither the commissioner nor any court shall consider charitable contributions made by an individual within or without the state in determining if the individual is domiciled in Minnesota.

Minnesota Rule

Minnesota Rule 8001.0300 Resident and Domicile Defined; Considerations reads as follows:

Subpart 1. Resident. The term "resident" means:

(a) any individual person who is domiciled in Minnesota, subject to the exception set forth in subpart 9; and

(b) any individual person (other than an individual deemed a nonresident under the Service members Civil Relief Act, United States Code, title 50 appendix, section 574, or an individual eligible for reciprocity under Minnesota Statutes, section 290.081) who is not domiciled in Minnesota but who maintains a place of abode in Minnesota and spends in the aggregate more than one-half of the taxable year in Minnesota.

A person may be a resident of Minnesota for income tax purposes, and taxable as a resident, even though the person is not deemed a resident for other purposes.

Subpart 2. Domicile; definition and presumptions.
The term "domicile" means the bodily presence of an individual person in a place coupled with an intent to make such a place one's home. The domicile of any person is that place in which that person's habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person's domicile. But if a person moves to another jurisdiction with the intention of remaining there permanently or for an indefinite time as a home, that person has lost that person's domicile in this state. The presumption is that a person who leaves this state to accept a job assignment in a foreign nation has not lost that person's domicile in this state.

Except for a person covered by the provisions of the Service members Civil Relief Act, United States Code, title 50 appendix, section 574, the presumption is that the place where a person's family is domiciled is that person's domicile. The domicile of a spouse is the same as the other spouse unless there is affirmative evidence to the contrary or unless the husband and wife are legally separated or the marriage has been dissolved. When a person has made a home at any place with the intention of remaining there and the person's family neither lives there nor intends to do so, then that person has established a domicile separate from that person's family.

The domicile of a single person is that person's usual home. In a case of a minor child who is not emancipated, the domicile of the child's parents is the domicile of the child. The domicile of the parent who has legal custody of the child is the domicile of the child. A person who is a permanent resident alien in the United States may have a domicile in this state. The domicile of a member of the armed forces will be governed by the facts just prior to becoming a member of the armed forces unless the person takes the necessary steps to establish a new domicile.

The mere intention to acquire a new domicile, without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person's status. The presumption is that one's domicile is the place where one lives. An individual can have only one domicile at any particular time. A domicile once shown to exist is presumed to continue until the contrary is shown. An absence of intention to abandon a domicile is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts must be given more weight than declarations. A person who is temporarily employed within this state does not acquire a domicile in this state if during that period the person is domiciled outside of this state.

Subpart 3. Considerations
The following items listed will be considered in determining whether or not a person is domiciled in this state:

A. Location of domicile for prior years;

B. Where the person votes or is registered to vote, but casting an illegal vote does not establish domicile for income tax purposes;

C. Status as a student;

D. Classification of employment as temporary or permanent;

E. Location of employment;

F. Location of newly acquired living quarters whether owned or rented;

G. Present status of the former living quarters; i.e., whether it was sold, offered for sale, rented, or available for rent to another;

H. Whether homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and whether the homestead status of the former living quarters has not been renewed;

I. Ownership of other real property;

J. Jurisdiction in which a valid driver's license was issued;

K. Jurisdiction from which any professional licenses were issued;

L. Location of the person's union membership;

M. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles;

N. Whether resident or nonresident fishing or hunting licenses purchased;

O. Whether an income tax return has been filed as a resident or nonresident;

P. Whether the person has fulfilled the tax obligations required of a resident;

Q. Location of any bank accounts, especially the location of the most active checking account;

R. Location of the other transactions with financial institutions;

S. Location of the place of worship at which the person is a member;

T. Location of business relationships and the place where business is transacted;

U. Location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member;

V. Address where mail is received;

W. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota;

X. Location of jurisdiction from which unemployment compensation benefits are received;

Y. Location of schools at which the person or the person's spouse or children attend, and whether resident or nonresident tuition was charged and;

Z. Statements made to an insurance company, concerning the person's residence, and on which the insurance is based.

Any of the items listed above will not, by itself, determine domicile. Charitable contributions made by a person will not be considered in determining whether that person is will not be considered in determining whether that person is domiciled in Minnesota.

Subpart 4. Days within and days without Minnesota.
In counting the number of days spent within and without Minnesota, a person shall be treated as present in Minnesota on any day if the person is physically present in Minnesota at any time during that day. However, a person in transit between two points outside Minnesota who is physically present in Minnesota less than 24 hours, will not be treated as present in Minnesota on any day during transit.

Items A and B are examples of the application of this subpart:

A. T is flying from New York to California and must change flights in Minnesota. T is scheduled to arrive in Minnesota at 7:00 P.M. on March 1, and is scheduled to depart at 1:00 P.M. on March 2. Since T is in transit between two points outside Minnesota and is present instate less than 24 hours, neither March 1 nor March 2 is treated as a day within Minnesota.

B. T has been in Minnesota from March 1 to April 15. On April 15, T departed from Minnesota at 6:00 A.M. T is treated as present in Minnesota on April 15.

Subpart 5. Records.
Any person domiciled outside Minnesota who maintains a place of abode within Minnesota and claims to be a nonresident of the state must have available for examination adequate records to substantiate that more than one-half of the tax year was spent outside Minnesota.

Adequate records means any contemporaneously kept records that establish the places of physical presence of the person on particular dates. Adequate records include, but are not limited to, calendars, diaries, canceled checks, credit card receipts, and airline tickets.

Subpart 6. Definition of abode.
An abode is a dwelling place permanently maintained by a person, whether or not owned and whether or not occupied by the person. It does not need to be permanent in the sense that the person does not intend to abandon it at some future time. However, a cabin or cottage not suitable for year round use and used only for vacations is not an abode. Additionally, quarters which contain sleeping arrangements but do not contain facilities for cooking or bathing will not generally be considered an abode.

A person who moves a domicile outside Minnesota is not considered to be maintaining an abode in Minnesota even though the person continues to own or rent a dwelling in Minnesota if the person has moved personal furnishings and belongings from the dwelling and is making a good faith effort to sell, lease, or sublease the dwelling.

Subpart 7. Domiciliary residents.
The physical presence test does not apply to persons who are domiciled in Minnesota throughout the tax year. There is no presumption that a person domiciled in Minnesota has lost that domicile if the person is absent from Minnesota over one-half of the tax year.

Subpart 8. Part year domiciliaries.
Persons domiciled in Minnesota who move their domiciles outside Minnesota during the tax year and persons domiciled outside Minnesota who move their domiciles to Minnesota during the tax year are part year residents of Minnesota. The physical presence test does not apply to such persons unless a Minnesota abode is maintained during the period domiciled outside of Minnesota.

Subpart 9. Certain persons deemed nonresidents.
A person domiciled in Minnesota is deemed a nonresident for the period of time that the person is a qualified individual under the Internal Revenue Code, section 911. For a person who has homesteaded the person's principal residence in Minnesota prior to leaving the country, this subpart applies only if the person notifies the county within three months of moving out of the country that homestead status should be revoked and does not file a Minnesota homestead application for any property in which the person has an interest during the period the person is a qualified individual.

Subpart 10. Examples.

Items A to E contain examples of the application of this part:

A. T was domiciled in Minnesota from January 1, 1987, through September 1, 1987, and did not leave the state during that period. On September 2, 1987, T sold the Minnesota dwelling and changed domicile to Texas.

   T was a part year resident of Minnesota in 1987. Although T was physically present in Minnesota over 183 days, the physical presence test does not apply because T did not maintain an abode in Minnesota during the part of the year T was not domiciled in Minnesota.

B. Same facts as item A, but T decided not to sell the Minnesota abode.

   T was a full year resident of Minnesota in 1987. T was physically present in Minnesota over one-half of the year and maintained an abode in Minnesota.

C. Same facts as item A, but T did not sell the Minnesota dwelling although T listed it for sale with a real estate broker at fair market value from September 1 through December 31, 1987.

   T was a part year resident of Minnesota in 1987, assuming T removed personal belongings and furnishings from the Minnesota abode when T changed domicile. Although T was physically present over one-half of the year and continued to own a dwelling in Minnesota, T will not be considered to have maintained an abode in Minnesota because T moved belongings from the dwelling and made a good faith effort to sell the dwelling.

D. T moved from Minnesota to Florida on February 1, 1987. T maintained an abode in Minnesota and lived in that abode May 1, 1987 to September 1, 1987.

T was not a full year resident of Minnesota under the physical presence test. Although T maintained a Minnesota abode, T was not physically present in Minnesota over one-half of the year.

However, the department could review the steps T took to change domicile and could consider T a full year resident if it were determined T remained domiciled in Minnesota.

E. T moved domicile to Minnesota on June 1, 1987. T did not have an abode in Minnesota prior to June 1, 1987. T was physically present in Minnesota throughout the period of June 1, 1987 to December 31, 1987.

   T was a part year resident of Minnesota in 1987. Although T was physically present in Minnesota over one-half of the year, T did not have a Minnesota abode during the part of the year T was domiciled outside the state. Therefore, the physical presence test does not apply.

Appendix B – Audit Process After a Taxpayer is Contacted

Auditor Notifies Taxpayer of Audit, Requests Information	• We send the taxpayer a letter that requests information and includes a Residency Questionnaire and Fact Sheet, and information on their rights and responsibilities. They have 30 days to respond.
Taxpayer Gathers Information (30 Days or Request More Time)	• Over the next 30 days, the taxpayer completes the questionnaire and gathers other information we requested. The taxpayer can work with the auditor if they need more time to gather the data.
Taxpayer Submits Information	• Taxpayer submits questionnaire, documentation, and other information to the auditor. Providing complete information helps the auditor correctly identify where the taxpayer's domicile is located.
Auditor Reviews Information	• The auditor carefully reviews all information from the taxpayer and from other sources. Review time depends on the amount of information received and how the information is organized.
Auditor Requests More Information	• In some cases, we may have questions or need more information. If that happens, we discuss the information we have with the taxpayer and/or send another letter to request information from them.
Taxpayer Gathers and Submits Additional Information	• The taxpayer gathers and submits additional information requested by the auditor. The auditor begins to review the new information and/or contacts the taxpayer to discuss any new questions.
Auditor Reviews Additional Information, Prepares Report	• The auditor carefully reviews the new information. If there are no more questions, the auditor can make a decision or close the audit (if the taxpayer has shown their domicile is outside Minnesota).
Auditor Presents Audit Report to Taxpayer/Representative	• The auditor presents the audit report to the taxpayer/represenative and reviews how domicile and audit results were determined. The taxpayer can offer more information, agree, or disagree with results.
CTC, Tax Order, or Settlement (Depends on Taxpayer Response)	• Taxpayer agrees (Consent to Change) - Pays the amount due. • Taxpayer disagrees or does not respond - Tax Order (see below). • Taxpayer offers to settle - Review, negotiate, accept, or deny offer.
Taxpayer May Appeal Tax Order (Within 60 Days of Order)	• When all the above steps are completed and there is a change in the taxpayer's liability, we issue a Tax Order for the amount due. They have 60 days to appeal to the department or to the Tax Court.

Appendix C – Common Myths About Residency and Taxes

There are many third-party publications that analyze how Minnesota administers the domicile/ residency process. In addition to these publications, verbal discussions occur; like the game of telephone, these conversations change as they are passed from person to person.

This report provides an opportunity to address some of the myths and misunderstandings about how we determine domicile and residency.

Myth 1

If my accountant, CPA, financial planner, or attorney is in Minnesota, that connection will automatically be used as a factor against me in a residency audit.

False. No single factor is used to determine residency. Minnesota Revenue looks at all of the specific facts and circumstances. These professional contacts, whether they are in or out of Minnesota, are a very small part of the entire picture.

Myth 2

Everyone who moves from Minnesota has to prove to the Department of Revenue that they are no longer Minnesota residents.

False. Most people who move from Minnesota never have to prove to the Minnesota Revenue that they have changed domicile.

Myth 3

As long as I am out of Minnesota for more than 183 days, I do not owe Minnesota taxes.

False. If an individual is domiciled in Minnesota, the number of days does not matter and they are subject to Minnesota income tax. An individual will remain domiciled in Minnesota until they take the necessary steps to change their domicile to another state.

Myth 4

If my bank is in Minnesota, I am automatically considered a Minnesota resident.

False. Due to modernization of the banking industry, the mere location of a person's bank does not indicate where a person lives. No single factor is used to determine residency.

Myth 5

Revenue will track where my pets are by the microchips that are implanted and use that against me if the microchip is registered in Minnesota.

False. Minnesota Revenue has no way of knowing about a person's pet's microchip and this is not something the department would require the taxpayer to produce.

Myth 6 **If a Minnesota resident wants to change their domicile to a more tax-friendly state, the break with Minnesota must be complete.**

False. An individual can still have connections with Minnesota even after moving to another state. A change of domicile must be reflected in a change in the quality and quantity of connections with the new state, but there is no requirement to break all ties with Minnesota.

Myth 7 **Even if I am no longer in the state, if I forget to notify someone of my change of address, I will be found to be a Minnesota resident and owe back taxes.**

False. An individual does not have to sever every connection they have with Minnesota. If you forget to change your mailing address with one contact, you will not be considered a Minnesota resident if you have established domicile elsewhere.

Myth 8 **Even if I have moved from Minnesota, I am living somewhere else, and I am a resident of another state, Minnesota can decide I owe back taxes plus penalties and interest.**

It depends. If you truly move to another state, consider yourself to be a resident of that state, and your actions support that intent, you are domiciled in that state. However, if you maintain an abode in Minnesota and spend more than half the year in this state you will be taxed as a resident of Minnesota.

Myth 9 **If I maintain any one of the 26 factors in Minnesota, I will be considered a Minnesota resident for taxes.**

False. No single factor is used to determine residency.

Myth 10 **If I have a rental property in Minnesota, I will be considered a Minnesota resident.**

False. If you do not live in Minnesota and have established domicile in another place, you will not be considered to be domiciled in Minnesota even if you own rental property.

Myth 11 **If I have a hobby, like competitive sailing, and I dock my boat in Minnesota or do some or all of my racing in Minnesota, I will be considered a Minnesota resident.**

False. If you do not live in Minnesota and you have established domicile elsewhere, you will not be considered to be domiciled in Minnesota because you are in Minnesota for vacation or recreational activities.

Myth 12 Minnesota defines domicile differently than the rest of the states.

False. The concept of domicile is similar in all states and for different types of taxes. It is a well-established legal concept. Most states have a very similar definition of domicile with all definitions focusing on intent and the location of the focus on a person's life.

Myth 14 Minnesota requires a taxpayer to establish a "new domicile" and intend to live there before they will consider your Minnesota residency terminated.

True. Like other states, Minnesota requires that you establish a new domicile before you are no longer considered a resident. That is because everyone has to have a tax "home."

Appendix D – Larson v. Commissioner of Revenue

Larson Case

Factors that favored Minnesota:

A, I, M, Q, T, V, W

Other factors that favored Minnesota

- Mr. Larson claimed rental income on his tax return for the NV property that he claimed as his primary residence.
- Mr. Larson claimed that the rental income reported on his tax return was an error, but he never amended his tax return to correct this reported error.
- Most of taxpayers business (Larson Cos.) and buying/selling properties occurred in MN.
- Though Mr. Larson was registered to vote in NV, he never voted in NV.
- Mr. Larson's actions did not support his stated intent of changing his domicile.
- Mr. Larson spent more time in MN than anywhere else.

Factors that favored Nevada:

B, F, G, J, O, U

Other factors that favored Nevada

- Mr. Larson moved the bulk of his clothes, a sizeable wine collection, two pieces of art, and numerous personal possessions to NV.

Factors

A. Location of domicile for prior years;
B. Where the person votes or is registered to vote, but casting an illegal vote does not establish domicile for income tax purposes;
C. Status as a student;
D. Classification of employment as temporary or permanent;
E. Location of employment;
F. Location of newly acquired living quarters whether owned or rented;
G. Present status of the former living quarters; i.e., whether it was sold, offered for sale, rented, or available for rent to another;
H. Whether homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and whether the homestead status of the former living quarters has not been renewed;
I. Ownership of other real property;
J. Jurisdiction in which a valid driver's license was issued;
K. Jurisdiction from which any professional licenses were issued;
L. Location of the person's union membership;
M. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles;
N. Whether resident or nonresident fishing or hunting licenses purchased;
O. Whether an income tax return has been filed as a resident or nonresident;
P. Whether the person has fulfilled the tax obligations required of a resident;
Q. Location of any bank accounts, especially the location of the most active checking account;
R. Location of the other transactions with financial institutions;
S. Location of the place of worship at which the person is a member;
T. Location of business relationships and the place where business is transacted;
U. Location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member;
V. Address where mail is received;
W. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota;
X. Location of jurisdiction from which unemployment compensation benefits are received;
Y. Location of schools at which the person or the person's spouse or children attend, and whether resident or nonresident tuition was charged and;
Z. Statements made to an insurance company, concerning the person's residence, and on which the insurance is based.

Mauer Case

Factors that favored Minnesota:

A, G, M, Q, T, U, V, W

Other factors that favored Minnesota

- Primary employment factor neutral; however taxpayer also had secondary employment in MN.
- House was listed for sale, but not at a marketable price, there were no open houses, and had the property insured for $1.6 million for personal property.
- Voluntary membership in an organization
- In his travel log, Mr. Mauer referred to MN as "return[ing] home" and time he spent in Fort Meyers, FL as "vacation."
- Taxpayer spent significantly more time in MN than in Florida.
- Mr. Mauer asserted that he wanted to avoid MN winters; this was not supported by his actions.
- The majority of Mr. Mauer's travel was originated in or was departing from MN.
- NBA Officials Media Guide listed MN as Mr. Mauer's home address.
- Mr. Mauer stated that he never wanted to, and never would, go to Florida in July, August, and September because of the humidity and the hurricanes.
- Mr Mauer's travel patterns were the same before and after claimed domicile change, spending most of those days in MN and primarily traveling in and out of MN.

Factors that favored Florida:

B, F, H, J, I, O

Other factors that favored Florida

- Taxpayer signed a Florida Declaration of Domicile (in front of notary in MN).
- Taxpayer terminated homestead status on MN home and homesteaded FL condo.
- Opened a bank account in FL.

Factors

A. Location of domicile for prior years;
B. Where the person votes or is registered to vote, but casting an illegal vote does not establish domicile for income tax purposes;
C. Status as a student;
D. Classification of employment as temporary or permanent;
E. Location of employment;
F. Location of newly acquired living quarters whether owned or rented;
G. Present status of the former living quarters; i.e., whether it was sold, offered for sale, rented, or available for rent to another;
H. Whether homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and whether the homestead status of the former living quarters has not been renewed;
I. Ownership of other real property;
J. Jurisdiction in which a valid driver's license was issued;
K. Jurisdiction from which any professional licenses were issued;
L. Location of the person's union membership;
M. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles;
N. Whether resident or nonresident fishing or hunting licenses purchased;
O. Whether an income tax return has been filed as a resident or nonresident;
P. Whether the person has fulfilled the tax obligations required of a resident;
Q. Location of any bank accounts, especially the location of the most active checking account;
R. Location of the other transactions with financial institutions;
S. Location of the place of worship at which the person is a member;
T. Location of business relationships and the place where business is transacted;
U. Location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member;
V. Address where mail is received;
W. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota;
X. Location of jurisdiction from which unemployment compensation benefits are received;
Y. Location of schools at which the person or the person's spouse or children attend, and whether resident or nonresident tuition was charged and;
Z. Statements made to an insurance company, concerning the person's residence, and on which the insurance is based.

Appendix F – How Minnesota Compares to Other States

Key (for Day Count): ***A*** *= Must have abode in the state for the tax year* ***d*** *= Days* ***m*** *= Months*

State	State Income Tax	Domicile Factors/ Tax Compact	Day Count	Residency/Domicile – Differences From Minnesota for Tax Purposes
Alabama	Yes	Factors	7 m	Domicile – established by birth, choice, or by operation of law
Alaska	No	Factors		No substantive difference
Arizona	Yes	Factors	9 m	No substantive difference
Arkansas	Yes	Factors	A + 6 m	No substantive difference
California	Yes	Factors	9 m	No substantive difference
Colorado	Yes	Factors	A + 6 m	No substantive difference
Connecticut	Yes	Compact	A + 183 d	No substantive difference
Delaware	Yes	Compact	A + 183 d	No substantive difference
Florida	No	Factors		No substantive difference
Georgia	Yes	Day Count	183 d	Legal resident if present on Dec. 31, resides in Georgia on a more or less regular or permanent basis
Hawaii	Yes	Factors	200 d	Domicile – established by birth, choice, or by operation of law
Idaho	Yes	Factors	A + 270 d	Intent is to tax individuals if they are physically present in the state enjoying the benefit of its government.
Illinois	Yes	Factors		Intent is to tax individuals if they are physically present in the state enjoying the benefit of its government, except those who are in the state temporarily, and not to tax individuals who are outside the state (even if domiciled in IL).
Indiana	Yes	Factors	A + 183 d	No substantive difference

State	State Income Tax	Domicile Factors/ Tax Compact	Day Count	Residency/Domicile – Differences From Minnesota for Tax Purposes
Iowa	Yes	Factors - Includes doctors, dentists, attorneys, CPAs, and other professional contacts	A + 183 d	Individuals who are domiciled or maintain a permanent abode in the state. Domicile is presumed for individuals who have an abode in the state and do any of the following: ▪ claim homestead or military tax credit ▪ are registered to vote ▪ have IA driver's license ▪ resides in IA for more days of the year than in any other state
Kansas	Yes	Factors	6 m	No substantive difference
Kentucky	Yes	Nonspecific Factors	183 d	Domiciled in KY the last day of the tax year
Louisiana	Yes	Factors	6 m	Resident if domiciled in LA on the last day of the tax year, for more than 6 months, AND have an abode in the state
Maine	Yes	Nonspecific Factors/ Tax Compact	A + 183 d	Safe harbors for individuals who did not maintain an abode for entire tax year, OR who maintained an abode elsewhere for the entire tax year and spent 30 days or less in the state
Maryland	Yes	Tax Compact	183 d	Resident if domiciled in MD on last day of the tax year; OR maintain an abode in MD for over 6 months, OR spends 183 days in MD.
Massachusetts	Yes	Tax Compact	A + 183 d	No substantive difference; factors very similar to MN.
Michigan	Yes	Factors	183 d	No substantive difference; factors very similar to MN.
Minnesota	Yes	Factors	183 d	

State	State Income Tax	Domicile Factors/ Tax Compact	Day Count	Residency/Domicile – Differences From Minnesota for Tax Purposes
Mississippi	Yes	Factors (more or less)		Domiciled if maintains an abode; OR satisfies voter requirements; OR has a homestead exemption; OR resided in the state on a "more or less" permanent basis.
Missouri	Yes	Neither	30/183 d	Domiciled and abode in the state; OR, domiciled with abode outside of state + 30 days in state; OR, not domiciled but maintained abode + 183 days in the state
Montana	Yes	Factors		No substantive difference
Nebraska	Yes	Factors		No substantive difference
Nevada	No	Factors		
New Hampshire	Yes (On dividends and interest only)	Tax Compact		No substantive difference
New Jersey	Yes	Tax Compact	A + 183 d	No substantive difference
New Mexico	Yes	Factors	185 d	No substantive difference
New York	Yes	Tax Compact	A + 183 d	No substantive difference
North Carolina	Yes	Factors	183 d	Intent is to tax individuals who are domiciled in NC or reside in the state at any time during the tax year. In absence of proof to contrary, more than 183 days constitutes residency.
North Dakota	Yes	Neither	A + 7 m	No substantive difference
Ohio	Yes	Factors	183 d	Factors include number of "contact days," individual activities in other tax years, and any other fact not prohibited by Commissioner. Presumption of non-residency if less than 182 contact days, at least one abode elsewhere, and file affidavit of non-OH domicile by 4/15.
Oklahoma	Yes	Factors	7 m	No substantive difference
Oregon	Yes	Factors	A + 200 d	No substantive difference
Pennsylvania	Yes	Tax Compact	A + 183 d	No substantive difference

State	State Income Tax	Domicile Factors/ Tax Compact	Day Count	Residency/Domicile – Differences From Minnesota for Tax Purposes
Rhode Island	Yes	Tax Compact	A + 183 d	No substantive difference
South Carolina	Yes	Factors		Does not define “domicile” in statute or regulations, but instructions on Form SC1040 discuss permanent home, center of financial, social and family life, and intent to return,
South Dakota	No			
Tennessee	Yes (On dividends and interest only)	Factors	A + 6 m	No substantive difference
Texas	No			
Utah	Yes	Factors	A + 183 d	No substantive difference
Vermont	Yes	Tax Compact	183 d	No substantive difference
Virginia	Yes	Factors	183 d	No substantive difference
Washington	No	Factors		
West Virginia	Yes	Factors	183 d	No substantive difference
Wisconsin	Yes	Factors		No substantive difference
Wyoming	No	Factors		
Washington, D.C.	Yes	Tax Compact	A + 183 d	No substantive difference