

# CHAPTER 8001

## DEPARTMENT OF REVENUE

### INCOME AND FRANCHISE TAXES

#### TAX DEFINITIONS

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#### 8001.0100 PARTNERSHIP AND PARTNER.

Subpart 1. **Partnership.** The term "partnership" includes the following:

- A. syndicates;
- B. groups;
- C. pools;
- D. joint ventures; and
- E. other unincorporated organizations through or by means of which any business, financial operation, or venture is carried on and which is not, within the meaning of this act, a trust, estate, or corporation.

Subp. 2. **Partner.** The term "partner" includes a member in such a syndicate, group, pool, joint venture, or unincorporated organization.

Some of the characteristics which must be present in a partnership are enumerated as follows:

- A. an agreement between two or more parties to engage in a specific business or undertaking;
- B. an investment by each partner of capital or services, or both;
- C. a mutual right to contract debts in the name of the partnership;
- D. a mutual liability to the debts contracted;
- E. a right to an annual accounting and division of the profits or losses; and
- F. a termination of the partnership upon the death of a partner or upon a change in the ownership of a participating interest.

Subp. 3. **Certain property interests not necessarily a partnership.** Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or a part ownership does not of itself establish a partnership whether such coowners do or do not share any profits made by the use of the property. The sharing of gross returns does not of itself establish a partnership whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

Subp. 4. **When partnership form taxed as corporation.** An organization which is in form a partnership may be considered an association taxable as a corporation if:

- A. it is not interrupted by the death of a member or change in the ownership of a participating interest during the agreed period of its existence; and
- B. its management is centralized in one or more persons in their representative capacities.

**Statutory Authority:** *MS s 290.52*

#### 8001.0200 CORPORATION DEFINED.

Subpart 1. **In general.** The term "corporation" includes joint stock companies and corporations existing under the laws of any state or country; certain partnerships; associations (other than ordinary partnerships); and common law trusts organized or conducted for profit.

Subp. 2. **Certain partnerships classified as corporations.** An organization which is in form a partnership may be considered an association taxable as a corporation if:

- A. it is not interrupted by the death of a member or change in the ownership of a participating interest during the agreed period of its existence; and

B. its management is centralized in one or more persons in their representative capacities.

If a partnership is classified as a "corporation," the income received by the members from the earnings of such partnership will be treated in their personal returns in the same manner as dividends from corporations.

**Subp. 3. Limited partnerships.** For all taxable years beginning with and subsequent to 1939, a limited partnership is classified for the purpose of this act as an ordinary partnership, or, on the other hand, as an association taxable as a corporation, depending upon its character in certain material respects. If the organization is not interrupted by the death of a general partner or by a change in the ownership of this partner's participating interest, and if the management of its affairs is centralized in one or more persons acting in a representative capacity, it is taxable as a corporation. For want of these essential characteristics, a limited partnership is to be considered as an ordinary partnership, notwithstanding other characteristics conferred upon it by local law.

**Subp. 4. Certain trusts classified as corporations.** In cases where trustees hold property for the collection of the income and its distribution among the beneficiaries of the trust, the trust is not classified as a "corporation." Where the trustees are not restricted to the mere collection of funds and their payment to the beneficiaries but possess powers similar to those exercised by the directors in a corporation for the purpose of carrying on a business enterprise, the trust is classified as a "corporation." The distinction is that between the activity or purpose for which an ordinary, strict trust of the traditional type would be created and the activity or purpose for which a corporation for profit might have been formed.

**Statutory Authority:** *MS s 290.52*

**History:** *17 SR 1279*

#### **8001.0300 RESIDENT AND DOMICILE DEFINED; CONSIDERATIONS.**

**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 Soldiers' and Sailors' Relief Act of 1940, 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.

**Subp. 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 shall be 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 shall have 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.

The presumption is that the place where a person's family is domiciled is that person's domicile. The domicile of a spouse shall be 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 shall have established a domicile separate from that person's family.

The domicile of a single person is that person's usual home. In 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 shall 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 such period the person is domiciled without this state.

**Subp. 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 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 one 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 domiciled in Minnesota.

**Subp. 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 in-state 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.

**Subp. 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.

**Subp. 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.

**Subp. 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.

**Subp. 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.

**Subp. 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, if no Minnesota homestead application is filed for any property in which the person has an interest during the period the person is a qualified individual. A homestead application filed before the move to a foreign country does not affect a person's eligibility for this exception.

**Subp. 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.

**Statutory Authority:** *MS s 290.52*

**History:** *12 SR 2746; 17 SR 1279*

#### **8001.0400 FIDUCIARY DEFINED.**

**Subpart 1. Definition.** A fiduciary means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any position of peculiar confidence toward other persons or corporations. For income tax purposes a fiduciary is a person who holds in trust an estate to which another has the beneficial title or interest, or receives and controls the income of another, as in the case of receivers.

**Subp. 2. Agent distinguished.** An agent is not necessarily a fiduciary, although a fiduciary relationship may exist between a principal and an agent. For instance, a real estate agent may be in complete control of the management of property with authority to execute leases and deal with tenants entirely on the agent's own recognizance, periodically turning over the net proceeds from the rental of the property to the agent's principal. Even though such agent receives this authority by virtue of power of attorney the agent is not a fiduciary within the meaning of the act. In any case where business is transacted through the principle of agency, and no legal trust has been created, the liability under this act to file returns rests with the principal.

**Statutory Authority:** *MS s 290.52*

**History:** *17 SR 1279*

**8001.0500** [Repealed, L 1987 c 268 art 1 s 128]

**8001.0600** [Repealed, L 1987 c 268 art 1 s 128]

**8001.0700** [Repealed, L 1987 c 268 art 1 s 128]

**8001.9000 INCORPORATION BY REFERENCE OF INTERNAL REVENUE CODE.**

An incorporation by reference of the Internal Revenue Code in Minnesota Statutes, chapter 290 or 290A shall be interpreted in accordance with any regulations or rulings adopted or issued by the Internal Revenue Service which govern the referenced provisions.

**Statutory Authority:** *MS s 290.52*