

1 Department of Revenue

2

3 Adopted Permanent Rules Relating to the Definition of Resident
4 and Domicile

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6 Rules as Adopted

7 8001.0300 RESIDENT AND DOMICILE DEFINED; CONSIDERATIONS.

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

9 A. any individual person who is domiciled in

10 Minnesota, subject to the exception set forth in subpart 9; and

11 B. any individual person (other than an individual
12 deemed a nonresident under the Soldiers' and Sailors' Relief Act
13 of 1940, United States Code, title 50 appendix, section 574, or
14 an individual eligible for reciprocity under Minnesota Statutes,
15 section 290.081) who is not domiciled in Minnesota but who
16 maintains a place of abode in Minnesota and spends in the
17 aggregate more than one-half of the taxable year in Minnesota.

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

21 Subp. 2. [Unchanged.]

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

25 A. to Z. [Unchanged.]

26 Any one of the items listed above will not, by itself,
27 determine domicile.

28 Charitable contributions made by a person will not be
29 considered in determining whether that person is domiciled in
30 Minnesota.

31 Subp. 4. Days within and days without Minnesota. In
32 counting the number of days spent within and without Minnesota,
33 a person shall be treated as present in Minnesota on any day if
34 the person is physically present in Minnesota at any time during
35 that day. However, a person in transit between two points



1 outside Minnesota who is physically present in Minnesota less
2 than 24 hours, will not be treated as present in Minnesota on
3 any day during transit.

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

6 A. T is flying from New York to California and must
7 change flights in Minnesota. T is scheduled to arrive in
8 Minnesota at 7:00 P.M. on March 1, and is scheduled to depart at
9 1:00 P.M. on March 2. Since T is in transit between two points
10 outside Minnesota and is present instate less than 24 hours,
11 neither March 1 nor March 2 is treated as a day within Minnesota.

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

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

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

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

34 A person who moves a domicile outside Minnesota is not
35 considered to be maintaining an abode in Minnesota even though
36 the person continues to own or rent a dwelling in Minnesota if

1 the person has moved personal furnishings and belongings from
2 the dwelling and is making a good faith effort to sell, lease,
3 or sublease the dwelling.

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

9 Subp. 8. **Part-year domiciliaries.** Persons domiciled in
10 Minnesota who move their domiciles outside Minnesota during the
11 tax year and persons domiciled outside Minnesota who move their
12 domiciles to Minnesota during the tax year are part-year
13 residents of Minnesota. The physical presence test does not
14 apply to such persons unless a Minnesota abode is maintained
15 during the period domiciled outside of Minnesota.

16 Subp. 9. **Certain persons deemed nonresidents.** A person
17 domiciled in Minnesota is deemed a nonresident for the period of
18 time that the person is a qualified individual under the
19 Internal Revenue Code, section 911, if no Minnesota homestead
20 application is filed for any property in which the person has an
21 interest during the period the person is a qualified
22 individual. A homestead application filed before the move to a
23 foreign country does not affect a person's eligibility for this
24 exception.

25 Subp. 10. **Examples.** Items A to E contain examples of the
26 application of this part:

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

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

36 B. Same facts as item A, but T decided not to sell

1 his Minnesota abode.

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

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

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

17 D. T moved from Minnesota to Florida on February 1,
18 1987. T maintained an abode in Minnesota and lived in that
19 abode May 1, 1987 to September 1, 1987.

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

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

27 E. T moved his domicile to Minnesota on June 1,
28 1987. T did not have an abode in Minnesota prior to June 1,
29 1987. T was physically present in Minnesota throughout the
30 period of June 1, 1987 to December 31, 1987.

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