

**RESIDENCY AND TAXES:
CHARITABLE CONTRIBUTIONS MAY NOT BE CONSIDERED;
STAYING OUT OF MINNESOTA FOR MORE THAN 183 DAYS MAY NOT BE
ENOUGH**

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Some donors wishing to change state residency for tax purposes may have ceased giving to Minnesota organizations. Are gifts to Minnesota charities a factor in determining whether an individual is a Minnesota resident for tax purposes? Nothing could be further from the truth. Minnesota law specifically provides that “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 [a resident] in Minnesota.” In other words, Minnesota taxing authorities are prohibited from considering the taxpayer’s charitable contributions when determining whether the individual is a Minnesota resident. Donors in the process of establishing residency outside of Minnesota need not avoid gifts to Minnesota organizations.

However, individuals must also be aware of the myth that “If I am out of Minnesota for more than 183 days in any given year, I will not be a Minnesota resident for tax purposes.” As simple as the statement may seem, it is missing half of the puzzle in determining whether an individual is a Minnesota resident. The statute and case law provide that the first thing that must be considered in determining residency for taxpaying purposes is an individual’s “domicile.” Under Minnesota law, “domicile” means the “bodily presence of an individual person in a place coupled with an intent to make such place one’s home.” An individual need not prove that he or she abandoned a Minnesota domicile, but rather must prove that he or she has established a new domicile in another state.

The Minnesota Department of Revenue has articulated 26 factors to weigh in considering whether an individual’s domicile is in Minnesota or another jurisdiction. (Charitable contributions are not included in the 26 factors.) Although analysis of each of the factors is beyond the scope of this article, suffice it to say that one must look at the individual’s contacts and connections with each jurisdiction to determine a person’s domicile. Therefore, if under the 26 factors an individual has a closer connection with Minnesota, Minnesota will be considered the individual’s domicile, subjecting the individual to Minnesota tax, even though the individual is not physically present in Minnesota for 183 days or more.

Recent cases in Minnesota have focused on what is known as “Factor W” of the Department’s 26 factors. Factor W is the “percentage of time (not counting hours of employment) that a person is physically present in Minnesota and the percentage of time (not counting hours of employment) that a person is physically present in each jurisdiction other than Minnesota.” In those cases, there have been a number of factors evidencing Minnesota domicile and a number of factors evidencing domicile in another jurisdiction. In the cases where factors were “split,” the courts looked to the amount of time that the person was physically present in each jurisdiction. For example, if an individual spent a greater percentage of time in Minnesota than in the jurisdiction into which he or she claimed to be domiciled (e.g., there is sufficient amount of travel outside of that jurisdiction), Factor W was tilted in favor of the individual being considered a Minnesota domicile. In one such case, the taxpayer was in Minnesota 24% of the time, in Nevada (the state

of claimed domicile) 6% of the time, and Mexico 36% of the time. Thus, even though the individual was outside of Minnesota for more than one-half of the year, Factor W was weighed in favor of finding the individual maintained a Minnesota domicile.

In addition to dispelling the myth that giving to Minnesota charities, in and of itself, will cause a person to be a Minnesota resident, it is also critical to dispel the myth that mere absence from the state for more than 183 days in a given year will result in an individual avoiding Minnesota income tax. Careful consideration and a knowledge of the factors is important for individuals where tax residency is an issue.

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