Residency for Minnesota Purposes

With a focus on legislative and administrative developments

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1. Residency

Residency

- **Residency** is generally defined by two rules:
  - Domicile (permanent residency); or
  - The 183-day rule.
- **Minnesota residents** are people who meet the conditions of permanent residency or the 183-day rule.
- **Part-year residents** are people who moved during the year into Minnesota with the intention of remaining, or moved out of Minnesota and have established a permanent residence elsewhere.
- **Nonresidents** earn income in Minnesota but are permanent residents of another state or country.

Permanent Residency

- Your permanent residence (domicile) is the place you intend to make your home for a permanent or indefinite period of time. It is your legal residence and will continue until you take steps to establish a new residence.
- Permanent residency is determined by:
  - Property ownership and residence
  - Financial data
  - Licenses and registrations
  - Affiliations
  - Higher education
  - Family and dependents

Changing Residency

- Changing legal residence requires:
  - Physical presence in a new location, and
  - Intent to remain there permanently or indefinitely
- In determining residency, both your words and actions are considered, but your actions carry more weight than words.

The 183-Day Rule

- If you are a resident of another state, you may still be taxed as a Minnesota resident under the 183-day rule.
- This rule depends on two conditions:
  1. You spend at least 183 days in Minnesota (any portion of a day counts as a full day)
  2. You or your spouse own, rent or occupy an abode – a self-contained living unit, suitable for year-round use, that is equipped with its own cooking and bathing facilities – in Minnesota.
- If both conditions apply, you are a Minnesota resident for the length of time the second condition applies. If the second condition applied for the entire year, you are considered a full-year Minnesota resident for income tax purposes. If it applied for less than a full year, you are considered a part-year resident.

2. Part-Year Residents

Are You a Part-Year Resident?

- You're considered a part-year resident of Minnesota if you:
  - moved to or from Minnesota during the year – or if you are a resident alien or nonresident alien who has lived in Minnesota and elsewhere in the United States; or
  - spent at least 183 days in Minnesota and maintained an abode in Minnesota for a portion of the year. In this case, you are considered a Minnesota residence for income tax purposes for the length of time you maintained an abode in Minnesota, even though you may have been domiciled in another state for the full year.

Income Requirements

- If you are a part-year resident, you are required to file Form M1 if your Minnesota gross income meets the minimum filing requirement for the current year.
- These steps determine if you are required to file Form M1:
  - Determine the total gross income included on your federal return that you received while you were a Minnesota resident, regardless of where it was earned or where the property or business that produced it was located.
  - Determine the total of the types of income you received while you were a Minnesota nonresident.
  - Add the results of the first two steps. If the total meets the minimum filing requirement for the year, you must file Form M1 and Schedule M1NR.

Residency and Taxation

- For the portion of the year you are a Minnesota resident, you are taxed on all income, regardless of where you earned it.
- For the portion of the year you were a nonresident, you must pay tax on income derived from Minnesota sources, including wages for work performed in Minnesota.
- Part-year residents may qualify for Minnesota credits.

3. Nonresidents

Are You a Nonresident Required to File Form M1?

- You are considered a nonresident if you are domiciled in another state and you did not meet the 183-day rule for Minnesota.
- As a nonresident, you are required to file Form M1, *Minnesota Individual Income Tax Return*, and Schedule M1NR, *Nonresident/Part-Year residents,* if your gross income from Minnesota sources is more than the minimum filing requirement for the current year.
- If you are married and live with your spouse, both you and your spouse are presumed to have the same state of residence for tax purposes.
- Most credits are available to nonresidents, though they may be prorated.

Not a U.S. Citizen?

- If you're a resident alien and your home is Minnesota, follow the rules that apply to Minnesota residents.
- If you moved into or out of Minnesota during the year, follow the rules that apply to part-year Minnesota residents.
- If you are a nonresident alien who has worked in Minnesota, you must follow the federal guidelines and the Minnesota guidelines for nonresident aliens.

Income Requirements

- If your gross income earned in Minnesota and from sources in Minnesota is more than the minimum filing requirement, you are required to file Minnesota Form M1.
- Although *gross* income determines whether you must file a Minnesota return, only net income is ultimately taxed.
- Your income will be apportioned when you complete Schedule M1NR.
- **Below filing requirement.** If you are not required to file a Minnesota return because your Minnesota income is below the minimum filing requirement and your employer withheld Minnesota tax from your wages, you can get a refund by filing Form M1 and Schedule M1NR.

Business Income

- Nonresidents who receive income from a business with operations in Minnesota may be required to pay tax on that income. If your share of the Minnesota gross earnings meets the minimum filing requirement, you must file a Minnesota return.

Business Income

- **Sole proprietors and single member LLCs** operated by nonresidents of Minnesota should compute the portion of gross business income that is taxable by Minnesota using the same “sales factor apportionment” that corporations use. Three-factor formula still used for computing “minimum fees.”
- **Partnership and S corporation income.** Nonresident partners and shareholders have to pay tax on income received from a partnership or S corporation that operates in Minnesota. Your share of the income taxable by Minnesota is found on Schedule KPI or Schedule KS.
- **Sale of partnership interest**. If you sell any portion of your interest in a partnership, some or all of the gain may be taxable.

Other Items to Consider

- **Estimated Tax.** If your income is not subject to Minnesota withholding and you expect to owe more than $500 of Minnesota tax, you may be required to pay quarterly estimated tax.
- **Prior-year Losses.** Losses must be claimed in the same year as they are claimed on the federal return. Minnesota does not allow the separate carryover of losses.

4. Reciprocity

Reciprocity

- Employees who are employed outside their state of residency may be subject to income tax laws of two states – their resident state and the state in which they're employed.
- Reciprocity helps to prevent the same personal service income from being taxed by more than one state.
- Generally, only your home state will tax your personal service income earned while working in a reciprocity state.

Personal Service Income

- Reciprocity applies only to personal service income, which is typically thought of as salary or wages. This includes:
  - wages
  - salaries
  - tips
  - commissions
  - fees
  - bonuses
- Therefore, if you are a Minnesota resident who works in a reciprocity state and your only income from that state is personal service income, you are not required to file an income tax return with that state.

Other Types of Income

- All other types of taxable income you receive from Minnesota sources do not qualify for reciprocity and may be assigned to your home state and/or the state in which the income was derived.
- If you're a Minnesota resident, you must pay Minnesota tax on all taxable income, regardless of where it was derived. However, if you paid income tax to both Minnesota and to the other state on the same income (other than personal service income), you may be eligible for a credit when you file your return.

Business Income

- There are many instances when business income generated in Minnesota does not qualify for reciprocity.
- If you own a business that sells a product, the income earned from the sale of that product will be taxed by Minnesota, even if you’re a resident of Michigan or North Dakota. This is true whether you own the business as a sole proprietor or as a partner in a partnership.
- Only personal compensation for professional services personally provided by you qualifies for reciprocity. If the business income generated by your employees or resulting from the sale of goods is more than incidental, the income does not qualify.

5. Military Personnel

Military Subtraction

- All income earned from federal active service in the US/UN Military is a subtraction.

Determining Residency

- Members of the military and their spouses remain domiciled in the state in which they have established permanent residency until they make the necessary steps to change their residency.
- If you are a resident of another state who is stationed in Minnesota, being in Minnesota for over half of the year does not make you a resident of Minnesota. The 183-day rule does not apply to military members or their spouses, unlike civilian nonresidents.

Income and Filing Requirements

- **Minnesota Residents.** If you are a resident of Minnesota for the entire year and are required to file a federal income tax return, you must also file Minnesota Form M1, *Individual Income Tax Return.*
- You are not required to file a Minnesota return if your gross income included on your federal return, minus any compensation received for federal active service, is less than the minimum filing requirement for the year.
- **Subtractions.** As a Minnesota resident, you must pay Minnesota tax on taxable income you received from all sources. You are allowed a subtraction for military compensation, if included in federal taxable income.

Home Sales

- Minnesota follows the federal guidelines. You may exclude the gain on the sale of your Minnesota home if you excluded it federally. However, you must include the gain as household income when filing form M1PR, *Property Tax Refund.*

Part-Year Residents and Nonresidents of Minnesota

- Even though your military pay is not taxed by Minnesota during the period of time you are a nonresident, you may be required to pay Minnesota tax on other types of income you received or earned in Minnesota, such as income from a civilian job, business income and gambling winnings.
- As a part-year resident or nonresident of Minnesota, you are required to file Form M1 if your Minnesota gross income meets the minimum filing requirement for the year.
- Minnesota gross income includes income you received from all sources (including sources not in Minnesota) while you were a Minnesota resident, and any income you earned in Minnesota or from sources in Minnesota while you were a nonresident.

Part-Year Residents and Nonresidents of Minnesota

- If you’re required to file a Minnesota return, part-year residents and nonresidents must also complete Schedule M1NR, Nonresidents/Part-Year Residents, to determine the income taxable to Minnesota.
- If you’re a resident of another state required to file a Minnesota return, you are allowed a subtraction for your active duty military pay, and your military pay is removed when calculating Minnesota tax.
- If you’re not required to file a Minnesota return and Minnesota taxes were withheld from your income or you paid estimated tax, you must file Form M1 and Schedule M1NR to receive a refund.

Military Pensions

- Military pensions of Minnesota residents are taxable by Minnesota. Therefore:
  - if you move into Minnesota, your pension becomes taxable once you become a Minnesota resident, even if the pension was earned prior to moving to Minnesota
  - if you move out of Minnesota and establish a new state of domicile, your pension is not taxed by Minnesota.

Death While Serving in Armed Forces

- If a military member dies while in active service, that member's Minnesota income tax liability will not be imposed for that year, and any outstanding debts for prior year taxes and penalties will be abated.
- A claim for refund of any tax paid may be filed within seven years from the date the return was filed for any years in which the decedent was in active service.
- **Joint Return.** If the taxpayer filed a joint return for any year, the tax abated or refunded will be based on the following ratio: divide the tax liability the military member would have paid had he or she filed a separate return by the total tax liability they would have paid had they each filed separate returns.

Military Service Credit

- If you served in a combat zone or qualified hazardous duty area anytime on or after Jan. 1, 2010, you may be eligible for a refundable credit.
- The credit is $120 for each month or part of a month you served in combat zone, during which time your military records indicate Minnesota as your home of record and you are a Minnesota resident.
- If the person is deceased, his or her estate, surviving spouse or dependent may qualify for the credit.

Minnesota Estimated Tax

- If you have income taxable by Minnesota that is not subject to withholding and you expect to owe more than $500 in tax, you are required to pay quarterly estimated tax.
- If you are a Minnesota resident who is stationed outside of Minnesota, you may want to ask your paymaster to withhold Minnesota income tax from your military pay to avoid having to pay estimated tax.

RESIDENT AND DOMICILE DEFINED; CONSIDERATIONS

1. Resident

- The term “resident” means:
  - any individual person who is domiciled in Minnesota, subject to the exception set forth in subpart 9; and
  - any individual person 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.

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.
  - 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.
- 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.
- A person who is a permanent resident alien in the US 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.

3. Considerations

- The following items listed will be considered in determining whether or not a person is domiciled in this state...

3. Considerations

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

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

3. Considerations

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. resident or nonresident fishing or hunting licenses

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

3. Considerations

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 that the person is physically present in Minnesota and the percentage of time 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 is charged

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

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 for less than 24 hours, will not be treated as present in Minnesota on any day during transit.

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 of Minnesota.

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. An absence of intention to abandon a domicile is equivalent to an intention to retain the existing one.
- 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 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.

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.

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.

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 IRC §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.

Resident Trust

Minn. Stat. § 290.01 Subd. 7b

1) Created by a will of a decedent who at death was domiciled in this state; or
2) An Irrevocable trust, the grantor of which was domiciled in this state at the time the trust became irrevocable.

Case Law

- Lewis Linn v. Brian Hamer, 2013 Ill. App. (4th) (12/18/2013)
- Peierls Family Intervivos Trusts (Del. Oct. 4, 2013)

Minnesota Supreme Court Cases

- *Sanchez v. Commissioner of Revenue* (Minn. 2009)
  - Income Tax
- *Larson v. Commissioner of Revenue* (Minn. 2013)
  - Income Tax
- *Mauer v. Commissioner of Revenue* (Minn. 2013)
  - Income Tax
- *Bradison v. Commissioner of Revenue* (Minn. 2012)
  - Guardianship

Advocacy and Legislation

- 2015 Minnesota Residency Report
  - www.revenue.state.mn.us/legislativeupdate
- Pass-Through Entities
  - Enacted in 2013 (but see Form 706 Instructions)
- 2014 Minnesota Estate Tax Study
  - at MN Department of Revenue website
- HF837 and SF745
  - Minn. Stat. § 290.01, Subd. 7
  - Minn Stat. § 291.005, Subd. 1

Minnesota Estate Tax Example

- $1,000,000 home in Minnesota
- $9,000,000 Stock and Bond portfolio
- Decedent is resident/domiciliary of Minnesota at death
- Situs of intangible personal property is state of decedent's domicile at death
- Death in 2015

MN Taxable Estate: $10,000,000

MN Tax Computation: $928,000 + 15.2% of excess over $9.1 m

($10 m - $9.1 m) x 15.2% = $136,800 + $928,000 = $1,064,800

Multiplied by fraction equal to MN Gross Estate/Fed Gross Estate

$1,064,800 x ($10,000,000/$10,000,000) = **$1,064,800**

Minnesota Estate Tax Example

- $1,000,000 home in Minnesota
- $9,000,000 Stock and Bond portfolio
- Decedent is resident/domiciliary of Florida at death
- Situs of intangible personal property is state of decedent's domicile at death
- Death in 2015

MN Taxable Estate: $10,000,000

MN Tax Computation: $928,000 + 15.2% of excess over $9.1 m

($10 m - $9.1 m) x 15.2% = $136,800 + $928,000 = $1,064,800

Multiplied by fraction equal to MN Gross Estate/Fed Gross Estate

$1,064,800 x ($1,000,000/$10,000,000) = **$164,800**

Questions?