

**CHAPTER 8001**  
**DEPARTMENT OF REVENUE**  
**INCOME TAX DIVISION**  
**TAX DEFINITIONS**

8001 0300 RESIDENT AND DOMICILE  
 DEFINED, CONSIDERATIONS

**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.

*[For text of subp 2, see M.R. 1987]*

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

*[For text of subp 3, items A to Z, see M.R. 1987]*

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 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.

**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

# MINNESOTA RULES 1988

## 8001.0300 TAX DEFINITIONS

2

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 his Minnesota dwelling and changed his 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 he was not domiciled in Minnesota.

**B.** Same facts as item A, but T decided not to sell his 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 his Minnesota dwelling although he 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 his Minnesota abode when he 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 he 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.

# MINNESOTA RULES 1988

3

## TAX DEFINITIONS 8001.0300

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

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

E. T moved his 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, he 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*