

Minnesota Attorney General: Administrative Rules Proceedings

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ATTORNEY GENERAL

May 23, 1988

AMY EISENSTADT, ATTORNEY
Minnesota Department of Revenue
Appeals and Legal Services

MARTHA J. CASSERLY
Special Assistant
Attorney General

296-6839

In the Matter of the Adopted Permanent Rules Relating to the Definition of Resident and Domicile

The above-referenced rule has been approved as to its legality by the Attorney General on May 23, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:bbl

Enclosures

cc: Maryanne Hruby
Duane Harves

RULE REVIEW CHECKLIST

File No. 1482
DATE RECEIVED 5/09/88
REVIEW DATE 5/18/88
DUE DATE 5/23/88

APPROVED 5.23.88 mjc
DISAPPROVED
WITHDRAWN

Docket No. 05.0009.0736
ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED X
REVISOR DISAPPROVED
FIELD W/SEC.STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion
7/13/87 Date published in State Register
Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule
Yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
290.52 Statutory Authority
No Small Business Statement
No Expenditure of public money statement
Yes Signature

✓ Statement of Need and Reasonableness
No Small Business Statement
N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
2/2/88 Date (30)/25 days before adoption

✓ Publication in State Register
2/1/88 Date (30)/25 days before adoption

~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting
5/6/88 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Barry Feller Name of SAAG representing agency

✓ Notice of Submission to Attorney General

✓ Affidavit of Mailing Notice to Attorney General

CBE

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

RECEIVED

MAY 0 9 1988

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

May 6, 1988

Christie Eller
Assistant Attorney General
515 Transportation Building
John Ireland Boulevard
St. Paul, Minnesota 55146

Dear Ms. Eller:

Enclosed please find the following documents in the matter of the amended rule of the Department of Revenue defining resident and domicile for income tax purposes:

1. a photocopy of the notice of solicitation of outside opinion as published in the State Register;

2. a copy of the proposed rule with certificate of approval as to form by the revisor of statutes;

3. the notice of intent to amend a rule without a public hearing as mailed;

4. the statement of need and reasonableness;

5. the affidavit of mailing the notice of intent;

6. a photocopy of the notice of intent as published in the State Register;

7. four copies of the rule as adopted, reflecting all modifications and approved as to form by the revisor of statutes;

8. the Findings of Fact, Conclusions, and Order amending rule;

9. the written submissions and comments on the rule received by the Department of Revenue;

10. the Declaration of Counsel;

11. the notice of submission to the Attorney General; and

12. the affidavit of mailing notice of submission to the Attorney General.

The above-listed documents are submitted for your review and approval pursuant to Minnesota Statutes, Ch. 14.

Sincerely,

Amy Eisenstadt

AMY EISENSTADT, ATTORNEY
Minnesota Department of Revenue
Appeals and Legal Services 7112
St. Paul, Minnesota 55146-7112
Phone: 612/296-1904

AE:mac
Enclosures

Department of Revenue

Adopted Permanent Rules Relating to the Definition of Resident and Domicile

Rules as Adopted

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. [Unchanged.]

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

A. to Z. [Unchanged.]

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

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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 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

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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

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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.

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 ~~domicile~~ abode during the part of the year T was domiciled outside the state. Therefore, the physical presence test does not apply.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

May 23 1988

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED AMENDED RULE OF THE DEPARTMENT OF REVENUE DEFINING RESIDENT AND DOMICILE FOR INCOME TAX PURPOSES. (MINN. RULE PT. 8001.0300)

STATEMENT OF NEED AND REASONABLENESS

The above-captioned amendment to a rule is being proposed in order to update and revise the current rule of the Department of Revenue defining resident and domicile. The current rule has been in effect since 1981.

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed amended rule. It is submitted pursuant to Minn. Rule Pt. 1400.0500 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion regarding income tax rules was published in the State Register on July 20, 1987. All interested parties were allowed time to submit comments orally or in writing. Suggestions and comments that were received have been duly considered by the Department of Revenue.

AUTHORITY TO ADOPT RULES

Minnesota Statutes Section 290.52 grants the Commissioner statutory authority to promulgate rules concerning the income tax law. Implicit in the authority to establish rules is the ability to amend rules.

ADOPTION OF PROPOSED AMENDED RULE

NEED AND REASONABLENESS

The need to amend Minn. Rule Pt. 8001.0300 results from the changes made to the statutory definition of resident for income tax purposes and the adoption of a statutory definition of abode in 1987 Minn. Laws, Ch. 268, Article 1, sections 9 and 10. Copies of sections 9 and 10 of Article 1 of the Omnibus Tax Bill are attached hereto as Exhibits A and B. These sections have been codified as Minnesota Statutes (1987) section 290.01, subdivisions 6a and 7.

Prior to these 1987 changes, residence for Minnesota income tax purposes was determined solely according to the individual's domicile. Since domicile is a subjective question of where an individual intends to make his or her home, the use of the domicile standard alone caused several problems. First, the only way the Department can judge the subjective intent of a taxpayer is through a review of objective factors. The objective factors (as listed in Minn. Rule Pt. 8001.0300, Subp. 3) will not always accurately reflect an individual's true intent. Second, since the determination is

dependent on the review of various factors, which entails the review of numerous documents, such determinations are very time consuming for the taxpayer and examiner involved. Additionally, since each case is determined according to its own facts, many domicile cases are appealed to the tax court, even after going through an administrative protest. This means that in addition to the original examiner's time, another department examiner and/or attorney is involved in the case, as well as the Attorney General's Office. This process can also be time consuming and expensive for the taxpayer. It was felt that Department resources could be better allocated and it was intended to reduce the number of residency cases in the Attorney General's case load so that more of that office's time could be spent on cases of greater impact to the State and to taxpayers. Finally, the use of domicile alone allows individuals without the intent to change domiciles to manipulate the objective factors to create a nominal tax home, thereby avoiding Minnesota taxes. This creates the appearance of tax cheating to Minnesotans who know of people spending most of the year in the state but who do not pay any state income tax. In reviewing how other states dealt with the problems in using domicile as the test for tax residence, it was found that over one-half of the states that impose a tax on residents use a definition of resident that includes a physical presence test. A list of these states is attached hereto as Exhibit C. As in the majority of these states, under Minnesota's new definition of "resident", an individual domiciled in state will continue to be a resident, however the definition was expanded to include individuals domiciled outside of Minnesota who have Minnesota abodes and are

physically present in Minnesota over one-half of the year. The physical presence test does solve some of the problems created by the use of domicile alone. The physical presence test is more fair and equitable since a person who is instate substantial amounts of time will be required to pay a share of state taxes. Also, the vast majority of residency determinations will be determined using the physical presence test. Since this test is determined objectively, the time spent on residency determinations should be greatly reduced.

The amendments to this rule are necessary to assist the Department and taxpayers in applying the new law. The amendments address the questions that have been raised by taxpayers, Department examiners, and tax practitioners since the new law was passed. In this Statement of Need and Reasonableness, the amendments to each subpart will be addressed separately, below.

SUBPART 1. RESIDENT.

Subpart 1 summarizes the definition of resident for Minnesota income tax purposes. It is necessary to amend this subpart by adding appropriate language and deleting unneccessary language so that it will accurately reflect the definition of resident adopted by the Legislature in 1987.

SUBPART 2. DOMICILE; DEFINITION AND PRESUMPTIONS.

No changes are proposed.

SUBPART 3. CONSIDERATIONS.

This subpart lists the factors considered by the Department of Revenue in making a domicile determination. A sentence was added to clarify that the Department will not consider charitable contributions in making a domicile determination. Charitable contributions has never been listed in the rule as a factor used in determining domicile. However, some individuals who were establishing non-Minnesota domiciles stopped donating to Minnesota charities as part of their establishment of a new domicile. See, TWIN CITIES, "Money Walks", June, 1987. Also, some nonprofit organizations had expressed to the Department that they were losing contributions from people who did not wish to jeopardize their non-Minnesota domiciles. An express statement from the Department was necessary to assure the public that charitable contributions would not be considered in domicile determinations. By adding this sentence to the rule, it is clear that this is part of the law as applied by the Department.

SUBPART 4. DAYS WITHIN AND DAYS WITHOUT MINNESOTA.

This rule is necessary to clarify that, while the general rule is that any part of a day spent in the state will be counted as a day in state, an individual does not have to consider a day spent in Minnesota if the presence in the state is merely for travel purposes. In order to avoid disputes regarding what constitutes "travel", an objective test is provided in this rule. The language used in this

rule is based on similar language used in Internal Revenue Reg. 1.911-2(d)(2), which deals with the counting of days for the physical presence test for the foreign earned income exclusion. This rule provides in part:

> If an individual who is in transit between two points outside the United States is physically present in the United States for less than twenty-four hours, such individual shall not be treated as present in the United States during such transit but shall be treated as travelling over areas not within any foreign country.

This objective test provides a reasonable amount of time to an individual to complete the portion of his or her trip through Minnesota, regardless of the means of transportation used. For example, twenty-four hours is sufficient time for an individual to drive through Minnesota and allows the individual sufficient time for rest and meals; twenty-four hours allows an individual traveling by air adequate time for unexpected delays.

Additionally, two examples are given for further assistance in the application of this rule.

SUBPART 5. SUBSTANTIATION.

Pursuant to statute, the individual has the burden of proving that s/he has not been present in Minnesota over half of the year. This subpart provides a definition of "adequate records" and gives a nonexclusive list of some documents that would constitute adequate records, so that individuals affected will have notice of the types of records that will be acceptable for proving physical presence. This rule is necessary to assist taxpayers in complying with the new statute and avoid taxation as Minnesota residents if they were not in fact in the state over half of the year.

The rule requires that the records be contemporaneously kept because records made at the time are more likely to be accurate and reliable than records made after the fact based on memory. The types of records listed in the rule as records that could be used to substantiate physical presence are documents that individuals have easy access to and are likely to save for other tax or business purposes. Also, these types of records have been used successfully by the Department and the Attorney General's Office in tracing physical presence of taxpayers.

SUBPART 6. DEFINITION OF ABODE.

This subpart expands on the definition of "abode" provided in Minnesota Statutes section 290.01, subd. 6a. Further guidance for

taxpayers is necessary because of the wide range of living arrangements that individuals may utilize, not all of which have the permanence needed to be considered an abode for purposes of the physical presence test. The Department has received numerous questions regarding such living arrangements which are answered in the subpart as proposed. The language used in this subpart is based on the language of New York Income Tax Regulation Section 102.2(e). Regulation 102.2 is the New York regulation interpreting that state's definition of resident, which includes a physical presence test. A copy of the New York statute and regulation are attached hereto as Exhibits D and E.

Additionally, a provision is added to clarify that individuals who are not able to sell or sublease their Minnesota dwelling will not be considered as maintaining an abode. This is necessary because technically such individuals would meet the physical presence test. However, it is not reasonable to subject individuals who have truly changed domiciles to taxation as full year residents simply due to an inability to dispose of Minnesota dwellings which have been abandoned.

SUBPART 7. DOMICILIARY RESIDENTS.

This subpart is proposed to prevent any confusion on the part of taxpayers by clarifying that there is no "reverse" physical presence test applicable to Minnesota domiciliaries whereby such individuals would not be subject to tax as residents if they were outside the state over one-half of a year.

SUBPART 8. PART YEAR DOMICILIARIES.

This subpart clarifies that individuals who change their domiciles either into or out of Minnesota will generally be part year residents, even if they were physically present in Minnesota over one-half of the year. However, such individuals may still be subject to the physical presence test and taxed as full year residents if their Minnesota abodes are maintained during the period they are non-Minnesota domiciliaries. Both this subpart and subpart 7 are intended to further clarify for taxpayers that there are two separate tests under which a person may be considered a resident for tax purposes: one for individuals domiciled in Minnesota and one for individuals domiciled outside of Minnesota.

SUBPART 9. CERTAIN PERSONS DEEMED NONRESIDENTS.

This subpart summarizes the exception from domicile for individuals eligible for the federal foreign earned income exclusion. The exception was added in the 1987 legislative session. It is considered in a separate subpart because the exception applies to very few taxpayers so that summarizing this exception in subpart 1, which summarizes the tests generally applicable, would needlessly complicate that subpart.

Eligibility for the Minnesota exception requires eligibility for the federal exclusion and that the person does not have any interest in

property receiving Minnesota homestead status. The subpart clarifies that an individual will not lose eligibility for this exception if a homestead declaration was properly filed as of January 2, and the individual is later transferred overseas in that same year. This rule is necessary because homestead status for a year is determined on one date, January 2, and there is no means for cancelling homestead status later that year if that property is no longer used as a principal residence. Therefore, there was some confusion regarding the effect of a properly filed homestead and many practitioners requested clarification.

SUBPART 10. EXAMPLES.

This subpart contains five examples illustrating the application of the statute and proposed rule in order to further clarify such application.

Sec. 9. Minnesota Statutes 1986, section 290.01, is amended by adding a subdivision to read:

Subd. 6a. **ABODE.** For purposes of section 290.01, subdivision 7, the term "abode" means a dwelling maintained by an individual, whether or not owned by the individual and whether or not occupied by the individual, and includes a dwelling place owned or leased by the individual's spouse.

EXHIBIT A

Sec. 10. Minnesota Statutes 1986, section 290.01, subdivision 7, is amended to read:

Subd. 7. RESIDENT. The term "resident" means (1) any individual domiciled in Minnesota ~~and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such tax year, have been domiciled outside the state,~~ except that an individual is not a "resident" for the period of time that the individual is a "qualified individual" as defined in section 911(d)(1) of the Internal Revenue Code of 1986, as amended through December 31, 1986, unless, during that period, a Minnesota homestead application is filed for property in which the individual has an interest; and (2) any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota, unless the individual is in the armed forces of the United States.

For purposes of this subdivision, presence within the state for any part of a calendar day constitutes a day spent in the state. Individuals shall keep adequate records to substantiate the days spent outside the state.

EXHIBIT B

JURISDICTIONS WITH PHYSICAL PRESENCE TEST

1.	Alabama	Maintaining a permanent place of abode instate; or presence in Alabama over seven months.
2.	Arkansas	Domiciled in Arkansas; or maintaining permanent place of abode instate and spending over six months of tax year instate.
3.	Colorado	Domicile; or maintaining permanent place of abode instate and spending over six months instate.
4.	Connecticut	Domicile, unless no permanent abode instate and not present instate over 30 days; or no instate domicile but maintains a permanent abode instate and spends over 183 days instate.
5.	District of Columbia	Domicile; or maintaining abode in District of Columbia for 183 days of tax year.
6.	Georgia	Legal resident on December 31 unless temporarily in transit through state; resident instate at least 183 days of preceding 365 days; not legal resident, but resides instate on more or less permanent basis and so resides on December 31.
7.	Hawaii	Domicile; or residing instate--presumption that individual instate more than 200 days is a resident.
8.	Indiana	Domicile; or maintaining permanent place of abode instate and spending more than 183 days within state.
9.	Kentucky	Domicile on December 31; or outstate domicile but maintains place of abode instate and spends over 183 days of tax year in Kentucky.
10.	Louisiana	Domicile; or maintaining permanent place of abode instate; or spending, in the aggregate, more than six months of tax year instate.
11.	Maine	Domicile; or maintaining permanent abode and spending over 183 days instate.

EXHIBIT C

JURISDICTIONS WITH PHYSICAL PRESENCE TEST

(continued...)

12.	Michigan	Presence instate 183 days of tax year.
13.	Missouri	Domicile, unless no permanent abode in-state, permanent abode outstate and does not spend more than 30 days instate; or no instate domicile, but has permanent abode instate and spends over 183 days in state.
14.	Nebraska	Domicile; or permanent abode instate and spending over six months instate.
15.	New Jersey	Domicile, unless permanent abode outstate and not in New Jersey over 30 days; or no instate domicile, but permanent abode in New Jersey and over 183 days spend in New Jersey.
16.	New York	Domicile, unless (a) no permanent place of abode in state, maintains permanent place of abode elsewhere and spends not more than 30 days of taxable year instate or (b) within any 548-day period is present in foreign country(ies) at least 450 days, is not instate more than 90 days and doesn't maintain permanent place of abode occupied by spouse and/or children over 90 days; or not domiciled instate, but maintains permanent place of abode instate and spends over 183 days in state.
17.	North Dakota	Domicile; or maintaining permanent place of abode within state and spends more than seven months within state.
18.	Oregon	Domicile, unless no permanent abode instate, maintains permanent abode outstate and spends not over 30 days instate; or no instate domicile, but maintains permanent abode instate and spends over 200 days instate.
19.	Pennsylvania	Domicile, unless permanent abode maintained outstate and not over 30 days spent in-state; or no instate domicile, but perma-nent abode maintained instate and over 183 days spent instate.
20.	Rhode Island	Domicile, unless no permanent place of abode instate and not over 30 days spent in-state; or no instate domicile, but perma-nent place of abode instate and over 183 days spent instate.

JURISDICTIONS WITH PHYSICAL PRESENCE TEST

(continued...)

21.	Utah	Domicile; or permanent abode in Utah and over 182 days spent instate.
22.	Vermont	Domicile; or spending and maintaining permanent abode instate for least 184 days of tax year.
23.	West Virginia	Domicile, unless permanent abode outstate and not over 30 days spent instate; or not domiciled instate but permanent abode maintained instate and not over 183 days spent in West Virginia.

New York Statutes Ch. 60, Art. 22, Sec. 605
Definition of Resident Individual

Sec. 605. * * * (a) Resident individual.—A resident individual means an individual:

(1) who is domiciled in this state, unless (A) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or (B) (i) within any period of five hundred forty-eight consecutive days he is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred forty-eight consecutive days he is not present in this state for more than ninety days and does not maintain a permanent place of abode in this state at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days, and (iii) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section six hundred fifty-four, and which period is contained within such period of five hundred forty-eight consecutive days, he is present in this state for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in such period of less than twelve months bears to five hundred forty-eight, or

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States.

EXHIBIT D

[¶ 18-516] Reg. Sec. 102.2. **Resident Individual (Tax Law, Sec. 605(a)).**—(a) *General.* An individual may be a resident of New York State for income tax purposes, and taxable as a resident, even though he would not be deemed a resident for other purposes. As used in this Subchapter, the term "resident individual" includes (1) all persons domiciled in New York State, subject to the exceptions set forth in subdivision (b) below, and (2) any individual (other than an individual in active service in the armed forces of the United States) who is not domiciled in New York State but who maintains a permanent place of abode in New York State and spends in the aggregate more than 183 days of the taxable year in New York State.

(b) *Certain persons not deemed residents although domiciled in New York State.* Any person domiciled in New York State is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the requirements in paragraph (1) or all three of the requirements in paragraph (2) of this subdivision:

(1) For a specific taxable year all three of the following requirements are met:

(i) he maintains no permanent place of abode inside New York State during such year,

(ii) he maintains a permanent place of abode outside this State during such entire year, and

(iii) he spends in the aggregate not more than 30 days of the taxable year in this State; or

(2) For a specific taxable year beginning after December 31, 1977, all three of the following requirements are met:

(i) within any period of 548 consecutive days he is present in a foreign country or countries for at least 450 days; and

(ii) during such period of 548 consecutive days he is not present in New York State for more than 90 days, does not maintain a permanent place of abode in this State at which his spouse (unless such spouse is legally separated) or minor children are present for more than 90 days; and

(iii) during any period of less than 12 months, which would be treated as a separate taxable period pursuant to Part 148 of this Subchapter, and which is contained within such period of 548 consecutive days, he is present in New York State for a number of days which does not exceed an amount which bears the same ratio to 90 as the number of days contained in such period of less than 12 months bears to 548.

As long as an individual who is domiciled in New York State continues to meet the requirements of either paragraph (1) or paragraph (2) of this subdivision, he will be considered a nonresident of New York State for income tax purposes. However, if for any taxable year he fails to meet those conditions, he will be subject to New York State personal income tax as a resident for that year. Where an individual domiciled in New York State claims to be a nonresident for any taxable year, the burden is upon him to show that during that year he satisfied the requirements set forth in paragraph (1) or paragraph (2) of this subdivision.

Example: B, a single individual, is domiciled in New York State. During the period July 1, 1978 through December 30, 1979 (a period of 548 consecutive days), B was present in a foreign country 463 days.

During the above period, B was present in New York State a total of 50 days, 15 days during the period July 1, 1978 through December 31, 1978 and 35 days during 1979.

Since B was present in a foreign country 463 days, he meets the requirement of subparagraph (i) of paragraph (2) of this subdivision.

B also meets the requirements of subparagraph (ii) of paragraph (2) of this subdivision because the total of 50 days he was present in this State during this 548 consecutive day period is less than the maximum of 90 days allowed.

To ascertain whether he meets the requirements of subparagraph (iii) of paragraph (2) of this subdivision, B must determine if the number of days present in New York State during the period that is less than 12 months (July 1, 1978 through December 31, 1978) exceeds the maximum allowed for this less than 12 month period. The maximum number of days B may be present in New York State during the period July 1, 1978 through December 31, 1978 is 30, determined by making the following computation:

$$\frac{184}{548}\ \begin{matrix}\text{(Number of days in the less than 12 month period)}\end{matrix} \times 90 = 30$$

Maximum number of days B may spend in New York State during the period July 1, 1978 through December 31, 1978

EXHIBIT E

a domicile. It is possible for a serviceman to change his domicile; however, the requisite intent is difficult to prove.

(e) *Permanent place of abode.* (1) A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. However, a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode. Furthermore, a barracks or any construction which only contains bachelor type quarters but does not contain facilities for cooking, bathing, etc., will generally not be deemed a permanent place of abode. Also, a place of abode, whether in New York State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. For example, an individual domiciled in another state may be assigned to his employer's New York State office for a fixed and limited period, after which he is to return to his permanent location. If such an individual takes an apartment in New York State during this period, he is not deemed a resident, even though he spends more than 183 days of the taxable year in New York State, because his place of abode here is not permanent. He will, of course, be taxable as a nonresident on his income from New York State sources, including his salary or other compensation for services performed in New York State. However, if his assignment to his employer's New York State office is not for a fixed and limited period, his New York State apartment will be deemed a permanent place of abode and he will be a resident for New York State personal income tax purposes if he spends more than 183 days of the year in New York State. The 183-day rule applies only to taxpayers who are not domiciled in New York State.

(2) The determination of whether a serviceman maintains a permanent place of abode outside New York State is not dependent merely upon whether the serviceman lives on or off a military base. This is only one of many factors to be considered in determining whether a permanent place of abode is being maintained outside New York State. Some of the other factors include the type and location of quarters occupied by the taxpayer and members of his immediate family and how and by whom such quarters are maintained. Barracks, bachelor officers' quarters, quarters assigned on vessels, etc., generally do not qualify as permanent places of abode maintained by the serviceman. Further, the maintenance of a place of abode by a serviceman outside New York State will not be considered permanent if it is maintained only during a duty assignment of a limited or temporary nature. (*Adopted January* 20, 1982; *amended April* 11, 1984.)

[¶ 18-517] Reg. Sec. 102.3. **Nonresident Individual (Tax Law, § 605(b)).**—For New York State personal income tax purposes, a nonresident individual is anyone who is not a resident as defined in section 102.2 of this Part. Except where this Subchapter specifically provides otherwise, all references to nonresidents are equally applicable to nonresident aliens. (*Adopted January* 20, 1982.)

[¶ 18-518] Reg. Sec. 102.4. **Resident Estate or Trust (Tax Law, § 605(c)).**—(a) A resident estate or trust is:

(1) The estate of a decedent who at his death was domiciled in New York State;

(2) A trust, or portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in New York State; or

(3) A trust, or portion of a trust, consisting of the property of: (i) a person domiciled in New York State at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or (ii) a person domiciled in New York State at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

(b) For purposes of subdivision (a) of this section, a trust or portion of a trust is revocable if it is subject to a power exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

Example: A, who is domiciled in Canada, creates a trust with the X Trust Company in New York City as trustee. The entire corpus of the trust consists of securities of American corporations, which are actively traded by the trustee on the New York Stock Exchange. The beneficiaries of the trust are all New York State residents. Regardless of whether the trust is held to be a resident of the United States for Federal income tax purposes, it is, for New York income tax purposes, a nonresident trust.

(c) The determination of whether a trust is a resident trust is not dependent on the location of the trustee or the corpus of the trust or the source of income, provided, however, no New York State personal income tax may be imposed on such trust if all of the following conditions are met:

(1) all the trustees are domiciled in a state other than New York State, and

[The next page is 3521-3.]

Since B was present in New York State 15 days during the period July 1, 1978 through December 31, 1978, he did not exceed the maximum of 30 days allowed for this period. Therefore, he meets the requirements of subparagraph (iii) of paragraph (2) of this subdivision.

Based on the information contained in this example B meets all the requirements of paragraph (2) of this subdivision and would be considered a nonresident of New York State for income tax purposes during the period July 1, 1978 through December 30, 1979. B would be required to file as a resident of New York State for the period January 1, 1978 through June 30, 1978 and as a nonresident of New York State for the period July 1, 1978 through December 31, 1978. B would be required to file as a nonresident of New York State for the entire taxable year of 1979. *(Adopted January* 20, 1982.)

(c) *Rules for days within and without New York State.* In counting the number of days spent within and without New York State, presence within New York State for any part of a calendar day constitutes a day spent within New York State except that such presence within New York State may be disregarded if it is solely for the purpose of boarding a plane, ship, train or bus for travel to a destination outside New York State, or while traveling by motor, plane or train through New York State to a destination outside New York State. Any person domiciled outside New York State who maintains a permanent place of abode within New York State during any taxable year and claims to be a nonresident must keep and have available for examination by the Tax Commission adequate records to substantiate the fact that he did not spend more than 183 days of such taxable years within New York State.

(d) *Domicile.* (1) Domicile, in general, is the place which an individual intends to be his permanent home—the place to which he intends to return whenever he may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicate that he did this merely to escape taxation in some other place.

(3) Domicile is not dependent on citizenship; that is, an immigrant who has permanently established his home in New York State is domiciled here regardless of whether he has become a United States citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in New York State who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York State domicile unless it is clearly shown that he intends to remain abroad permanently and not to return. (See subdivision (b) of this section for certain persons not deemed residents of New York State for a specific taxable year although domiciled in New York State.)

(4) A person can have only one domicile. If he has two or more homes, his domicile is the one which he regards and uses as his permanent home. In determining his intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive. As pointed out in subdivision (a) of this section, a person who maintains a permanent place of abode in New York State and spends more than 183 days of the taxable year in New York State is taxable as a resident even though he may be domiciled elsewhere.

(5) Generally, the domicile of a husband and wife are the same, however, if they are separated in fact they may each, under some circumstances, acquire their own separate domiciles, even though there be no judgment or decree of separation. A child's domicile ordinarily follows that of such child's parents, until such child reaches the age of self-support and actually establishes his or her own separate domicile. Where the mother and father have separate domiciles, the domicile of the child is generally the domicile of the parent with which such child lives for the major portion of the year. The domicile of a child for whom a guardian has been appointed is not necessarily determined by the domicile of the guardian.

(6) Federal law provides in effect that for the purposes of taxation, a serviceman is not deemed to have lost his residence or domicile in any state solely by reason of being absent therefrom in compliance with military or naval orders. Thus, such Federal law insures that a serviceman domiciled in New York State would not be deemed a domiciliary for income tax purposes in another state in which he is stationed. On the other hand, a serviceman domiciled in another state who is stationed in New York State would not be deemed a domiciliary, for personal income tax purposes, of New York State. The rule is, generally speaking, that the domicile of a person is in no way affected by service in the armed forces of his country. A change of domicile has to be shown by facts which objectively manifest a voluntary intention to make the new location

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STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED AMENDED RULE OF THE DEPARTMENT OF REVENUE DEFINING RESIDENT AND DOMICILE FOR INCOME TAX PURPOSES. (MINN. RULE PT. 8001.0300)

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE

Notice of the Commissioner's intent to amend the above-entitled rule without a public hearing together with the proposed amended rule was published in the State Register on February 1, 1988. A notice of intent to amend the above-entitled rule without a public hearing was sent by United States mail to all persons on the list maintained by the Department of Revenue pursuant to Minnesota Statutes, Section 14.14, subdivision 1a on February 2, 1988. A statement of need and reasonableness was prepared prior to February 1, 1988 and this statement was available to the public.

All persons were afforded an opportunity to submit comments for thirty (30) days after said notice. No requests for a public hearing were received.

Based on thee comments and evidence in the record before the Department, I find the following:

1. The proposed amendments to the rule are needed and reasonable amendments to the rule defining resident and domicile for income tax purposes in order for that rule to accurately reflect the statutes governing these definitions and to assist the Department and taxpayers in the application of those definitions.

2. The second paragraph of subpart 5 has been modified as follows:

   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.

   The word "lease" was inadvertently omitted from the proposed rule. The addition of this term is necessary to make the rule clear and concise and to cover all situations contemplated in this subpart.

3. The response to example E in subpart 10 has been modified as follows:

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 ~~domicile~~ abode during the part of the year T was domiciled outside the state. Therefore, the physical presence test does not apply.

The use of the term "domicile" was an error. The answer does not make sense when the term "domicile" is used, but does clearly reflect the law and proposed regulations as set forth in earlier subparts when the term "abode" is inserted in place of "domicile."

CONCLUSIONS

1. The modifications to the proposed rule are needed and reasonable in order to preserve the meaning and intent of the rule.

2. The modifications to the proposed rule are necessary to correct drafting errors.

3. The modifications to the proposed rule listed in Findings 2 and 3 do not result in substantial changes as the modifications do not:

   1) affect a class of persons who would not reasonably have been expected to comment on the proposed rule as originally published;

   2) introduce a new subject matter; or

   3) make a major substantive change.

NOW, THEREFORE, IT IS ORDERED that this rule incorporating the specific modifications shown above and identified as Minnesota Department of Revenue Rule Governing the Definition of Resident and Domicile for Income Tax Purposes be adopted this 6th day of May, 1988 pursuant to the authority vested in me by Minnesota Statutes, section 290.52.

STATE OF MINNESOTA
Department of Revenue

JOHN P. JAMES
Commissioner of Revenue

IN THE MATTER OF THE PROPOSED
AMENDMENT OF THE RULE OF THE
DEPARTMENT OF REVENUE GOVERNING
THE DEFINITION OF RESIDENT AND
DOMICILE FOR INCOME TAX PURPOSES

DECLARATION
OF COUNSEL

I, _____, Special Assistant Attorney General, do hereby declare that I have examined the above captioned rule and the supporting rulemaking record and that, based on my examination, the Administrative Procedure Act, and Minnesota Rules, Chapter 2010 have been followed. Any exceptions are noted below. For Attorney General billing purposes, the four-digit docket client code is _____.

_____
Special Assistant Attorney General

Dated: _____

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

May 18, 1988

Rita Desmond
515 Transportation Building
John Ireland Boulevard
St. Paul, Minnesota 55146

RE: Minnesota Department of Revenue
Income Tax Rule

Dear Ms. Desmond:

Enclosed please find a Declaration of Counsel executed by Barry R. Greller, Special Assistant Attorney General, Tax Litigation Division.

Sincerely,

Amy Eisenstadt

AMY EISENSTADT, ATTORNEY
Minnesota Department of Revenue
Appeals and Legal Services 7112
St. Paul, Minnesota 55146-7112
Phone: 612/296-1904

AE:mac
Enclosure

IN THE MATTER OF THE PROPOSED
AMENDMENT OF THE RULE OF THE
MINNESOTA DEPARTMENT OF REVENUE
GOVERNING THE DEFINITION OF RESIDENT
AND DOMICILE FOR INCOME TAX PURPOSES.

DECLARATION
OF COUNSEL

I, Barry R. Greller, Special Assistant Attorney General, do hereby declare that I have examined the above captioned rule and the supporting rulemaking record and that, based on my examination, the Administrative Procedure Act, and Minnesota Rules, Chapter 2010 (1987) have been followed without exception. For Attorney General billing purposes, the four-digit docket client code is 0736.

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

Dated: May 18, 1988.

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to the Definition of Resident and Domicile

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8001

The attached rules are approved for publication in the State Register

Janet C. Rahm
Senior Assistant Revisor

Department of Revenue

Proposed Permanent Rules Relating to the Definition of Resident and Domicile

Rules as Proposed

8001.0300 RESIDENT AND DOMICILE DEFINED; CONSIDERATIONS.

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

A. any individual person ~~maintaining a home in Minnesota during any part of a tax year~~ who is~~, during that part of such year,~~ 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. [Unchanged.]

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

A. to Z. [Unchanged.]

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

Approved by Revisor _____

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 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

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by Revisor _____

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 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

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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.

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 domicile during the part of the year T was domiciled outside the state. Therefore, the physical

presence test does not apply.

Approved
by Revisor _____

State of Minnesota

STATE REGISTER

Department of Administration—Documents Division



Published every Monday

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Pages 89-128

State Register

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, official notices to the public, state and non-state public contracts, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

Printing Schedule and Submission Deadlines

Vol. 12 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
3	Monday 6 July	Monday 13 July	Monday 20 July
4	Monday 13 July	Monday 20 July	Monday 27 July
5	Monday 20 July	Monday 27 July	Monday 3 August
6	Monday 27 July	Monday 3 August	Monday 10 August

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the State Register editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

Rudy Perpich, Governor

Sandra J. Hale, Commissioner
Department of Administration

Stephen A. Ordahl, Director
Minnesota Documents Division

Robin PanLener, Editor

Paul Hoffman, Assistant Editor

Debbie Kobold, Circulation Manager

For Legislative News

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action; House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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Board of Podiatric Medicine

Notice of Solicitation of Outside Information or Opinions in the Matter of the Rules Relating to Standards for Approval of Podiatric Medical Schools, Standards for A State Clinical Examination, Standards for Approval of Graduate Residency, Preceptorship, or Other Programs, Establishing the Scope of a Temporary Permit to Practice Podiatric Medicine and the Standards for Awarding the Permit, Defining False or Misleading Advertising, and Establishing Reporting Procedures

NOTICE IS HEREBY GIVEN that the State Board of Podiatric Medicine is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rule governing standards for approval of podiatric medical schools, standards for a state clinical examination, standards for approval of graduate residency, preceptorship or other programs, establishing the scope of a temporary permit to practice podiatric medicine and the standards for awarding the permit, defining false or misleading advertising, and establishing procedures for reporting unprofessional conduct. The adoption of the rule is authorized by *Minnesota Statutes*, section 153.02, as amended by Act of May 14, 1987, chapter 108, section 3, 1987 *Minnesota Session Law Service* 105 (West), which permits the agency to adopt rules as necessary to carry out the purposes of the Minnesota Podiatric Medical Practice Act.

The Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Joyce M. Schowalter, Executive Director, Board of Podiatric Medicine, Suite 108, 2700 University Avenue West, St. Paul, Minnesota 55114. Oral statements will be received during regular business hours over the telephone at (612) 642-0568 and in person at the above address.

All statements of information and opinions shall be accepted until 30 days from the date of this publication. Any written material received by the Board shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 8 July 1987

Joyce M. Schowalter, Executive Director
Minnesota Board of Podiatric Medicine

Minnesota Pollution Control Agency

Intent to Establish a Mailing List for the Purpose of Issuing Public Notices on Permit Applications and Preliminary Determinations

Notice is hereby given that pursuant to *Minnesota Rules* Part 7001.0200 the Minnesota Pollution Control Agency intends to establish a mailing list for the purpose of issuing public notices on permit applications and preliminary determinations.

An environmental permit is required for all major facilities which discharge to the air, land or water, and which treat, store or dispose of hazardous wastes.

A preliminary determination of the Agency's intent to issue a permit is made at the time the permit application is noticed for public comment.

You may request that your name be placed on the mailing list for the activity or type of facility (air, water, solid waste, or hazardous waste) and the county(ies) you are interested in.

You must call or write the Minnesota Pollution Control Agency, Public Information Office, 520 Lafayette Road, St. Paul, Minnesota 55155. Phone 612/296-7283 to request the form which must be completed and returned to the Agency by August 31, 1987. This list will be updated periodically.

Department of Revenue

Legal and Legislative Affairs Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Individual Income Taxation

Notice is hereby given that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to propose the adoption and amendment of the rules governing individual income taxation, particularly the rules gov-

erning the following areas: residency, net and taxable net income, taxation of part year residents and nonresidents, assignability of income, net operating losses, tuition and transportation deduction, basis, fiduciary, partnership and Subchapter S corporation tax computations, returns, audit and review, estimated tax payments and withholding of personal service compensation of nonresidents. The adoption of rules is authorized by *Minnesota Statutes*, section 290.52, which permits the agency to make rules enforcing the provisions of *Minnesota Statutes* chapter 290.

The State Department of Revenue requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Amy Eisenstadt
Legal and Legislative Affairs Division
Minnesota Department of Revenue
P.O. Box 64446
St. Paul, Minnesota 55164

Oral statements will be received during regular business hours over the telephone at (612) 296-1022 and in person at:

Centennial Office Building
2nd Floor
658 Cedar Street
St. Paul, Minnesota

All statements of information and opinions shall be accepted until August 31, 1987. Any written material received by the State Department of Revenue shall become part of the rulemaking record to be submitted to the Attorney General or administrative law judge in the event that the rules are adopted.

Dated: 20 July 1987

Amy Eisenstadt, Attorney
Legal and Legislative
Affairs Division
Department of Revenue

Secretary of State

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Mail Balloting, Statewide Voter Registration System, Uniform Commercial Code Financing Statements, Agricultural Production In-Put Lien Notification Statements, and Statewide Uniform Commercial Code Network

Notice is hereby given that the Secretary of State is seeking information or opinions from sources outside of the agency in preparing to propose the adoption of rules regarding mail balloting, statewide voter registration system, uniform commercial code financing statements, agricultural product in-put lien notification statements, and statewide uniform commercial code network.

The Secretary of State requests information and opinions concerning the subject matter of these rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally to the appropriate address and telephone number listed below.

All statements of information and opinions shall be accepted until further notice. Any written material received by the Secretary of State shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

The adoption of rules related to mail balloting is authorized by *Laws of 1987*, chapter 212 which permits mail balloting in certain townships and unorganized territories and requires the Secretary of State to adopt rules for the conduct of mail balloting.

Written statements related to mail balloting should be addressed to: Joe Mansky, Election Division, 180 State Office Bldg., St. Paul, MN 55155.

The telephone number for oral statements is (612) 296-2805.

The adoption of rules related to a statewide voter registration system is authorized by *Laws of 1987*, chapter 361 which requires the Secretary of State to develop, implement, and maintain a statewide computerized voter registration system accessible by each county auditor and to adopt rules to administer the system.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

February 2, 1988

In the Matter of the Proposed Amendment of the Rule of the Minnesota Department of Revenue Governing the Definition of Resident and Domicile for Purposes of Individual Income Taxes

NOTICE OF INTENT TO AMEND A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Revenue intends to amend the rule described above without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22 to 14.28. The statutory authority to amend the rule is Minnesota Statutes, Section 290.52.

All persons have thirty (30) days in which to submit comment in support of or in opposition to the proposed amendment or any part or subpart of the amendment. Comment is encouraged. Each comment should identify the portion of the proposed amendment addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the amendment within the thirty day comment period. If twenty-five or more persons submit a written request for a public hearing within the thirty day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Amy Eisenstadt, Attorney
Minnesota Department of Revenue
Appeals and Legal Services 7112
St. Paul, Minnesota 55146-7112
Phone: 612/296-1904

AN EQUAL OPPORTUNITY EMPLOYER

The proposed amendment may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed amended rule as noticed.

The rule proposed for amendment relates to: Definition of Resident and Domicile for Purposes of Individual Income Taxes. The rule with proposed amendments was published in the State Register on February 1, 1988. A free copy of the rule with proposed amendments is available upon request (use address given above).

A statement of Need and Reasonableness that describes the need for and reasonableness of each amendment of the rule and identifies the data and information relied upon to support the proposed amendments has been prepared and is available upon request (use address given above).

If no hearing is required, upon adoption of the amendments, the amended rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the amended rule as adopted, must submit a request to me in writing (use address given above).

Amy Eisenstadt

Amy Eisenstadt
Attorney

AE:mac

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE RULE OF THE DEPARTMENT OF REVENUE GOVERNING THE DEFINITION OF RESIDENT AND DOMICILE FOR PURPOSES OF INDIVIDUAL INCOME TAXES

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Margaret A. Connolly, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Revenue rulemaking mailing list is accurate, complete, and current as of this 6th day of May, 1988.

That on the 2nd day of February, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Margaret A. Connolly

Subscribed and sworn to before me
this 6th day of May, 1988.

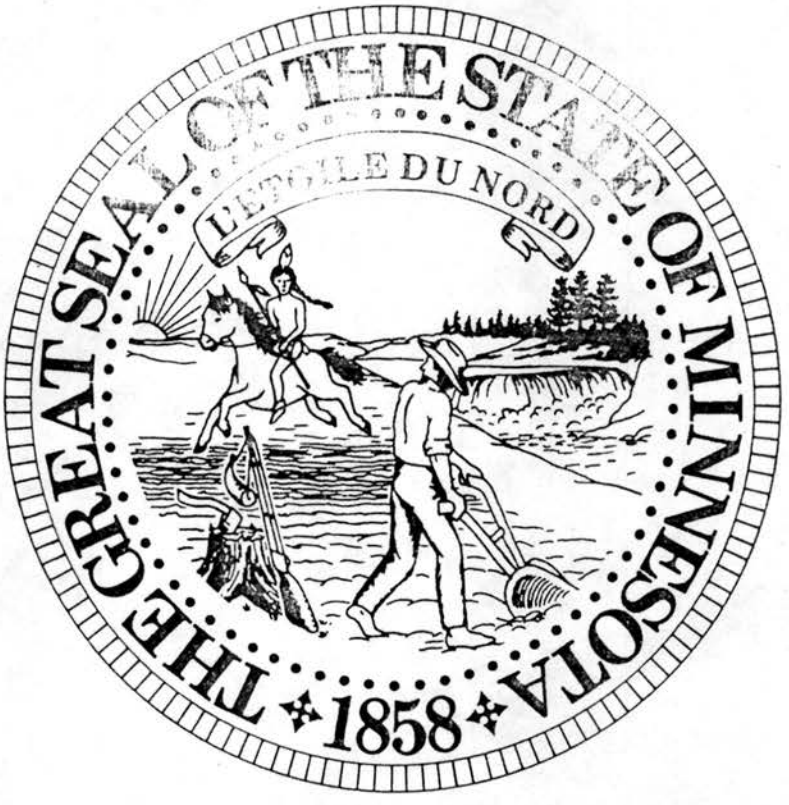
Diane C. Walsh

DIANE C. WALSH
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 30, 1991

State of Minnesota

STATE REGISTER

Department of Administration—Documents Division



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agency shall also mail a copy of its recommendation to the applicant or provider. The commissioner shall grant or deny a request for a variance within 30 days after the department receives the request from the agency. ~~If the commissioner denies the applicant's or provider's request for a variance, the applicant or provider may appeal the decision according to Minnesota Statutes, sections 14.57 to 14.70. The applicant or provider shall be informed of the right to appeal at the time of denial.~~

Subp. 9. to 16. [Unchanged.]

Department of Revenue

Proposed Permanent Rules Relating to the Definition of Resident and Domicile

Notice of Intent to Amend Rule Without a Public Hearing

Notice is hereby given that the Minnesota Department of Revenue intends to amend the rule described above without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, Section 290.52.

The rule proposed for amendment relates specifically to the definition of resident and domicile for purposes of individual income taxes.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed amendments or any part or subpart of the amendments. Comment is encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the amendments within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Amy Eisenstadt
Mail Station 7110
St. Paul, Minnesota 55146-7110
(612) 296-5339

The proposed amendments may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed amended rule as noticed.

A statement of Need and Reasonableness that describes the need for and reaasonableness of each amendment to the rule and identifies the data and information relied upon to support the proposed amendments has been prepared and is available upon request by contacting Ms. Eisenstadt at the above address.

If no hearing is required, upon adoption of the amendments, the amended rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the amended rule as adopted, must submit a request in writing to Ms. Eisenstadt at the above address.

Rules as Proposed

8001.0300 RESIDENT AND DOMICILE DEFINED; CONSIDERATIONS.

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

A. any individual person ~~maintaining a home in Minnesota during any part of a tax year~~ who is~~, during that part of such year,~~ domiciled in Minnesota, subject to the exception set forth in subpart 9; and

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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. [Unchanged.]

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

A. to Z. [Unchanged.]

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 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 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.

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 domicile during the part of the year T was domiciled outside the state. Therefore, the physical presence test does not apply.

Secretary of State

Proposed Permanent Rules Relating to Voter Registration; Election Programs; Automatic and Administrative Recounts; and Election Judge Training

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the Secretary of State intends to adopt the above-entitled rule without a public hearing following the procedure set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes*, sections 201.022, 201.221, 204B.25, 204C.361, 206.57.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE RULE OF THE DEPARTMENT OF REVENUE GOVERNING THE DEFINITION OF RESIDENT AND DOMICILE FOR INCOME TAX PURPOSES	NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL OF RULE ADOPTED WITHOUT PUBLIC HEARING

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, May 6, 1988 for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rule which was published in the State Register and made available to the public on February 1, 1988, has been modified. A copy of the rule as modified is enclosed with this notice.

The rule must be approved or disapproved by the Attorney General within fourteen (14) calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule. Any written comments must be submitted within eight (8) calendar days of the date of submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
515 Transportation Building
John Ireland Boulevard
Saint Paul, Minnesota 55155
Telephone Number: (612) 297-2040

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Amy Eisenstadt, Attorney
Minnesota Department of Revenue
Appeals and Legal Services Division
Centennial Office Building #7112
St. Paul, Minnesota 55146-7112
Telephone: (612) 296-1904

Amy Eisenstadt

Amy Eisenstadt, Attorney
Department of Revenue

Dated: May 6, 1988

Department of Revenue

Adopted Permanent Rules Relating to the Definition of Resident and Domicile

Rules as Adopted

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. [Unchanged.]

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

A. to Z. [Unchanged.]

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

Approved by Revisor _____

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 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

Approved
by Revisor _____

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

Approved
by Revisor _____

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.

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 ~~domicile~~ abode during the part of the year T was domiciled outside the state. Therefore, the physical presence test does not apply.

Approved
by Revisor _____

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE RULE OF THE DEPARTMENT OF REVENUE GOVERNING THE DEFINITION OF RESIDENT AND DOMICILE FOR INCOME TAX PURPOSES (MINN. RULE PT. 8001.0300)

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL OF RULE ADOPTED WITHOUT PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Margaret A. Connolly, being first duly sworn, deposes and says:

That on the 6th day of May, 1988, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the attorney general.

Margaret A. Connolly

Subscribed and sworn to before me
this 6th day of May, 1988.

Diane C. Walsh

DIANE C. WALSH
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 30, 1991