

# RESIDENCY WARS



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**Fredrikson**  
& BYRON, P.A.

# Overview

- Taxation of Residents and Nonresidents
- Minnesota Residency Rules
- Minnesota Residency Law Updates
- Minnesota Residency Audits
- Tips for Advising Clients on Residency Changes
- Q & A



# Taxation of Residents and Non-residents

- Minnesota taxes 100% of a resident's income.
- Minnesota taxes some of the income of a non-resident
  - Wages, gambling winnings, sale of real estate, etc.
  - Deferred compensation
- Intangible income is sourced to state of domicile



# Nonresident Corporate Board Members Compensation (Revenue Notice 14-02)



- Minn. Stat. § 290.191, subd. 5(j) attributes services to the state where the services are received
- Revenue Notice allows nonresident board members to apportion director compensation based on time spent in Minnesota working for that board versus time spent everywhere working for that board if the nonresident served on no more than two corporate boards
- Last year's Omnibus Tax Bill (HF848) contained a provision that would codify the Revenue Notice and expand it to individuals who serve on more than two corporate boards, but the bill did not make it out of conference committee. Not in this year's omnibus tax bills (yet).

# Two Ways to Be a Minnesota Resident

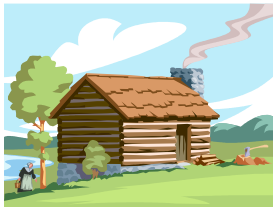
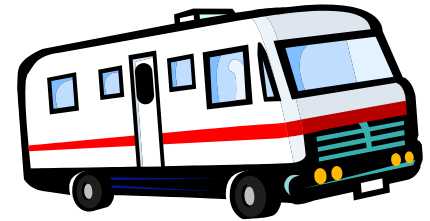
- Physical Presence Test
  - More than half the year in Minnesota and
  - Place of abode in Minnesota
- Intent or Domicile Test
  - Traditional subjective test
  - 26 objective factors





# Physical Presence: Place of Abode

- “Permanently Maintained”
  - Owned or rented
  - Occupied or unoccupied
- Suitable for year-round use
- Facilities for cooking and bathing



# Physical Presence: Counting Days



- Partial Days
  - Any part of a day spent in the state is a Minnesota day.
- Exception: In-Transit Rule
  - Passing through Minnesota
- Days spent “involuntarily” in Minnesota (i.e. in jail) count as Minnesota days.

*Wersal v. Comm’r of Revenue*, No. 8957-R (Minn. T.C. Apr. 5, 2017)

# Scenario 1 – Year of Change

- Taxpayer was domiciled in Minnesota 1/1/2016 to 9/1/2016
- On 9/1/2016 Taxpayer moves to Florida and establishes domicile there
- Taxpayer does not sell Minnesota house
- Taxpayer does not return to Minnesota until May 2017
- Taxpayer has big income event in November 2016 (sale of business)



# Scenario 1 – Questions

- Was the taxpayer a part-year or full-year resident of Minnesota in 2016?

**full-year resident**

*Marks v. Comm'r of Revenue* (Minn. 2016)

- If taxpayer put MN house on the market, is the taxpayer a part-year or full-year resident of Minnesota?
- Assume taxpayer spent less than 183 days in Minnesota in 2016. Is the November income from the business sale taxable in Minnesota?



# Physical Presence: Recordkeeping

- Taxpayers have the burden to prove where they spent their time
  - Contemporaneous calendars
  - Flight records (boarding passes)
  - Credit card statements
  - Cell phone records
  - Bank records



# Intent Residency



- Basic Intent Residency Test:
  - bodily presence + subjective intent to make a place one's home
- Presumptions
  - Only one domicile at a time
  - A domicile once in existence is presumed to continue (“leave and land” concept)
    - *Sanchez v. Commissioner of Revenue*
  - Spousal presumption

# Intent Residency: Factors

- There is no “checklist” for changing residency
- Minnesota’s 26 Factors
  - Factors provide evidence of intent
  - No one factor is determinative
- Factors are not “steps” or “requirements”



# Intent Residency: Most Important Factors

- Time spent (physical presence)
- Community involvement
  - DOR adds “family connections” to this factor
- Location of employment and business
  - Includes real and personal property location
- Home in new state



# Intent Residency: “Gotcha” Factors

## “Statements and Declarations”

- Driver’s license
- Voter registration
- Homestead
- Car registrations
- Nonresident hunting or fishing licenses



## Scenario 2 - Domicile

- Taxpayer and Wife were Minnesota domiciliaries
- Taxpayer moves to Nevada for work (brings dog with him)
- Wife and college-age son remain Minnesota residents, living in house in Eden Prairie, but Wife travels internationally and spends little time in Eden Prairie
- Taxpayer has family in Arizona (parents, sister)
- Taxpayer rents apartment and leases furniture in Nevada
- Taxpayer is present in Minnesota for 3 weeks during year
- Taxpayer did not obtain a Nevada driver's license, but did open a bank account in Nevada
- After his job in NV ended, he moved back to MN.

## Scenario 2 – Question

- Did Taxpayer establish a change of domicile to Nevada?

**YES**

*Dudley v. Comm'r*, No. 8666-R  
(Minn. T.C. Apr. 15, 2015)



## Scenario 3 - Domicile

- Taxpayer and Wife were Minnesota domiciliaries
- Taxpayer moves to Texas for work (no dog)
- Wife remains Minnesota resident, living in house in Inver Grove Heights; Wife is a teacher
- Taxpayer purchases house in Texas to repair and renovate; meanwhile, Taxpayer stays in hotel in Texas
- Taxpayer spent less than 30 days in Minnesota in 2010
- Taxpayer did not obtain a Texas driver's license, but instead obtained a Texas identification card
- Taxpayer opened a Texas bank account, but didn't use it
- After his position in TX ended, Taxpayer sold TX home and moved back to MN.

## Scenario 3 – Question

- Did Taxpayer establish a change of domicile to Texas?

**NO**

*Clifford v. Comm'r of Revenue,*

Docket No. 8718-R (Sep. 8, 2015)

## Scenario 4



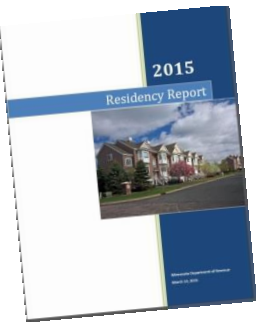
- Mrs. Smith has been a Florida domiciliary since 2008.
- In 2015, Mrs. Smith's mental and physical health decline due to Alzheimer's.
- In March 2016, Mrs. Smith's children move her to an assisted living facility in Minnesota.

## Scenario 4 Questions

- Did Mrs. Smith become a Minnesota domiciliary in 2016?
- Assuming that Mrs. Smith still owned a house in Minnesota during 2016, was Mrs. Smith a Minnesota physical presence resident in 2016?

# Department of Revenue's Residency Report (March 2015)

- Promise to simplify audit process and reduce the amount of requested information initially requested
- Promise to issue a Revenue Notice based on the current law that “clearly states” the following:
  - “The mere physical location of a CPA or Attorney providing services is not a factor in determining residency.”
  - “The department will not look at the location of bank accounts when determining residency.”





## Revenue Ruling 16-01: Domicile Considerations (2/1/2016)

“Employing, hiring, or engaging an attorney or CPA, or who has a business relationship with an attorney or CPA, whose address is in Minnesota *does not, by itself*, demonstrate an intent to establish or retain domicile in Minnesota.”

# Revenue Ruling 16-01: Domicile Considerations (2/1/2016)

“Having one or more bank accounts located in Minnesota, *does not, by itself,* demonstrate an intent to establish or retain domicile in Minnesota.”



# Proposed Legislation:

## Advisers and Bank Accounts

In determining where an individual is domiciled, neither the commissioner nor any court shall consider:

- (1) ~~charitable contributions made by an~~ the individual within or without the state in determining if the individual is domiciled in Minnesota;
- (2) the location of the individual's attorney, certified public accountant, or financial adviser; or
- (3) the place of business of a financial institution at which the individual applies for any new type of credit or at which the individual opens or maintains any type of account.



# Proposed Legislation:

## Advisers and Bank Accounts

For purposes of this subdivision, the following terms have the meanings given them:

(1) "**financial adviser**" means:

(i) an individual or business entity engaged in business as a certified financial planner, registered investment adviser, licensed insurance producer or agent, or a registered securities broker-dealer representative; or

(ii) a financial institution providing services related to trust or estate administration, investment management, or financial planning; and

(2) "**financial institution**" means a financial institution as defined in section 47.015, subdivision 1; a state or nationally chartered credit union; or a registered broker-dealer under the Securities and Exchange Act of 1934.

# Proposed Legislation: Medical Exception to Physical Presence Test

## **COMPARE:**

FY2015 Omnibus tax bill: “For purposes of this subdivision, presence within the state for any part of a calendar day constitutes a day spent in the state, except that a day spent in Minnesota for the primary purpose of receiving medical treatment by the taxpayer, or the spouse, child, or parent of the taxpayer, is not treated as a day spent in Minnesota. “Medical treatment” means treatment as defined in section 213(d)(1)(A) of the Internal Revenue Code.”

## **WITH...**



# Proposed Legislation: Medical Exception to Physical Presence Test

FY2016 Omnibus Tax Bills: “A day does not qualify as a Minnesota day if the taxpayer traveled from a place outside of Minnesota primarily for and essential to obtaining medical care, as defined in Internal Revenue Code, section 213(d)(1)(A), in Minnesota for the taxpayer, spouse, or a dependent of the taxpayer and the travel expense is allowed under Internal Revenue Code, section 213(d)(1)(B), and is claimed by the taxpayer as a deductible expense.”

FY2017 House Omnibus Tax Bill: Same language as 2016 bill. (It is not in the Senate Omnibus Tax Bill.)



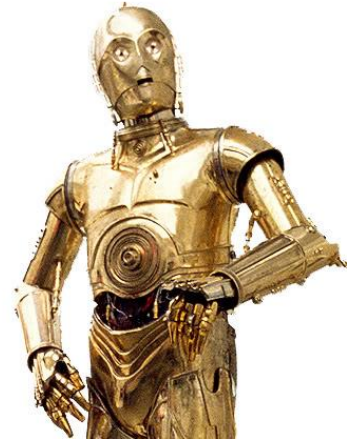
# Minnesota Residency Audits

- Assume that Minnesota will audit
- Residency questionnaire—do not fill out without advice of an experienced advisor
  - *Updated questionnaire is now being used*
- Present a compelling narrative
- Present a well-supported day count
- Establish and maintain credibility



# Tips for Advising Clients on Residency Changes

- Genuine change and narrative
- Recordkeeping
- There is no checklist
  - Most important factors
  - Factors the state has called “statements and declarations”
- Consistency





# Questions?

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