

# Minnesota residency requirements: statutes, regulatory factors, behavior, and more

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# Today's discussion



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- > Regulations/rules
- > Recent and pending case law
- > Putting all the pieces together

## Why an update?



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- > Recent changes to tax law – 2% rate hike
- > Several questions from taxpayers unhappy with tax increase
- > MN is aggressive and winning when challenged in courts
- > If a taxpayer wants to move, make sure to do things properly



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# **Minnesota statutes, rules, and regulations**

## **Minn. Stat. Sec. 290.01(7)**

- > 290.01(7)(a) defines resident as any individual domiciled in Minnesota, with the exception of qualified individual under IRC Sec. 911
- > 290.01(7)(b) allows the state to name any individual who maintains a “place of abode” in the state and spends more than one-half of the year in MN a resident for income tax purposes (183 day rule)

## **MN R. 8001.0300** – resident and domicile defined; considerations

- > Provides statutory definition of resident
- > Provides statutory definition of domicile
- > Provides 26 factors (considerations) the Commissioner can use when determining if a person is domiciled in the state
- > Provides statutory definition of “day” spent in Minnesota for counting days within and out of the state

## **MN R. 8001.0300** – resident and domicile defined; considerations

### Statutory definition of resident:

- > Any individual who is domiciled in MN, or
- > Any individual who is not domiciled in MN but maintains a place of abode in MN and spends in the aggregate more than one-half of the taxable year in MN
  - For purposes of days spent in MN, a person shall be treated as being present in MN on any day that person is physically present in MN at any time during that day
  - Exception provided if presence is related to travel between two points and time in MN is less than 24 hours

## **MN R. 8001.0300 – resident and domicile defined; consideration**

### Statutory definition of domicile

- > Bodily presence of an individual person coupled with an intent to make such a place one's home
- > Place in which that person's habitation is fixed, without any present intentions of removal and where that person intends to return when absent
- > Move to another jurisdiction with intention of remaining there permanently or for an indefinite period of time, that person has lost their domicile in this state
- > Presumption is that the place where a person's family is domiciled is that person's domicile. Domicile of a person's spouse is the same as the other spouse unless there is evidence to the contrary

## **26 Factors (Minn. R. 8001.0300(3))**

- > Location of domicile for prior years
- > Where person is registered to vote
- > Location of employment
- > Location of newly acquired living quarters
- > Present status of former living quarters
- > Homestead status requested for property tax purposes on new living quarters and homestead status of former living quarters
- > Ownership of other real property

## **26 Factors (Minn. R. 8001.0300(3))**

- > Jurisdiction of valid driver's license
- > Physical location of vehicles and jurisdiction of licensing of those vehicles
- > Location of bank accounts, where is most active account
- > Location of professional and business relationships
- > Address where mail is received
- > Whether the person has fulfilled the tax obligations of a resident
- > Statements made to insurance company concerning person's residence

### **Citizens of the US living abroad (IRC Sec. 911 Individuals)**

- > Individual must notify the county within 3 months of moving out of the country that homestead status be revoked for MN residence
- > Presumption is that a person who leaves this state to accept a job assignment in a foreign nation has not lost domicile in this state

### **183 Day Rule**

- > If time is spent in more than two states, MN may use greatest percentage of time to determine if taxpayer is a resident

### Factor tests

- > While rules state that one factor “will not, by itself, determine domicile, ” MN has been successful in imposing residency with only a few factors in their favor
- > Acts carry greater weight than declarations when domicile is being determined

*Charitable contributions will not, per the rule, be considered in determining whether an individual is domiciled in Minnesota.*

## How does this all begin?



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MN Department of Revenue will mail a *Residency Questionnaire* to a taxpayer

A light blue downward-pointing arrow connects the first step to the second.

Department of Revenue will request taxpayer to complete the questionnaire and send information to support non-resident claim

A light gray downward-pointing arrow connects the second step to the third.

Burden of proof is on taxpayer to show severance of domicile



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When an appeal with the Department of  
Revenue fails...take 'em to court!

# Two cases decided in MN Supreme Court in 2013 have given shape to DOR audits and scope of residency challenges

1. [William D. Larson v. Commissioner of Revenue \(1/9/2013\)](#)
2. [Kenneth B. Mauer v. Commissioner of Revenue \(4/17/2013\)](#)

## Core findings

- > Events after the year in which taxpayer moved can be used to assess intent
- > Emphasizes “locus of life” concepts

## Case facts

- > Larson born and raised in MN
- > Owns and operates Peterbilt dealerships in MN and WI
- > In 1997, entered negotiations to purchase Peterbilt dealership in Las Vegas, NV
- > Condition of purchase was he lived in Las Vegas and divested himself of MN and WI dealerships

# Case #1

## Larson v. Commissioner of Revenue



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### Case facts (cont.)

In June 1998, Larson:

- > Purchased condominium in Las Vegas, Nevada
- > Moved bulk of clothing, extensive wine collection, two pieces of art, and other possessions to NV
- > Obtained NV driver's license, cancelled MN driver's license
- > Registered to vote in NV, but never voted
- > Homesteaded NV residence
- > Opened NV bank account
- > Registered 2 cars in NV

# Case #1

## Larson v. Commissioner of Revenue



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### Case facts (cont.)

- > Unable to sell MN and WI dealership, therefore NV dealership purchase fell through
- > Filed as MN non-resident 1999-2006

### Court findings

#### Tax Court – Larson was MN resident

- > Absence of intent to remain in NV
- > Intent to change one's domicile "may be proved by acts and declarations" (Minn. R. 8001.0300(2))
  - Of these "two forms of evidence, acts must be given more weight than declarations" (Dreyling v. Comm'. of Revenue, 753 N.W.2d 698, 701-02)

## Court findings (cont.)

### Tax Court – Larson was MN resident

- > Connection with MN was greater than connection to NV
  - Spent more time in MN than NV
  - Owned more property in MN than NV
    - » Registered more vehicles in MN than NV
  - Maintained more professional relationships in MN than NV
    - » Retained one law firm in NV, four in MN
    - » Employed two accounting firms, one brokerage firm and medical treatments all in MN, none in NV
  - Personal assistant in MN managed bank accounts, paid bills, and received mail in MN. No job description provided for NV personal assistant.

## Court findings (cont.)

### Tax Court – Larson was MN resident

- > Court looked at acts and circumstances of taxpayer's life subsequent to year of move to evaluate the sincerity of the announced intent
- > Tax court concluded the "locus of [taxpayer's] life is in Minnesota"
- > Supreme Court – affirmed
- > Tax court did not err when comparing focus of taxpayer's life in examination of questions of domicile
- > Specific factors in Minn. R. 8001.0300(3) "aids in the determination of domicile," but does not provide the only factors the court may consider

## Core findings

- > Once taxpayer's MN domicile is established, a rebuttable presumption is formed that the taxpayer remains domiciled in MN and the taxpayer carries burden of rebutting this presumption
- > Court/MN DOR is not bound to conduct a formulaic application of factors listed in 8001.0300(3) (i.e. more factors in favor of the other win)

## Case #2

### Mauer v. Commissioner of Revenue



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## Case facts

- > Native Minnesotan, employed as referee by NBA
- > Built home on six acres of land in Afton in 1991, insured for >\$2 million
- > After home confinement related to Federal tax evasion sentence ended in 2003, flew to Florida and purchased townhome for \$235,000
- > Obtained FL driver's license, surrendered MN driver's license
- > Registered to vote in FL
- > Returned to MN one week later

## Case facts (cont.)

- > Homesteaded FL home and insured through FL agent
- > Registered FL home with employer (NBA) as home address
- > Entered into a listing agreement with unlicensed realtor to sell MN home, no record of home actually being listed
- > One-half of salary deposited in FL bank, one-half deposited in MN bank
- > During period of audit, wrote 470 checks on MN account, 7 checks on FL account
- > Kept travel log, often referred to time in MN as “home” and time in Fort Myers as “vacation”

## Case facts (cont.)

- > Owned 4 vehicles (oldest and least expensive was registered, licensed, and insured in FL)
- > Designated FL address as main travel home for NBA travel stipend program
- > Designated Fort Myers as home airport, NBA found travel was actually through MSP
- > NBA investigated activities, as FL travel generated larger stipend
- > Spent greater amount of off-days in MN than FL
- > 2004 – spent 181 days in MN, 64 in FL, and 121 in other locations
- > Travel, both personal and professional, often began and ended in MN

## Case facts

### Factor test

- > Court determined 8 favored MN, 6 favored FL, 6 were neutral, and 6 did not apply
- > Parties agreed that 6 favored FL and 6 did not apply
- > Taxpayer felt 3 favored MN and remaining 11 were neutral
- > Commissioner argued that 10 favored MN and 4 were neutral
- > Taxpayer argued Commissioner gave greater weight to factors favoring MN, court disagreed

## Court findings

### Tax Court – Mauer was a MN resident

- > Taxpayer need not prove that he has abandoned MN residence, but must rebut the presumption that he has not changed his domicile by proving that he established domicile in another state
- > Maintenance of MN home, negligible efforts to sell home, significant amount of time spent in MN, personal and business connections retained in MN, and vehicles and financial accounts retained in MN all combine to provide sufficient evidence in support of Commissioner's arguments that taxpayer remained domiciled in MN

## Court findings (cont.)

### Supreme Court – affirmed

- > Did not demonstrate credible and sincere resolve to establish a change in domicile, including spending more time in one's new state than in MN
- > Steps can be furthered by establishing new social connections in new state, moving more than just “some” personal belongings to the new state and moving one of several vehicles to the new state
- > Taxpayer continued to call MN “home” and maintained, furnished, and spent a significant plurality of time in the same home in MN that he occupied before the disputed time frame

## Court findings (cont.)

### Supreme Court – affirmed

#### > Dissent – Justice Anderson

- Agreed that majority has correctly set prevailing law, but felt taxpayer provided burden of proof of intent
- Felt majority got lost in “26-factor test” while ignoring major events of taxpayer’s life
- Taxpayer was on a plane the day after home confinement ended and purchased a townhome two days later
- Taxpayer’s dispute with NBA, including facing sanctions and termination, demonstrates intent to change domicile

## Court findings (cont.)

### Supreme Court – affirmed

#### > Dissent – Justice Anderson

- “Current approach to domicile by the Commissioner is hardly ‘common sense’ as the Commissioner has suggested”
- “Taxpayers in Minnesota enter the domicile swamp at their own peril”
- “The Commissioner’s interpretative practices as applied to the domicile rule can only be described as arbitrary”

Several cases currently on the State Tax Court docket that could provide even more direction on the issue

Cases have not been to trial yet, so there is no public authority to be given to the facts, however they do warrant keeping an eye on if they do go to trial

## Case facts

- > Purchased and homesteaded Nevada home
- > Placed MN home on the market—rented home in MN to use while visiting
- > Registered to vote in NV
- > Received NV driver's licenses, registered vehicles in NV
- > Mr. Zavadil continued to work part-time from NV for a Minnesota business
  - Also engaged in real estate development and real estate investment companies - Duties were fulfilled in NV

## Case facts (cont.)

- > Filed part-year MN resident returns in 2005, MN non-resident returns 2006

## Commissioner ruling

- > Taxpayers were residents for 2005 and 2006
- > Did not demonstrate that they abandoned their MN domicile and establish new domicile in NV because more time was spent in MN than any other state (although not > 183 days)

## Case facts

- > Purchased Wyoming ranch in in 1991, decided to make their permanent home in 1998
- > Maintained a home in MN
  - Elderly mother lived there—her health deteriorated, sister and brother-in-law moved in to care for her
  - Spent approximately 100 days/year in MN

## Case facts

### In 2005:

- > Brother-in-law passed away, Keiths spent more time than usual in MN to help care for mother
- > His wife required dual hip replacement—felt no doctor in WY could perform surgery, so was performed in MN
- > Recovery and prohibition from flying or driving, along with additional care for mother, kept Keiths in MN more than 183 days/year from 2005-2007

## Commissioner ruling

- > Because taxpayer was in the state >183 days, they were MN residents

## Taxpayers' argument

- > Reason for presence in the state on a given day must be considered
  - Time spent in MN for medical reasons, either personal or for relatives, should not be included as days in state
- > Non-domiciliary residency statute violate the Due Process, Commerce, and Equal Protection Clauses of the US Constitution



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**So what does this mean?**

## 183 day rule is first hurdle

- > State will use airline records, credit card and bank statements to determine location
- > Important that taxpayers keep contemporaneous records of travel and be able to provide support when requested
- > Don't call MN "home" in these records (Mauer)

## Intent

- > A domicile once shown to exist is presumed to continue until the contrary is shown
- > Burden of proof to show how behaviors have changed

## Intent

### Acts and declarations

- > Many of the 26 factors are considered declarations (registering to vote, changing driver's license, etc.)
- > Greater emphasis is placed on acts
  - How has life of taxpayer changed since domicile has changed
  - What has the taxpayer given up

## Taxpayers who travel extensively

- > Watch percentage of days in MN vs. elsewhere (Mauer)
- > Best argument if new home state has higher percentage than MN
- > Majority of travel should begin and end in new home state



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