

Featured Professionals

Masha M. Yevzelman

Related Services

Tax Disputes & Litigation

Residency Legislative Alert: Location of Attorney, CPA, Financial Adviser or Bank Account May No Longer Be Considered in Domicile Determinations

Legal Update

05.31.2017

By Masha M. Yevzelman & Thomas R. Muck

When evaluating whether an individual is a Minnesota resident, as opposed to a resident of another state or country, the Minnesota Department of Revenue has been considering, among many factors, the location of a person's attorney, accountant, financial adviser and bank accounts. Thus, individuals seeking to change their residency to another state or country have been asking whether they should fire their Minnesota advisers and close their Minnesota bank accounts. In response to such questions, the Minnesota State Bar Association, the Minnesota CPA Society and other members of the business community urged the Minnesota Legislature to change the law.

Minnesota law provides that an individual is a resident of Minnesota for income tax purposes if he is either: (1) domiciled outside Minnesota, but maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota or (2) domiciled in Minnesota because his subjective intent is to remain a Minnesota resident. For estate tax purposes, on the other hand, Minnesota law views only individuals domiciled in the state as Minnesota residents. There is no "physical presence" test for estate tax purposes.

The Department of Revenue evaluates domicile using several factors, including the 26 factors identified by the Department of Revenue in Minnesota Rule 8001.0300. The 26 factors include where an individual spends his or her time, maintains a home, works, is involved in the community, has a driver's license and is registered to vote. Also among the factors are the "location of any bank accounts, especially the location of the most active checking account," "business relationships" and the "location of other transactions with financial institutions."

After several years, the Minnesota business community efforts to change the law have finally succeeded. The omnibus tax bill, enacted by the Legislature during the special session and signed by the Governor on May 30, 2017, included a legislative amendment to remove from consideration in a domicile dispute—for both income and estate tax purposes—the location of an individual's attorneys, CPAs, financial

Residency Legislative Alert: Location of Attorney, CPA, Financial Adviser or Bank Account May No Longer Be Considered in Domicile Determinations

advisers and bank accounts. As amended, the law, which is effective for tax years beginning after December 31, 2016, now provides:

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

...(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.

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 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.

Thus, individuals seeking to move from Minnesota to another state or country will no longer have to ask whether they should fire their Minnesota advisers and close their Minnesota bank accounts.