

# Leaving Town? Top 10 MN Residency Myths Debunked

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& BYRON, P.A.

## Myth 10:

If you're out of Minnesota for more than 183 days, the Department of Revenue will agree that you're not a Minnesota resident.

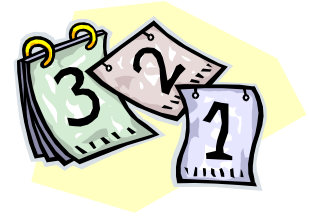
# Two Residency Tests

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

**MUST SATISFY BOTH TESTS**



# Physical Presence Test: Counting Days



- Partial Days
  - Any part of a day counts as a Minnesota day
  - Do not count “nights”
- Exception: In-Transit Rule
  - Passing through Minnesota
  - Less than 24 hours

# Physical Presence Test: Recordkeeping

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



# Intent Residency/Domicile

- Applies to individuals and estates
- 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)
    - Relocation cannot be for temporary purposes
  - Marital and family presumptions

# There is no “safe harbor” under Minnesota law for residency changes.

# U.S. Federal Tax Residency Rules

- U.S. tax “residents” are subject to tax on *worldwide income* and required to comply with substantial tax and FBAR reporting obligations
- “Nonresident aliens” (NRAs) are only subject to U.S. tax on U.S. source income (FDAP) and on income effectively connected with the conduct of a U.S. “trade or business” (ECI)
  - To be a U.S. tax resident, the NRA must meet the “183 day” formula test
- Minnesota views “residency” differently; one can be a US resident, and a Minnesota resident, a resident of neither, or of only one...



## Myth 9:

**If you move to another country, you automatically become a non-resident of Minnesota.**



# Changing Domicile to a Foreign Jurisdiction

- An individual is not a MN resident if
  - A “qualified individual” whose tax home is in a foreign country under IRC § 911(d)(1):
    - *Bona Fide* resident of a foreign country for an uninterrupted period that includes an entire taxable year, or
    - Is physically present outside the USA (in or more foreign countries) during at least 330 full days during any consecutive 12 months
  - Taxpayer must notify the county within 3 months of moving out that homestead status should be revoked for the Minnesota residence and
  - Property is not classified as homestead while the individual remains a qualified individual.

# Changing Domicile to a Foreign Jurisdiction

- If not a “qualified individual,” then DOR presumes taking a job assignment in a foreign country does not change MN domicile
- Key: intention to remain abroad
- Same domicile factors apply
- DOR also evaluates whether taxpayer is:
  - on a path to permanent residency
  - learning foreign language

## Myth 8:

**In a residency audit, only the years at issue matter (what you do before or after is irrelevant).**

# Context Matters

“This matter involves Mark Zauhar’s residency during 2013 and 2014. Although the court’s analysis will focus primarily on facts pertaining to those two years, **one interval of a human life can rarely be understood in isolation**. In this case, unique circumstances render a broader context particularly important.”

-*Zauhar v. Comm’r of Revenue*, No. 9139-R, 2020 WL 4912971  
(Minn. T.C. Aug. 19, 2020)

# Context Matters

“In reviewing whether the taxpayer intended to change his or her domicile, we examine more than simply acts occurring at the time of and shortly after the taxpayer’s physical move to another state.”

*-Larson v. Comm’r of Revenue, 824 N.W.2d 329, 332 (Minn. 2013)*

## Myth 7:

**You must sever all Minnesota ties. To change residency, you must fire your MN attorneys, accountants, and financial advisors.**

# Factors that Cannot Be Considered

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

- Charitable contributions;
- Location of attorney, CPA, or financial adviser; or
- Location of financial accounts.

Minn. Stat. § 290.01, subd. 7(c)



# Abandonment of MN Domicile

“For 40 years the Minnesota Supreme Court has emphasized that the proper focus of inquiry is on *whether a new domicile has been established elsewhere*, not on whether a Minnesota domicile has been abandoned: ‘This court has stressed that a party does not need to prove *abandonment* of present domicile, but, instead, rebuts the presumption that he or she has not changed domicile by proving establishment of domicile in another jurisdiction.’”

-*Zauhar v. Comm’r of Revenue*, No. 9139-R, 2020 WL 4912971 (Minn. T.C. Aug. 19, 2020) (citing *Sandberg v. Comm’r of Revenue*, [383 N.W.2d 277](#), 283 n.7 (Minn. 1986) and *Comm’r of Revenue v. Stamp*, [296 N.W.2d 867, 870](#) (Minn. 1980)); see also *Mauer*, 829 N.W.2d at 68; *Sanchez*, 770 N.W.2d at 526.

# Continuing Ties with MN...

“Although Mark had continuing contacts with Minnesota during both years at issue, Minnesota law does not require a taxpayer to sever all Minnesota ties to establish a domicile elsewhere. *See, e.g., Mauer*, 829 N.W.2d at 68, 70. As we stated in *Marcotte v. Commissioner of Revenue*:

Because of long-term business and social relationships and the ownership of property in Minnesota, many ties were not broken and probably never will be broken. This is not necessary. **All that is necessary is physical presence in another state with the requisite intent to make that state one's new home.**”

-*Zauhar v. Comm’r of Revenue*, No. 9139-R, 2020 WL 4912971 (Minn. T.C. Aug. 19, 2020) (citing *Page v. Comm’r of Revenue*, No. 4011, 1986 WL 15695, at \*7 (Minn. T.C. Mar. 12, 1986)).

# Myth 6:

**There is a medical  
exception to  
residency.**

# Physical Presence Test: No Medical Exception in MN



- Proposed legislation to create MN medical exception has *not* been enacted
- New York Medical Exception:
  - *Stranahan v. State Tax Commission*, 68 AD2d 250,416 NYS2d 836 (3d Dept 1979): when a nondomiciliary seeks treatment for a serious illness, the time spent in a medical facility for the treatment of that illness should not be counted toward the number of days the taxpayer is determined to be in New York for statutory residency purposes.
  - Audit policy: confinement to a medical institution for any reason in New York (serious or otherwise), does not constitute a day spent in New York.
    - For example, if an individual suffers a heart attack while in the state on business and cannot be removed, the time spent confined to a New York medical institution would not count toward the 183-day rule.

# Physical Presence Test: Involuntary Presence



- Taxpayer was arrested and charged in MN with a DUI and was ordered by the Court to remain in Minnesota.
- Days spent “involuntarily” in Minnesota (*i.e.* in jail) count as Minnesota days.
- “Presence” in Minnesota means an “individual passes time in a physical place.”
- “Consideration of an individual's intent or state of mind, whether voluntary or involuntary” is not relevant.

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

# Physical Presence Test: Involuntary Presence



## COVID-19 FAQs for Individuals

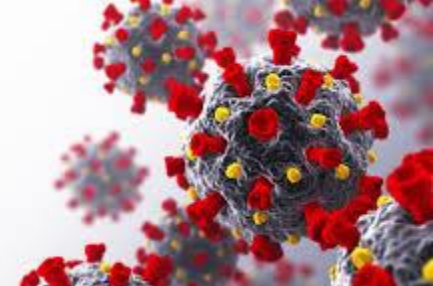
### **Does the reason I'm in Minnesota affect if I need to file a state Individual Income Tax for tax year 2020? What if I'm in Minnesota due to COVID-19?**

Generally, no. Minnesota full-year and part-year residents are required to file a Minnesota income tax return if their income meets the state's minimum filing requirements. The filing requirement is the same even if you are in Minnesota due to COVID-19, except for:

- Military members and their spouses stationed in Minnesota
- Individuals covered by income tax reciprocity agreements

For details, [see Who Must File an Income Tax Return](#) and [Residents \(Determining Residency\)](#).

# Federal US “COVID” Residency Rules Differ



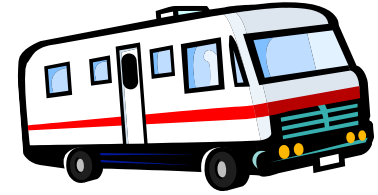
- US residency for NRAs based annually on “183-day” rolling 3-year formula for days of physical presence in US:
  - $1 \times \text{current year} + 1/3 \times \text{first preceding year} + 1/6 \times \text{second preceding year} \geq \text{“183”}$
- Rev. Proc. 2020-20:
  - Grants automatic exclusion of 60 days of US presence in 2020 for period starting 2/1/20 through 4/1/20 as “COVID-19 Emergency Period” but must be present each day
  - BUT, taxpayer cannot have been a US resident at the end of 2019, and cannot become a US resident in 2020 for days of presence outside that 60 day period
- As a result, a foreigner could become a MN “resident” and not be a resident of the US during 2020....

# Myth 5:

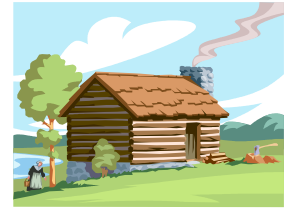
**If you put your Minnesota real estate into a trust, it is not your property for residency purposes.**



# Place of Abode?



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



# *Transfers to Trust*

The Court “is not bound by ‘the formalities of [property] ownership.’”

- *Zauhar v. Comm’r of Revenue*, No. 9139-R, 2020 WL 4912971  
(Minn. T.C. Aug. 19, 2020)

(citing *Zavadil v. Comm’r of Revenue*, No. 8433-R, 2015 WL 1331322, at \*24).

**Myth 4:**  
**There is a**  
**“checklist” for**  
**changing**  
**residency.**

# Intent Residency: Factors

- There is no “checklist” for changing residency
- Minnesota’s 26 Factors
  - Factors provide evidence of intent
  - No one factor is determinative
  - They are not exclusive (there are other factors)
- Factors are not “steps” or “requirements”
- Factors should not be mechanically tallied
- Acts are more important than declarations



# Zauhar v. Comm'r

“[T]he objective factors set forth in Rule 8001.0300 are intended simply to assist the court evaluating domicile, and emphasize that the court's ultimate task is to determine the subjective sincerity of Mark's stated intention to make Florida his home.”

-*Zauhar v. Comm'r of Revenue*, No. 9139-R,  
2020 WL 4912971 (Minn. T.C. Aug. 19, 2020)

# Mauer v. Comm'r

“[B]oth the Commissioner and the tax court . . . must strive to apply the Department's factors in a consistent and equitable manner. For taxpayers to have trust and confidence that Minnesota's tax system is fairly and equitably applied to all, it is vitally important that taxpayers be able to understand the Department's factors and how those factors are applied in any given situation. Such an understanding is important so that taxpayers can adjust their expectations, intentions, and actions accordingly.”

*-Mauer v. Comm'r of Revenue, 829 NW2d 59 (Minn. 2013)*

# Intent Residency: Most Important Factors

- Time spent (physical presence)
- Community and family connections
- Location of employment and business interests
- Size and value of home (and other assets)
- Contextual evidence
- Intent to return to MN even if temporarily away

# Intent Residency: Gotcha Factors



## “Statements and Declarations”

Driver’s license

Voter registration and voting

Homestead

Car registrations

Nonresident hunting or  
fishing licenses



# Myth 3:

**If you sell your business after you become a nonresident of Minnesota, you avoid MN tax.**

# Minnesota Taxes Some Income of a Nonresident

- Apportioned business income
- Wages earned for services performed in MN
- Income or gains from tangible property located in MN
- Income from winnings on a bet
- Some gains from sale of a business

# Sale of Business

- Partnership interest:
  - Allocate using original cost of tangible property ratio OR
  - prior year's sales factor (if more than 50% of assets are intangibles)
- Stock sale: assign to state of domicile
- Asset sale: it depends

# Asset Sales

- Business income:
  - Apportion gain from assets among Minnesota and other states using sales factor (sales in Minnesota over sales everywhere).
- Nonbusiness income (asset by asset):
  - Goodwill/covenant not to compete: “To the extent that the income from the business in the year preceding the year of sale was allocable to Minnesota.”
  - Tangible property: Gains taxable in MN if property located in Minnesota

# Installment Sales

Minn. Stat. § 290.0137

## Accelerated Recognition of Installment Sale Gains

- Installment sale gains (IRC § 453) are immediately taxable in year taxpayer becomes a nonresident.
- Nonresident taxpayer may formally elect to defer taxation if agrees to file nonresident income tax returns reporting installment gains in all future applicable years.

**Myth 2:**  
**I will never be**  
**audited.**

# Residency Audit Initial Letter

- Requests Documents:
  - Residency Questionnaire
  - Calendar/journal showing physical presence each day
  - Employment contract
  - Insurance policies
  - Cell phone, bank, and credit card statements
  - Airline reward statements
  - Tax returns

# Residency Questionnaire

- Physical Presence
  - Date moved from MN
  - Whether moved back to MN
  - Number of days spent in each location
  - Number of days worked in each location
- Housing
  - All addresses “where you lived”
  - All properties you owned
  - Owned/rented
  - Put house up for sale?
  - Homestead status
  - Mortgage/refinance?
  - Moved personal belongings?



# Residency Questionnaire

- Family and Community Connections
  - Spouse
  - Dependent Children
  - Other family
  - Pets
  - Schools
  - Club memberships
  - Place of worship
- Business/Professional Associations
  - Employment
  - Professional licenses
  - Business ownership
  - Business sale
  - Doctors/dentists

# Residency Questionnaire

- Statements and Declarations
  - Voter registration
  - Driver's license
  - Permit to carry concealed weapon
  - Hunting or fishing license
  - Passport and address thereon
  - Estate planning documents (where and when updated)
  - Income tax return filing
  - Vehicles and boats
  - Insurance policies
  - Active bank and credit card accounts
  - **“any special circumstances not addressed above”**

# Minnesota Residency Audits

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



# Myth 1:

**You can't win a  
residency case before  
the Minnesota Tax  
Court.**

# Recent Taxpayer Win: *Zauhar*

- **Context:** After retiring, Mark moved to Florida for weather and trapshooting
- **Time:** Mark spent more time in FL than in any other state
- **Housing:**
  - FL: Mark lived in Park Model Trailer Home at a Trapshooting Park, rented land underneath Park Model; in later years, purchased large home near the Trapshooting Park
  - MN: Through a trust, Sharon owned a house and hunting land up north
- **Family:**
  - Mark's wife (Sharon) and adult daughter (LZ) remained Minnesota residents, but visited Mark in Florida
  - Mark's only sister in FL; all holidays in FL with Sharon and LZ
- **Community:** Mark became a member of the Florida Trapshooting Association
- **Gotcha:**
  - FL: Driver's License, Voter Registration
  - MN: Nonresident hunting licenses, MN house was homesteaded by Sharon's trust

- *Zauhar v. Comm'r of Revenue*, No. 9139-R, 2020 WL 4912971 (Minn. T.C. Aug. 19, 2020)

# Taxpayer Wins!

- Mark Zauhar was a FL resident!
- Overcame *prima facie* validity of Order
  - Order contained numerous errors
  - Commissioner applied wrong standards
- Overcame spousal/family presumption
- Satisfied burden of persuasion and proved by a preponderance of the evidence that Mark Zauhar changed his domicile to FL



# Summary of Holding

- Context matters.
- Abandonment of MN or severance of all MN ties is not necessary.
- Service on boards of 501(c)(3) entities cannot be considered in evaluating domicile because it is a charitable contribution.
- The Court and the Department of Revenue must apply domicile factors consistently and equitably (factors cannot only matter when they favor the Department).

# Spousal/Family Presumption: “Joint Intent”

- “The Commissioner insists that the court must *not* inquire into Mark's *actual individual intention* with respect to domicile, but should instead attribute a *collective intention* to the Zauhars as a family unit[.]”
- Holding:
  - “We reject the Commissioner's family-intent proposal as contrary to the language of controlling law. . . . The very presumption on which the Commissioner relies presupposes that the domicile of each spouse ultimately will be determined separately.”



# Spousal/Family Presumption: Physical Separation

- Commissioner contended that “that spouses may acquire separate domiciles only if they maintain *physical separation*.”
- Holding:
  - “We . . . reject the Commissioner’s view that the establishment of separate domiciles for spouses imposes on them an obligation of physical separation. Although the Rule generally presumes that spouses have the same domicile, it allows spouses who are not separated or divorced to establish separate domiciles by presenting “affirmative evidence” rebutting the presumption. Minn. R. 8001.0300, subp. 2.”
  - “We have recognized that a taxpayer's visits to his family’s Minnesota residence, and his family's reciprocal visits to his out-of-state residence, do not defeat an otherwise valid change in domicile.”

# Questions?



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