

Minnesota Residents – Intention Does Not Always Win
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Minnesota has residents that consider themselves “snowbirds” – spending portions of their time (usually the long, cold, winter months) in a warmer climate and the summer months in Minnesota. Typically, by the time they are ready to retire, at least one of their advisors will tell them that for tax purposes, they would be better off establishing their residency in whatever state they frequent other than Minnesota, be it Florida, Texas, Nevada or Arizona.....the list is long as to states with more advantageous taxation than Minnesota. When clients have asked me in the past how to establish residency in a different place, I would say “make sure over ½ of your time is not in Minnesota, change your driver’s license, your voting registration and establish your homestead there to show your intention of residency. With the recent case law coming out of Minnesota, that just simply is not enough anymore.

Minnesota Courts have determined that an existing domicile in Minnesota continues until a new one is established, not only by showing intention, but actions. The Court stated that when one announces an “intent to make a new abode one’s home, the trier of fact may consider the acts and circumstances of that person in evaluating the sincerity of the announced intent.” Comm’r of Revenue v. Stamp, 296 N.W.2nd 867 (Minn 1980). According to the Minnesota Statutes, however, intent to change residency can be measured by a 26-factor test the Minnesota Department of Revenue has compiled. The trier-of-fact is to consider each of the 26 factors, with no single factor more determinative than any other, on a case-by-case basis. Minn. R. 8001.0300, Subp.3 (2007). The 26 factors are as follows:

1. Location of domicile for prior years;
2. Where the person votes or is registered to vote;
3. Status as a student;
4. Classification of employment as temporary or permanent;
5. Location of employment;
6. Location of newly acquired living quarters whether owned or rented;
7. Present status of the former living quarters, i.e. whether it was sold, offered for sale, rented, or available for rent to another;
8. Whether homestead status has been requested and/or/obtained for property tax purposes on newly purchased living quarters and whether the homestead status of the former living quarters has not been renewed;
9. Ownership of other real estate;
10. Jurisdiction in which a valid driver’s license was issues;
11. Jurisdiction from which any professional licenses were issued;
12. Location of the person’s union membership;
13. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles;
14. Whether resident or nonresident fishing or hunting licenses were purchased;
15. Whether an income tax return has been filed as a resident or nonresident;
16. Whether the person has fulfilled the tax obligations required of a resident;

17. Location of any bank accounts, especially the location of the most active checking account;
18. Location of other transactions with financial institutions;
19. Location of the place of worship at which the person is a member;
20. Location of business relationships and the place where business is transacted;
21. Location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member;
22. Address where mail is received;
23. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota;
24. Location of jurisdiction from which unemployment compensation benefits are received;
25. Location of schools at which the person or the person's spouse or children attend, and whether resident or nonresident tuition was charged; and
26. Statements made to an insurance company, concerning the person's residence, and on which insurance is based.

Although these 26 factors have been used by Minnesota courts for some time, the recent decisions have the actions of the taxpayer being scrutinized to evaluate the sincerity of the intention of a domicile change. Additionally, once a taxpayer is a resident of Minnesota, the taxpayer is the one who has the burden to prove that they have changed their domicile to another state. Courts have recently seemed reluctant to let the taxpayer establish a residency change. In Larson, for example, the Court found that even though the taxpayer did not make a homestead application on any of his properties in Minnesota, had made a homestead application in Nevada, had registered to vote in Nevada and obtained a driver's license in Nevada, because of his business ties to the State of Minnesota and his physical presence in the State of Minnesota more than anywhere else, (even though not half the year in any year that was under audit) and because the Court believed the factors came out more often in favor of Minnesota than in other places, the Court believed his intention for becoming a Nevada resident was not sincere and he was found to be a resident of Minnesota. Larson v. Comm'r of Revenue, 824 N.W.2nd 329 (Minn. 2013).

It is surprising that the clear intention does not seem to make much of a difference. Clearly, in Larson, the taxpayer was choosing Nevada for his residency. He established his homestead, licensing and voter registration, a bank account, and even purchased additional rental properties there over time, establishing his place in the community. He had cars, bank accounts and a life in Nevada. It was not a made-up existence. He even created a Nevada trust to hold his property. He retained homes in Minnesota for his sister and his children, as well as investing in some rental properties. He also had properties in Wisconsin, Texas and Mexico. His attorneys and accountants remained where most of his historical long-term business dealings were, in Minnesota. (Id.) The court did not take into account that once you find trusted advisors and open your life and circumstances up to those people, it is difficult to reestablish those relationships elsewhere. Why would he? He has a personal assistant to pay bills that he has had for some time. She resides in Minnesota. His accountants are located in Minnesota. With the technology available today it is much easier to maintain those relationships than it once was.

The Larson Court also seemed to look at the fact that during the years in question, the taxpayer had one minor child in school in Minnesota and he provided housing for his son and his son's mother, his sister and another son who all reside in Minnesota. (*Id.*) These circumstances establish reasons for him to be in Minnesota, but should not be determinative in the establishment of his residency.

Finally, the taxpayer also had business dealings in Minnesota, Wisconsin, North Dakota, South Dakota, Montana, California, Kentucky and Ohio through various entities, most managed under the umbrella of a Minnesota corporation. Taxpayer served as chairman of the corporation and was compensated for his service. Taxpayer did attempt to purchase a business in Nevada, but the purchase fell through, so the only business dealings he had in Nevada were his rental properties. Larson, 824 N.W.2d at 331. Again, these seem to be reasons to establish time spent in Minnesota, but not reasons for the creation of residency.

What should be learned from the Larson case is that clear intention simply does not carry the weight it once did. To establish residency outside of Minnesota, one should strive to limit their involvement and assets held in Minnesota, while establishing relationships and moving their assets to their residency state of choice. Actions speak louder than words.