Residency

1

Income Tax Fact Sheet 1 *Minnesota forms you may need: M1, M1M, M1NR, M1CR* **Fact Sheet**

People who maintain homes in other locations, temporarily relocate, live out of state but work in Minnesota, or who are in the military, are sometimes unclear about their tax responsibilities. Consequently, some people fail to file a Minnesota return or pay the correct amount of tax.

For example, some Minnesota **residents** believe that when they temporarily live in another state, they do not owe Minnesota tax. Not true!

Likewise, **nonresidents** are sometimes unclear about their tax obligations. Since they are permanent residents of another state, they think they're not required to pay Minnesota tax. But they may be required to pay, depending on the amount and type of income.

Minnesota residents—for income tax purposes—are people who meet the conditions of permanent residency or the 183-day rule (see *The 183-day rule* on page 2).

If you move out of Minnesota temporarily, but have no intention of remaining permanently in another state, you continue to be a Minnesota resident.

As a resident, you must pay Minnesota tax on taxable income you received from all sources, regardless of where it was earned.

Part-year residents are people who have moved during the year into the state with the intention of remaining, or moved out of state and have established a permanent residence elsewhere. In either situation, you must pay Minnesota tax on taxable income you received from all sources while a Minnesota resident. For the portion of the year you were a nonresident, your income is taxed in the same manner as a nonresident (see *Nonresidents* below).

Nonresidents earn income in Minnesota but have their permanent residence elsewhere. If you are a nonresident, you must pay Minnesota tax on income earned here. This includes wages, deferred wages, gambling winnings and income or capital gains derived from a business or property, a partnership, S corporation, estate or trust operating in Minnesota. You do not have to pay Minnesota tax on interest, dividends, tax refunds, alimony, pensions or unemployment compensation.

In fact, people are often responsible for paying Minnesota income tax, regardless of where they live. Because individual circumstances vary, so do the rules for meeting those responsibilities.

This fact sheet will help you determine your Minnesota tax responsibilities.

Residency . . .

is generally defined by two rules:

- domicile (permanent residency), or
- the 183-day rule.

Permanent residency

Your permanent residence (domicile) is the place you intend to make your home for a permanent or indefinite period of time. It is your legal residence. Your permanent residence, once established, continues until you take steps to establish a new residence.

If you live with your spouse, both you and your spouse are presumed to have the same state of residency for income tax purposes. And even though you might split your time between more than one location or state, you both still have the same *permanent* residence.

Example 1. Laura lives in Minnesota for five months and in Arizona for seven months. Because she was a Minnesota resident before she began spending time in Arizona, Laura continues to be a full-year Minnesota resident until she takes steps to change her residency.

Example 2. William's job requires that he temporarily moves to another state for the next two years. Because he intends to stay only for a limited time (no matter how long), William's residency does not change. In this situation, he is considered a full-year Minnesota resident.

If, on the other hand, William moves to another state with the intention of making it his home permanently or for an indefinite time, he no longer is a Minnesota resident.

Example 3. Patrick retired, sold his permanent home in Minnesota and lives the life of a nomad, traveling around the country in a recreational vehicle. Even though he abandoned his Minnesota home, Patrick is still considered to be a full-year Minnesota resident until he establishes residency in another state.

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Criteria used to determine permanent residency

The criteria below will help you determine your state of permanent residency.

Property ownership and residence:
- homestead status
- the location of your home
- your mailing address
- the amount of time you spend in Minnesota

Financial data:
- the location of your bank accounts
- where you qualify for unemployment insurance
- the state in which you filed previous resident tax returns
- the state where you earn your wages

Licenses and registrations:
- where you are registered to vote
- which state issued your driver's license
- where your vehicles are registered
- the state in which you maintain professional licenses

Affiliations:
- the location of your fraternal, social or athletic memberships
- where you maintain union memberships
- your place of worship

Higher education:
- where you qualify for in-state tuition

Family and dependents:
- whether you can be claimed as a dependent on another person's federal income tax return and, if so, that person's state of residence
- where your spouse or dependents reside

In summary, no single factor will determine your state of permanent residency. Even though some factors may be more important than others, all relevant factors are evaluated together when determining residency.

Furthermore, certain considerations, such as where you make charitable contributions, play no part in determining your residency.

Changing residency

Changing legal residence requires the following:
- physical presence in a new locality, and
- intent to remain there permanently or indefinitely.

Actions that express intent may include:
- changing legal documents, such as a will or insurance policies, to reflect your new legal residence
- changing your home of record with your employer
- registering to vote in your new locality
- applying for a driver's license in your new state of residence and relinquishing your old license
- registering a car in your new state of residence
- applying for homestead status in your new state of residence
- selling your home and purchasing a home in your new state of residence
- consistently using the new permanent address on records and correspondence.

When it comes to determining residency, your words and actions are both considered, but of the two, your actions carry more weight than words. For example, you may say that you consider Texas to be your home, but if you homestead real estate and maintain your primary checking account in Minnesota, these actions are inconsistent with your words.

All relevant factors are evaluated together when determining permanent residency.

The 183-day rule

If you are a resident of another state, you may still be taxed as a Minnesota resident under the 183-day rule.

The 183-day rule depends on two conditions:

1. You spend at least 183 days in Minnesota (any portion of a day is counted as a full day), and
2. You or your spouse own, rent or occupy an *abode*—a self-contained living unit, suitable for year-round use, that is equipped with its own cooking and bathing facilities—in Minnesota.

If both conditions apply, you are a Minnesota resident for the length of time the second condition applies. If the second condition applied for the entire year, you are considered a full-year Minnesota resident for income tax purposes. If it applied for less than a full year, you are considered a part-year resident.

If you maintain a home in Minnesota, but claim residency elsewhere, you must keep adequate records to verify that more than half of the year is spent out of state. Records confirming your whereabouts commonly include planners, calendars, plane tickets, canceled checks, credit card and other receipts. This rule does not apply to military personnel or to people covered under reciprocity (see *Reciprocity* below).

Example: If you rented an apartment in Minnesota for 365 days, but only spent 183 days living in the apartment, you would be a Minnesota resident for the entire year. In this case, you would be required to pay Minnesota tax on all your taxable income received from all sources, including any income you earned while working in another state.

Special cases

Reciprocity

Minnesota has reciprocity agreements with Wisconsin, North Dakota and Michigan. Consequently, if you are a Minnesota resident working in Wisconsin, North Dakota or Michigan, you pay income tax to Minnesota—your state of residence. Likewise, if you are a resident of Wisconsin, North Dakota or Michigan working in Minnesota, you must pay income tax to your home state.

Only income earned from the performance of personal services—such as wages, salaries, tips, commissions and bonuses—in a reciprocity state qualifies for the reciprocity exemption. Capital gains from tangible property, rents, royalties and gambling winnings do not qualify.

As of January 1, 2010, the reciprocity agreement between Minnesota and Wisconsin is terminated. This does not affect tax year 2009.

For more information, see Fact Sheet 4, *Reciprocity*.

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Foreign earned income

Federal foreign earned income exclusion

If you earned income in a foreign country, you may qualify for the federal foreign earned income exclusion. If you qualify and your foreign earned income is excluded on your federal return, this income will not be taxed by Minnesota.

To qualify, you must have established a tax home in a foreign country and have been outside the United States for at least 330 days during a 12-month period (see IRS Publication 54, federal Form 2555 or Form 2555EZ).

Foreign income and residency

Some taxpayers (e.g., federal employees), may not qualify for the federal earned income exclusion. Others may have earned income above the federal threshold or have unearned income that doesn't qualify for the federal exclusion. If you are one of these individuals, you may be able to exclude income on your Minnesota return by qualifying as a nonresident. You are considered a nonresident if you do not homestead property in Minnesota, have established a tax home in a foreign country and have been outside the United States for at least 330 days during a 12-month period. You will pay Minnesota tax only if you have income derived from Minnesota sources.

For details on what income is taxed by Minnesota, see Fact Sheet 2, *Part-Year Residents*, or Fact Sheet 3, *Nonresidents*.

Aliens

If you are *not* a citizen of the United States, but have Minnesota earned income, you may be required to pay Minnesota income tax. The same guidelines that apply to Minnesota residents, part-year residents of Minnesota or nonresidents apply to resident aliens. Nonresident aliens need to refer to Fact Sheet 16, *Aliens*, for filing requirements.

For details on determining your Minnesota tax responsibilities, see Fact Sheet 16, *Aliens*, and Fact Sheet 2, *Part-Year Residents*, or Fact Sheet 3, *Nonresidents*.

Military personnel

Members of the military and their spouses remain domiciled in the state in which they have established permanent residency until they take the necessary steps to change their residency (see *Changing residency* on page 2).

The tax treatment of Minnesota military members has varied in recent years. For tax years 2001 through 2004, if you were on federal active duty, you were considered a nonresident for tax purposes during the time you were stationed outside Minnesota. Beginning in 2005, you are considered a Minnesota resident during the time you are stationed outside Minnesota, and are allowed a subtraction for your military pay.

For more information, see Fact Sheet 5, *Military Personnel*, and Schedule M1M, *Income Additions and Subtractions*.

Nonresident military personnel

The 183-day rule does not apply to military members or their spouses. If you are a permanent resident of another state stationed in Minnesota, you cannot be considered a full or part-year resident based on the number of days spent in Minnesota. In addition, beginning with tax year 2003, if you are required to file a Minnesota return, your military pay cannot be used to determine your Minnesota tax liability.

For more information, see Fact Sheet 5, *Military Personnel*, and Schedule M1M, *Income Additions and Subtractions*.

Students

Students remain a resident of the state in which they have established permanent residency (even if they attend school full-time in another state), unless they have taken steps to establish a new residency. However, if you are a resident of another state attending school in Minnesota, you may be considered a Minnesota resident under the 183-day rule. (The 183-day rule does not apply to students who are residents of a reciprocity state—Wisconsin, North Dakota or Michigan.)

If you are a nonresident, you are required to pay Minnesota tax on any income earned from work performed in Minnesota. For more information, see Fact Sheet 3, *Nonresidents*.

If you are a Minnesota resident who attends school in another state, you remain a Minnesota resident and must pay Minnesota tax on all taxable income from all sources.

Example 1. John is attending a college outside of Minnesota, and he lives in a dormitory room on campus. He graduated from high school in Minnesota and when he returns to Minnesota, he stays with his parents. Even though he spends most of his time in another state, he continues to be a Minnesota resident because he has not abandoned his domicile in Minnesota, nor has he established a new domicile somewhere else.

Example 2. Donna is an out-of-state student attending college in Minnesota. She lives in a dormitory room on campus for the entire school year, which runs from late August to May. While living in the dormitory, she shares bathing facilities with others on the same floor, and all cooking is done at a central location where all residents of the dormitory eat. When the school year ends, she moves out of the dormitory and resides out of state with her parents. That August, Donna returns to college for another year and again resides in a dormitory room on campus.

Donna's domicile remains the same as her parents. Although she spends most of her time in Minnesota, she has not abandoned her previous domicile. In addition, she is not a resident by physical presence. Even though she was present in Minnesota for more than 183 days, her dormitory room is not considered a permanent place of abode, because it is not equipped with cooking and bathing facilities.

Example 3. Frank is an out-of-state student attending college in Minnesota. He lives in an off-campus apartment with three friends. All four roommates share living expenses, including rent and utilities. Since Frank lives in the apartment for more than 183 days of the calendar year and is maintaining a permanent place of abode, he is considered a Minnesota resident, even if his domicile is elsewhere and he intends to leave Minnesota upon graduation.

Residency and taxation

Once you've determined where you are a resident, you can figure out what Minnesota forms you need to file, what income is taxable and any credits you may be entitled to claim.

Residents

If you are a full-year Minnesota resident and are required to file a federal income tax return, you must also file Minnesota Form M1, *Individual Income Tax Return*. You must pay Minnesota tax on your total taxable income, regardless of where it was earned or where the property or business that produced it was located.

However, for active duty military personnel beginning with tax year 2005, if your gross income included on your federal return, minus any compensation received for active duty performed outside Minnesota, is less than the Minnesota minimum filing requirement for the year ($9,350 for 2009), you are not required to file a Minnesota return.

Remember, you are a Minnesota resident if you:

- are an active-duty military personnel and you consider Minnesota to be your home, regardless of where you were stationed during the year,
- leave Minnesota but have not established permanent residency elsewhere,
- temporarily leave Minnesota and plan to return, or
- maintained an abode in Minnesota for the entire year and you met the requirements under the 183-day rule. In this case, you are a full-year Minnesota resident for income tax purposes even though you may have been domiciled in another state. (The 183-day rule does not apply to military personnel or residents of a reciprocity state.)

Part-year residents

If you are a part-year resident and your Minnesota gross income meets the Minnesota minimum filing requirement ($9,350 for 2009), you must file Form M1 and include Schedule M1NR, *Nonresidents/Part-Year Residents*. Minnesota gross income includes income you received from all sources (including sources not in Minnesota) while you were a Minnesota resident, and any income you earned in Minnesota or from sources in Minnesota while you were a nonresident.

You must pay Minnesota tax on all income recognized while a Minnesota resident. In addition, for the portion of the year you were a nonresident, you must pay tax on income derived from Minnesota sources.

If your home state taxes the same income that is taxed by Minnesota, you may be able to claim a credit on your home state's tax return for taxes paid to Minnesota. If not, you may qualify for a credit on your Minnesota return for income taxes paid to the other state (see Schedule M1CR, *Credit for Income Tax Paid to Another State*). However, when you file your Form M1, be sure to include a statement from the other state's tax department stating you are not eligible to receive a credit on that state's tax return for income tax paid to Minnesota.

Remember, you are a part-year resident if you:

- moved to or from Minnesota during the year, or
- maintained an abode in Minnesota for less than a full year and you met the requirements under the 183-day rule. In this case, you are considered a Minnesota resident for income tax purposes for the length of time you maintained an abode in Minnesota, even though you may have been domiciled in another state for the full year. (The 183-day rule does not apply to military personnel or residents of a reciprocity state.)

For further information and details on what income is taxed by Minnesota, see Fact Sheet 2, *Part-Year Residents*.

Nonresidents

If you are a nonresident and your Minnesota gross income meets the Minnesota minimum filing requirement ($9,350 for 2009), you must file Form M1 and include Schedule M1NR, *Nonresidents/Part-Year Residents*. Minnesota gross income includes income you received from sources in Minnesota.

You must pay Minnesota tax on all income derived from Minnesota sources if your Minnesota gross income exceeds the current year filing requirement.

If your home state taxes the same income that is taxed by Minnesota, you may be able to claim a credit on your home state's tax return for taxes paid to Minnesota. If not, you may qualify for a credit on your Minnesota return for income taxes paid to the other state (see Schedule M1CR, *Credit for Income Tax Paid to Another State*). However, when you file your Form M1, be sure to include a statement from the other state's tax department stating you are not eligible to receive a credit on that state's tax return for income tax paid to Minnesota.

Remember, you are a nonresident if you are domiciled in another state and did not meet the 183-day rule.

For further information and details on what income is taxed by Minnesota, see Fact Sheet 3, *Nonresidents*.

Need forms?

If you need forms, you may:

- download forms, fact sheets and other tax-related information from the department website at: www.taxes.state.mn.us
- photocopy the forms you need at a neighborhood library
- call 651-296-4444 or 1-800-657-3676 to have forms mailed to you
- write to: Minnesota Tax Forms, Mail Station 1421, St. Paul, MN 55146-1421.