

STATE OF MINNESOTA  
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED  
AMENDED RULE OF THE DEPARTMENT  
OF REVENUE DEFINING RESIDENT  
AND DOMICILE FOR INCOME TAX  
PURPOSES. (MINN. RULE PT.  
8001.0300)

STATEMENT OF NEED  
AND REASONABLENESS

The above-captioned amendment to a rule is being proposed in order to update and revise the current rule of the Department of Revenue defining resident and domicile. The current rule has been in effect since 1981.

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed amended rule. It is submitted pursuant to Minn. Rule Pt. 1400.0500 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion regarding income tax rules was published in the State Register on July 20, 1987. All interested parties were allowed time to submit comments orally or in writing. Suggestions and comments that were received have been duly considered by the Department of Revenue.

## AUTHORITY TO ADOPT RULES

Minnesota Statutes Section 290.52 grants the Commissioner statutory authority to promulgate rules concerning the income tax law. Implicit in the authority to establish rules is the ability to amend rules.

## ADOPTION OF PROPOSED AMENDED RULE NEED AND REASONABLENESS

The need to amend Minn. Rule Pt. 8001.0300 results from the changes made to the statutory definition of resident for income tax purposes and the adoption of a statutory definition of abode in 1987 Minn. Laws, Ch. 268, Article 1, sections 9 and 10. Copies of sections 9 and 10 of Article 1 of the Omnibus Tax Bill are attached hereto as Exhibits A and B. These sections have been codified as Minnesota Statutes (1987) section 290.01, subdivisions 6a and 7.

Prior to these 1987 changes, residence for Minnesota income tax purposes was determined solely according to the individual's domicile. Since domicile is a subjective question of where an individual intends to make his or her home, the use of the domicile standard alone caused several problems. First, the only way the Department can judge the subjective intent of a taxpayer is through a review of objective factors. The objective factors (as listed in Minn. Rule Pt. 8001.0300, Subp. 3) will not always accurately reflect an individual's true intent. Second, since the determination is

dependent on the review of various factors, which entails the review of numerous documents, such determinations are very time consuming for the taxpayer and examiner involved. Additionally, since each case is determined according to its own facts, many domicile cases are appealed to the tax court, even after going through an administrative protest. This means that in addition to the original examiner's time, another department examiner and/or attorney is involved in the case, as well as the Attorney General's Office. This process can also be time consuming and expensive for the taxpayer. It was felt that Department resources could be better allocated and it was intended to reduce the number of residency cases in the Attorney General's case load so that more of that office's time could be spent on cases of greater impact to the State and to taxpayers. Finally, the use of domicile alone allows individuals without the intent to change domiciles to manipulate the objective factors to create a nominal tax home, thereby avoiding Minnesota taxes. This creates the appearance of tax cheating to Minnesotans who know of people spending most of the year in the state but who do not pay any state income tax. In reviewing how other states dealt with the problems in using domicile as the test for tax residence, it was found that over one-half of the states that impose a tax on residents use a definition of resident that includes a physical presence test. A list of these states is attached hereto as Exhibit C. As in the majority of these states, under Minnesota's new definition of "resident", an individual domiciled in state will continue to be a resident, however the definition was expanded to include individuals domiciled outside of Minnesota who have Minnesota abodes and are

physically present in Minnesota over one-half of the year. The physical presence test does solve some of the problems created by the use of domicile alone. The physical presence test is more fair and equitable since a person who is instate substantial amounts of time will be required to pay a share of state taxes. Also, the vast majority of residency determinations will be determined using the physical presence test. Since this test is determined objectively, the time spent on residency determinations should be greatly reduced.

The amendments to this rule are necessary to assist the Department and taxpayers in applying the new law. The amendments address the questions that have been raised by taxpayers, Department examiners, and tax practitioners since the new law was passed. In this Statement of Need and Reasonableness, the amendments to each subpart will be addressed separately, below.

#### SUBPART 1. RESIDENT.

Subpart 1 summarizes the definition of resident for Minnesota income tax purposes. It is necessary to amend this subpart by adding appropriate language and deleting unnecessary language so that it will accurately reflect the definition of resident adopted by the Legislature in 1987.

#### SUBPART 2. DOMICILE; DEFINITION AND PRESUMPTIONS.

No changes are proposed.

### SUBPART 3. CONSIDERATIONS.

This subpart lists the factors considered by the Department of Revenue in making a domicile determination. A sentence was added to clarify that the Department will not consider charitable contributions in making a domicile determination. Charitable contributions has never been listed in the rule as a factor used in determining domicile. However, some individuals who were establishing non-Minnesota domiciles stopped donating to Minnesota charities as part of their establishment of a new domicile. See, TWIN CITIES, "Money Walks", June, 1987. Also, some nonprofit organizations had expressed to the Department that they were losing contributions from people who did not wish to jeopardize their non-Minnesota domiciles. An express statement from the Department was necessary to assure the public that charitable contributions would not be considered in domicile determinations. By adding this sentence to the rule, it is clear that this is part of the law as applied by the Department.

### SUBPART 4. DAYS WITHIN AND DAYS WITHOUT MINNESOTA.

This rule is necessary to clarify that, while the general rule is that any part of a day spent in the state will be counted as a day in state, an individual does not have to consider a day spent in Minnesota if the presence in the state is merely for travel purposes. In order to avoid disputes regarding what constitutes "travel", an objective test is provided in this rule. The language used in this

rule is based on similar language used in Internal Revenue Reg. 1.911-2(d)(2), which deals with the counting of days for the physical presence test for the foreign earned income exclusion. This rule provides in part:

If an individual who is in transit between two points outside the United States is physically present in the United States for less than twenty-four hours, such individual shall not be treated as present in the United States during such transit but shall be treated as travelling over areas not within any foreign country.

This objective test provides a reasonable amount of time to an individual to complete the portion of his or her trip through Minnesota, regardless of the means of transportation used. For example, twenty-four hours is sufficient time for an individual to drive through Minnesota and allows the individual sufficient time for rest and meals; twenty-four hours allows an individual traveling by air adequate time for unexpected delays.

Additionally, two examples are given for further assistance in the application of this rule.

SUBPART 5. SUBSTANTIATION.

Pursuant to statute, the individual has the burden of proving that s/he has not been present in Minnesota over half of the year. This subpart provides a definition of "adequate records" and gives a nonexclusive list of some documents that would constitute adequate records, so that individuals affected will have notice of the types of records that will be acceptable for proving physical presence. This rule is necessary to assist taxpayers in complying with the new statute and avoid taxation as Minnesota residents if they were not in fact in the state over half of the year.

The rule requires that the records be contemporaneously kept because records made at the time are more likely to be accurate and reliable than records made after the fact based on memory. The types of records listed in the rule as records that could be used to substantiate physical presence are documents that individuals have easy access to and are likely to save for other tax or business purposes. Also, these types of records have been used successfully by the Department and the Attorney General's Office in tracing physical presence of taxpayers.

SUBPART 6. DEFINITION OF ABODE.

This subpart expands on the definition of "abode" provided in Minnesota Statutes section 290.01, subd. 6a. Further guidance for

taxpayers is necessary because of the wide range of living arrangements that individuals may utilize, not all of which have the permanence needed to be considered an abode for purposes of the physical presence test. The Department has received numerous questions regarding such living arrangements which are answered in the subpart as proposed. The language used in this subpart is based on the language of New York Income Tax Regulation Section 102.2(e). Regulation 102.2 is the New York regulation interpreting that state's definition of resident, which includes a physical presence test. A copy of the New York statute and regulation are attached hereto as Exhibits D and E.

Additionally, a provision is added to clarify that individuals who are not able to sell or sublease their Minnesota dwelling will not be considered as maintaining an abode. This is necessary because technically such individuals would meet the physical presence test. However, it is not reasonable to subject individuals who have truly changed domiciles to taxation as full year residents simply due to an inability to dispose of Minnesota dwellings which have been abandoned.

#### SUBPART 7. DOMICILIARY RESIDENTS.

This subpart is proposed to prevent any confusion on the part of taxpayers by clarifying that there is no "reverse" physical presence test applicable to Minnesota domiciliaries whereby such individuals would not be subject to tax as residents if they were outside the state over one-half of a year.



SUBPART 8. PART YEAR DOMICILIARIES.

This subpart clarifies that individuals who change their domiciles either into or out of Minnesota will generally be part year residents, even if they were physically present in Minnesota over one-half of the year. However, such individuals may still be subject to the physical presence test and taxed as full year residents if their Minnesota abodes are maintained during the period they are non-Minnesota domiciliaries. Both this subpart and subpart 7 are intended to further clarify for taxpayers that there are two separate tests under which a person may be considered a resident for tax purposes: one for individuals domiciled in Minnesota and one for individuals domiciled outside of Minnesota.

SUBPART 9. CERTAIN PERSONS DEEMED NONRESIDENTS.

This subpart summarizes the exception from domicile for individuals eligible for the federal foreign earned income exclusion. The exception was added in the 1987 legislative session. It is considered in a separate subpart because the exception applies to very few taxpayers so that summarizing this exception in subpart 1, which summarizes the tests generally applicable, would needlessly complicate that subpart.

Eligibility for the Minnesota exception requires eligibility for the federal exclusion and that the person does not have any interest in

property receiving Minnesota homestead status. The subpart clarifies that an individual will not lose eligibility for this exception if a homestead declaration was properly filed as of January 2, and the individual is later transferred overseas in that same year. This rule is necessary because homestead status for a year is determined on one date, January 2, and there is no means for cancelling homestead status later that year if that property is no longer used as a principal residence. Therefore, there was some confusion regarding the effect of a properly filed homestead and many practitioners requested clarification.

SUBPART 10. EXAMPLES.

This subpart contains five examples illustrating the application of the statute and proposed rule in order to further clarify such application.

Sec. 9. Minnesota Statutes 1986, section 290.01, is amended by adding a subdivision to read:

Subd. 6a. ABODE. For purposes of section 290.01, subdivision 7, the term "abode" means a dwelling maintained by an individual, whether or not owned by the individual and whether or not occupied by the individual, and includes a dwelling place owned or leased by the individual's spouse.

Sec. 10. Minnesota Statutes 1986, section 290.01, subdivision 7, is amended to read:

Subd. 7. **RESIDENT.** The term "resident" means (1) any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such tax year, have been domiciled outside the state, except that an individual is not a "resident" for the period of time that the individual is a "qualified individual"

as defined in section 911(d)(1) of the Internal Revenue Code of 1986, as amended through December 31, 1986, unless, during that period, a Minnesota homestead application is filed for property in which the individual has an interest; and (2) any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota, unless the individual is in the armed forces of the United States.

For purposes of this subdivision, presence within the state for any part of a calendar day constitutes a day spent in the state. Individuals shall keep adequate records to substantiate the days spent outside the state.

## JURISDICTIONS WITH PHYSICAL PRESENCE TEST

1. Alabama                    Maintaining a permanent place of abode instate; or presence in Alabama over seven months.
2. Arkansas                    Domiciled in Arkansas; or maintaining permanent place of abode instate and spending over six months of tax year instate.
3. Colorado                    Domicile; or maintaining permanent place of abode instate and spending over six months instate.
4. Connecticut                    Domicile, unless no permanent abode instate and not present instate over 30 days; or no instate domicile but maintains a permanent abode instate and spends over 183 days instate.
5. District of Columbia                    Domicile; or maintaining abode in District of Columbia for 183 days of tax year.
6. Georgia                    Legal resident on December 31 unless temporarily in transit through state; resident instate at least 183 days of preceding 365 days; not legal resident, but resides instate on more or less permanent basis and so resides on December 31.
7. Hawaii                    Domicile; or residing instate--presumption that individual instate more than 200 days is a resident.
8. Indiana                    Domicile; or maintaining permanent place of abode instate and spending more than 183 days within state.
9. Kentucky                    Domicile on December 31; or outstate domicile but maintains place of abode instate and spends over 183 days of tax year in Kentucky.
10. Louisiana                    Domicile; or maintaining permanent place of abode instate; or spending, in the aggregate, more than six months of tax year instate.
11. Maine                    Domicile; or maintaining permanent abode and spending over 183 days instate.

JURISDICTIONS WITH PHYSICAL PRESENCE TEST

(continued...)

12. Michigan Presence instate 183 days of tax year.
13. Missouri Domicile, unless no permanent abode instate, permanent abode outstate and does not spend more than 30 days instate; or no instate domicile, but has permanent abode instate and spends over 183 days in state.
14. Nebraska Domicile; or permanent abode instate and spending over six months instate.
15. New Jersey Domicile, unless permanent abode outstate and not in New Jersey over 30 days; or no instate domicile, but permanent abode in New Jersey and over 183 days spend in New Jersey.
16. New York Domicile, unless (a) no permanent place of abode in state, maintains permanent place of abode elsewhere and spends not more than 30 days of taxable year instate or (b) within any 548-day period is present in foreign country(ies) at least 450 days, is not instate more than 90 days and doesn't maintain permanent place of abode occupied by spouse and/or children over 90 days; or not domiciled instate, but maintains permanent place of abode instate and spends over 183 days in state.
17. North Dakota Domicile; or maintaining permanent place of abode within state and spends more than seven months within state.
18. Oregon Domicile, unless no permanent abode instate, maintains permanent abode outstate and spends not over 30 days instate; or no instate domicile, but maintains permanent abode instate and spends over 200 days instate.
19. Pennsylvania Domicile, unless permanent abode maintained outstate and not over 30 days spent instate; or no instate domicile, but permanent abode maintained instate and over 183 days spent instate.
20. Rhode Island Domicile, unless no permanent place of abode instate and not over 30 days spent instate; or no instate domicile, but permanent place of abode instate and over 183 days spent instate.

JURISDICTIONS WITH PHYSICAL PRESENCE TEST

(continued...)

21. Utah Domicile; or permanent abode in Utah and over 182 days spent instate.
22. Vermont Domicile; or spending and maintaining permanent abode instate for least 184 days of tax year.
23. West Virginia Domicile, unless permanent abode outstate and not over 30 days spent instate; or not domiciled instate but permanent abode maintained instate and not over 183 days spent in West Virginia.

**New York Statutes Ch. 60, Art. 22, Sec. 605  
Definition of Resident Individual**

Sec. 605. \*\*\* (a) Resident individual.—A resident individual means an individual:

(1) who is domiciled in this state, unless (A) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or (B) (i) within any period of five hundred forty-eight consecutive days he is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred forty-eight consecutive days he is not present in this state for more than ninety days and does not maintain a permanent place of abode in this state at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days, and (iii) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section six hundred fifty-four, and which period is contained within such period of five hundred forty-eight consecutive days, he is present in this state for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in such period of less than twelve months bears to five hundred forty-eight, or

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States.



**[¶ 18-516]** Reg. Sec. 102.2. **Resident Individual (Tax Law, Sec. 605(a)).**—(a) *General.* An individual may be a resident of New York State for income tax purposes, and taxable as a resident, even though he would not be deemed a resident for other purposes. As used in this Subchapter, the term "resident individual" includes (1) all persons domiciled in New York State, subject to the exceptions set forth in subdivision (b) below, and (2) any individual (other than an individual in active service in the armed forces of the United States) who is not domiciled in New York State but who maintains a permanent place of abode in New York State and spends in the aggregate more than 183 days of the taxable year in New York State.

(b) *Certain persons not deemed residents although domiciled in New York State.* Any person domiciled in New York State is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the requirements in paragraph (1) or all three of the requirements in paragraph (2) of this subdivision:

- (1) For a specific taxable year all three of the following requirements are met:
- (i) he maintains no permanent place of abode inside New York State during such year,
  - (ii) he maintains a permanent place of abode outside this State during such entire year, and
  - (iii) he spends in the aggregate not more than 30 days of the taxable year in this State; or
- (2) For a specific taxable year beginning after December 31, 1977, all three of the following requirements are met:
- (i) within any period of 548 consecutive days he is present in a foreign country or countries for at least 450 days; and
  - (ii) during such period of 548 consecutive days he is not present in New York State for more than 90 days, does not maintain a permanent place of abode in this State at which his spouse (unless such spouse is legally separated) or minor children are present for more than 90 days; and
  - (iii) during any period of less than 12 months, which would be treated as a separate taxable period pursuant to Part 148 of this Subchapter, and which is contained within such period of 548 consecutive days, he is present in New York State for a number of days which does not exceed an amount which bears the same ratio to 90 as the number of days contained in such period of less than 12 months bears to 548.

As long as an individual who is domiciled in New York State continues to meet the requirements of either paragraph (1) or paragraph (2) of this subdivision, he will be considered a nonresident of New York State for income tax purposes. However, if for any taxable year he fails to meet those conditions, he will be subject to New York State personal income tax as a resident for that year. Where an individual domiciled in New York State claims to be a nonresident for any taxable year, the burden is upon him to show that during that year he satisfied the requirements set forth in paragraph (1) or paragraph (2) of this subdivision.

*Example:* B, a single individual, is domiciled in New York State. During the period July 1, 1978 through December 30, 1979 (a period of 548 consecutive days), B was present in a foreign country 463 days.

During the above period, B was present in New York State a total of 50 days, 15 days during the period July 1, 1978 through December 31, 1978 and 35 days during 1979.

Since B was present in a foreign country 463 days, he meets the requirement of subparagraph (i) of paragraph (2) of this subdivision.

B also meets the requirements of subparagraph (ii) of paragraph (2) of this subdivision because the total of 50 days he was present in this State during this 548 consecutive day period is less than the maximum of 90 days allowed.

To ascertain whether he meets the requirements of subparagraph (iii) of paragraph (2) of this subdivision, B must determine if the number of days present in New York State during the period that is less than 12 months (July 1, 1978 through December 31, 1978) exceeds the maximum allowed for this less than 12 month period. The maximum number of days B may be present in New York State during the period July 1, 1978 through December 31, 1978 is 30, determined by making the following computation:

(Number of days in the less than 184 12 month period) 548	$\times 90 = 30$	Maximum number of days B may spend in New York State during the period July 1, 1978 through December 31, 1978
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a domicile. It is possible for a serviceman to change his domicile; however, the requisite intent is difficult to prove.

(e) *Permanent place of abode.* (1) A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. However, a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode. Furthermore, a barracks or any construction which only contains bachelor type quarters but does not contain facilities for cooking, bathing, etc., will generally not be deemed a permanent place of abode. Also, a place of abode, whether in New York State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. For example, an individual domiciled in another state may be assigned to his employer's New York State office for a fixed and limited period, after which he is to return to his permanent location. If such an individual takes an apartment in New York State during this period, he is not deemed a resident, even though he spends more than 183 days of the taxable year in New York State, because his place of abode here is not permanent. He will, of course, be taxable as a nonresident on his income from New York State sources, including his salary or other compensation for services performed in New York State. However, if his assignment to his employer's New York State office is not for a fixed and limited period, his New York State apartment will be deemed a permanent place of abode and he will be a resident for New York State personal income tax purposes if he spends more than 183 days of the year in New York State. The 183-day rule applies only to taxpayers who are not domiciled in New York State.

(2) The determination of whether a serviceman maintains a permanent place of abode outside New York State is not dependent merely upon whether the serviceman lives on or off a military base. This is only one of many factors to be considered in determining whether a permanent place of abode is being maintained outside New York State. Some of the other factors include the type and location of quarters occupied by the taxpayer and members of his immediate family and how and by whom such quarters are maintained. Barracks, bachelor officers' quarters, quarters assigned on vessels, etc., generally do not qualify as permanent places of abode maintained by the serviceman. Further, the maintenance of a place of abode by a serviceman outside New York State will not be considered permanent if it is maintained only during a duty assignment of a limited or temporary nature. (Adopted January 20, 1982; amended April 11, 1984.)

[¶ 18-517] Reg. Sec. 102.3. **Nonresident Individual (Tax Law, § 605(b)).**—For New York State personal income tax purposes, a nonresident individual is anyone who is not a resident as defined in section 102.2 of this Part. Except where this Subchapter specifically provides otherwise, all references to nonresidents are equally applicable to nonresident aliens. (Adopted January 20, 1982.)

[¶ 18-518] Reg. Sec. 102.4. **Resident Estate or Trust (Tax Law, § 605(c)).**—(a) A resident estate or trust is:

- (1) The estate of a decedent who at his death was domiciled in New York State;
- (2) A trust, or portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in New York State; or

(3) A trust, or portion of a trust, consisting of the property of: (i) a person domiciled in New York State at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or (ii) a person domiciled in New York State at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

(b) For purposes of subdivision (a) of this section, a trust or portion of a trust is revocable if it is subject to a power exercisable immediately or at any future time, to revert title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

*Example:* A, who is domiciled in Canada, creates a trust with the X Trust Company in New York City as trustee. The entire corpus of the trust consists of securities of American corporations, which are actively traded by the trustee on the New York Stock Exchange. The beneficiaries of the trust are all New York State residents. Regardless of whether the trust is held to be a resident of the United States for Federal income tax purposes, it is, for New York income tax purposes, a nonresident trust.

(c) The determination of whether a trust is a resident trust is not dependent on the location of the trustee or the corpus of the trust or the source of income, provided, however, no New York State personal income tax may be imposed on such trust if all of the following conditions are met:

- (1) all the trustees are domiciled in a state other than New York State, and

[The next page is 3521-3.]

Since B was present in New York State 15 days during the period July 1, 1978 through December 31, 1978, he did not exceed the maximum of 30 days allowed for this period. Therefore, he meets the requirements of subparagraph (iii) of paragraph (2) of this subdivision.

Based on the information contained in this example B meets all the requirements of paragraph (2) of this subdivision and would be considered a nonresident of New York State for income tax purposes during the period July 1, 1978 through December 30, 1979. B would be required to file as a resident of New York State for the period January 1, 1978 through June 30, 1978 and as a nonresident of New York State for the period July 1, 1978 through December 31, 1978. B would be required to file as a nonresident of New York State for the entire taxable year of 1979. (Adopted January 20, 1982.)

(c) *Rules for days within and without New York State.* In counting the number of days spent within and without New York State, presence within New York State for any part of a calendar day constitutes a day spent within New York State except that such presence within New York State may be disregarded if it is solely for the purpose of boarding a plane, ship, train or bus for travel to a destination outside New York State, or while traveling by motor, plane or train through New York State to a destination outside New York State. Any person domiciled outside New York State who maintains a permanent place of abode within New York State during any taxable year and claims to be a nonresident must keep and have available for examination by the Tax Commission adequate records to substantiate the fact that he did not spend more than 183 days of such taxable years within New York State.

(d) *Domicile.* (1) Domicile, in general, is the place which an individual intends to be his permanent home—the place to which he intends to return whenever he may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicate that he did this merely to escape taxation in some other place.

(3) Domicile is not dependent on citizenship; that is, an immigrant who has permanently established his home in New York State is domiciled here regardless of whether he has become a United States citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in New York State who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York State domicile unless it is clearly shown that he intends to remain abroad permanently and not to return. (See subdivision (b) of this section for certain persons not deemed residents of New York State for a specific taxable year although domiciled in New York State.)

(4) A person can have only one domicile. If he has two or more homes, his domicile is the one which he regards and uses as his permanent home. In determining his intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive. As pointed out in subdivision (a) of this section, a person who maintains a permanent place of abode in New York State and spends more than 183 days of the taxable year in New York State is taxable as a resident even though he may be domiciled elsewhere.

(5) Generally, the domicile of a husband and wife are the same, however, if they are separated in fact they may each, under some circumstances, acquire their own separate domiciles, even though there be no judgment or decree of separation. A child's domicile ordinarily follows that of such child's parents, until such child reaches the age of self-support and actually establishes his or her own separate domicile. Where the mother and father have separate domiciles, the domicile of the child is generally the domicile of the parent with which such child lives for the major portion of the year. The domicile of a child for whom a guardian has been appointed is not necessarily determined by the domicile of the guardian.

(6) Federal law provides in effect that for the purposes of taxation, a serviceman is not deemed to have lost his residence or domicile in any state solely by reason of being absent therefrom in compliance with military or naval orders. Thus, such Federal law insures that a serviceman domiciled in New York State would not be deemed a domiciliary for income tax purposes in another state in which he is stationed. On the other hand, a serviceman domiciled in another state who is stationed in New York State would not be deemed a domiciliary, for personal income tax purposes, of New York State. The rule is, generally speaking, that the domicile of a person is in no way affected by service in the armed forces of his country. A change of domicile has to be shown by facts which objectively manifest a voluntary intention to make the new location