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## When Everything Matters, Nothing Matters: Minnesota's Unprincipled Approach for Determining Domicile in Tax Disputes, and a Path Forward

Joseph E. Cooch  
jcooch2@gmail.com

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**WHEN EVERYTHING MATTERS, NOTHING MATTERS:  
MINNESOTA’S UNPRINCIPLED APPROACH FOR  
DETERMINING DOMICILE IN TAX DISPUTES, AND A  
PATH FORWARD**

*Joseph E. Cooch*\*

<b>I. INTRODUCTION</b>	229
<b>II. MINNESOTA RESIDENCY LAW</b>	231
<b>III. PERUSING THE PRESUMPTIONS</b>	233
<i>A. CONTINUING-DOMICILE PRESUMPTION</i>	233
<i>B. FAMILY-DOMICILE PRESUMPTION</i>	237
<i>C. WHERE-YOU-LIVE PRESUMPTION</i>	238
<i>D. FOREIGN-EMPLOYMENT NEGATIVE PRESUMPTION</i>	238
<b>IV. NOT ALL FACTORS ARE CREATED EQUAL</b>	238
<i>A. “LIVING QUARTERS”: OWNED OR RENTED, BIG HOUSE OR         LITTLE HOUSE</i>	240
<i>B. NATURE OF EMPLOYMENT</i>	242
<i>C. FAMILY, SOCIAL, BUSINESS, AND PROFESSIONAL TIES</i>	243
<i>D. POSTURING FACTORS</i>	245
<i>E. OTHER STATE’S TAX TREATMENT OF INCOME</i>	246
<b>V. A QUICK SUB-RULES SIDETRACK</b>	248
<b>VI. A PATH FORWARD</b>	249
<b>VII. CONCLUSION</b>	252

**I. INTRODUCTION**

Home is where the heart is. Or maybe home is where state income tax is nonexistent. Or maybe home is where a smorgasbord of presumptions, sub-rules, and twenty-six factors say it is.

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\* J.D., Hamline University School of Law (2013). Law Clerk, South Dakota Supreme Court (2013–2014). I would like to thank Professor Morgan Holcomb for her help on this article. All errors are my own.

Where your home is—i.e., where you are defined to be a resident—has tax consequences. A state may tax a resident’s global income, meaning the state may tax income earned in any state or foreign country.<sup>1</sup> In contrast, if a person is a non-resident, the state may only tax the person’s income earned within the state, also known as source income.<sup>2</sup> For the most part, residency is an all-or-nothing game.

States generally define residency based on domicile, the number of days lived in a state, place of abode, or a blend of each.<sup>3</sup> In Minnesota, a resident is either a person domiciled in Minnesota, or a person who spends at least half the year in Minnesota and “maintains a place of abode” there, also known as the physical-presence test.<sup>4</sup> The physical-presence test provides a bright-line rule for determining residency. Domicile does not.

This article addresses Minnesota’s amorphous domicile rule, which is codified in Minnesota Rule 8001.0300. Current application of the rule is anything but principled—or simple. There are too many sub-rules and presumptions, and the 26-factor “test” is unwieldy. Many of the sub-rules simply restate the domicile definition or capture circumstances better left to a factor analysis. In other words, many of the sub-rules are unnecessary and confusing to the process. The presumptions, other than the continuing-domicile presumption, are superfluous and are best recast as factors. Finally, the current factor test provides no guidance on what factors should be considered more determinative of a person’s domicile, even though common sense recognizes that some factors better signify a person’s domicile. This article’s proposal attempts to remedy Rule 8001.0300’s unprincipled approach to determining domicile.

This article proposes a redraft of Rule 8001.0300. As part of this redraft, it contends that Minnesota needs to take a principled, structured approach when applying the twenty-six factors it uses to identify a person’s domicile by using a hierarchical categorization of factors. In addition, it advocates recharacterizing three of the four presumptions as factors, leaving only the continuing-domicile presumption intact. Finally, it recommends striking most of the sub-rules that clutter Rule 8001.0300, because many of them flow from the definition of domicile or restate circumstances already

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<sup>1</sup> See Aaishah Hashmi, *Is Home Really Where The Heart Is?: State Taxation of Domiciliaries, Statutory Residents, and Nonresidents in the District of Columbia*, 65 TAX LAW. 797, 801–02 (2012) (summarizing states’ power, under the United States Constitution, to tax resident income).

<sup>2</sup> See *id.* at 802–03 (summarizing states’ power, under the United States Constitution, to tax non-resident income).

<sup>3</sup> See RICHARD REICHLER, STATE TAXATION OF COMPENSATION AND BENEFITS § 1750.03 (2012).

<sup>4</sup> MINN. STAT. § 290.01, subd. 7 (2012); see also MINN. R. 8001.0300 (2013). Certain exceptions apply to these definitions, such as military status and reciprocity provisions. MINN. STAT. § 290.01, subd. 7. For this article, exceptions are ignored because of their limited application.

captured by the factors. In other words, most of the sub-rules add nothing to a domicile analysis.

Part II will look at Minnesota's residency law, with a primary focus on the definition of domicile. Parts III, IV, and V will examine Minnesota's application of its domicile rule, which will provide a glimpse into the murky world of domicile disputes. Part III will take a critical look at the presumptions that infest Rule 8001.0300 and will offer suggestions for trimming down the presumptions by recharacterizing three of the four presumptions as factors. Part IV will contend that a hierarchical categorization of the twenty-six factors is needed. Through categorization, factors that are qualitatively more important than others will be given their proper weight, while those of less importance will be used as tiebreakers. Part V will suggest that certain sub-rules be struck. Suggestions focus on eliminating sub-rules that are nothing more than the domicile definition applied to specific circumstances or that simply repeat factors already considered in the factor analysis.

Part VI will lay out the proposed redraft of Rule 8001.0300. The redraft emerges from this article's discussion of the problems with the current rule. The redraft, however, retains much of the current rule, particularly those portions that are peripheral to the core issues that normally arise in domicile disputes.

The redraft will not inject perfect predictability into domicile disputes. Determining a person's domicile is often an unpredictable undertaking. But the redraft will produce a more principled, structured approach to resolving domicile disputes and will impose more order on the process.

## II. MINNESOTA RESIDENCY LAW

In Minnesota, for tax purposes, a person is a Minnesota resident if he meets either of two conditions. First, a person who resides in the state for half the year and maintains a place of abode in Minnesota is a Minnesota resident.<sup>5</sup> Second, a person domiciled in Minnesota is a resident.<sup>6</sup>

This article addresses the second test—domicile. The first test, physical presence, provides a bright-line rule. Domicile, in contrast, involves consideration of a number of sub-rules, presumptions, and factors.<sup>7</sup> These considerations are meant to “guide” courts to a conclusion. Unfortunately, Rule 8001.0300's overlapping presumptions, sub-rules, and factors have led to unprincipled, or at least somewhat indecipherable, applications of the rule.

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<sup>5</sup> MINN. STAT. § 290.01, subd. 7; MINN. R. 8001.0300, subp. 1.

<sup>6</sup> MINN. STAT. § 290.01, subd. 7; MINN. R. 8001.0300, subp. 1.

<sup>7</sup> See MINN. R. 8001.0300, subp. 2–subp. 3.

Rule 8001.0300 defines domicile in two ways.<sup>8</sup> First, it defines domicile to mean “the bodily presence of an individual person in a place coupled with an intent to make such a place one’s home.”<sup>9</sup> This definition involves two prongs. First, the person must have a bodily presence in the state claimed to be his domicile.<sup>10</sup> Second, that bodily presence must be coupled with an intent to make that state his home.<sup>11</sup> It is unclear whether “coupled” means that intent and bodily presence must be simultaneous in every circumstance.<sup>12</sup> But Minnesota courts will “examine more than simply acts occurring at the time of and shortly after the taxpayer’s physical move to another state” when determining whether a taxpayer intended to change his domicile.<sup>13</sup> Courts will look both to actions at the time of the stated intention to move and to acts and circumstances of the taxpayer’s life after that date “to evaluate ‘the sincerity of [his] announced intent.’”<sup>14</sup>

Rule 8001.0300 also defines a person’s domicile as the “place in which that person’s habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.”<sup>15</sup>

When determining whether a person has changed domicile, intent is key.<sup>16</sup> However, there is no positive rule for determining intent.<sup>17</sup> Rather, the rule requires courts to look to “acts and declarations” for proof of intent, and it further instructs that “of the two forms of evidence, acts must be given more weight than declarations.”<sup>18</sup>

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<sup>8</sup> *Id.*, subp. 2. Courts treat these definitions as equivalent. *Larson v. Comm’r of Revenue*, 824 N.W.2d 329, 331 (Minn. 2013) [hereinafter *Larson II*].

Domicile means “that place in which [a] person’s habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.” To be domiciled, one must have “bodily presence . . . in a place coupled with an intent to make such a place one’s home.”

*Id.* (alteration in original) (citation omitted).

<sup>9</sup> MINN. R. 8001.0300, subp. 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *See Sanchez v. Comm’r of Revenue*, 770 N.W.2d 523, 527 (Minn. 2009) (“We need not decide whether presence and intent must be simultaneous under every possible scenario.”); *cf.* MINN. R. 8001.0300, subp. 2 (“The mere intention to acquire a new domicile, without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person’s status.”).

<sup>13</sup> *Larson II*, 824 N.W.2d at 332.

<sup>14</sup> *Id.* at 333 (alteration in original) (quoting *Sanchez*, 770 N.W.2d at 526).

<sup>15</sup> MINN. R. 8001.0300, subp. 2. While these two definitions are rephrasings of the same concept, the final phrase in the second definition, “to which, whenever absent, that person intends to return,” can cause problems when courts must contend with an agreement between the parties that the taxpayer never intended to return to Minnesota, while also dealing with the continuing-domicile presumption. *See infra* Part III.A (describing how the continuing-domicile presumption trumped the basic definition of domicile).

<sup>16</sup> *See* MINN. R. 8001.0300, subp. 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Rule 8001.0300 contains not only the definition of domicile, but also a number of presumptions, sub-rules, and factors meant to guide a court to a decision. The remaining parts of this article will take a critical look at these “guides” and will lay out a proposed redraft of Minnesota’s domicile rule.

### III. PERUSING THE PRESUMPTIONS

Rule 8001.0300 contains the following rebuttable presumptions: (1) once a place is shown to be a person’s domicile, it continues to be that person’s domicile until the contrary is shown (“continuing-domicile presumption”);<sup>19</sup> (2) the place where a person’s family is domiciled is that person’s domicile (“family-domicile presumption”);<sup>20</sup> (3) a person’s domicile is the place where one lives (“where-you-live presumption”);<sup>21</sup> and (4) a person who leaves Minnesota to accept employment in a foreign nation has not lost that person’s domicile in Minnesota (“foreign-employment negative presumption”).<sup>22</sup>

These presumptions are meant to guide courts in determining a person’s domicile. But, for the most part, the presumptions capture many of the same circumstances that are also captured by the twenty-six factors.<sup>23</sup> In contrast to the factors, however, presumptions carry more power on their own. Therefore, presumptions should be used sparingly.

This part takes a critical look at each presumption. It proposes retaining only the continuing-domicile presumption and striking the family-domicile presumption, the where-you-live presumption, and the foreign-employment negative presumption. These latter three presumptions address circumstances better left to the factor analysis.

#### *A. Continuing-Domicile Presumption*

Under Rule 8001.0300, once a place is shown to be a person’s domicile, it continues to be that person’s domicile until the contrary is shown.<sup>24</sup> The continuing-domicile presumption is the only presumption kept by the proposed redraft of Rule 8001.0300. This presumption is built on

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* People covered by the Soldiers’ and Sailors’ Civil Relief Act of 1940 are not included under this presumption. *Id.*

<sup>21</sup> MINN. R. 8001.0300, subp. 2.

<sup>22</sup> *Id.* (stating that “[a]n absence of intention to abandon a domicile is equivalent to an intention to retain the existing one”).

<sup>23</sup> See *infra* Part III.B–D (describing how circumstances captured in the family-domicile presumption, the where-you-live presumption, and the foreign-employment negative presumption are also captured by factors).

<sup>24</sup> MINN. R. 8001.0300, subp. 2.

practical considerations, and it recognizes “[d]omicile is not something either easily abandoned or accidentally changed.”<sup>25</sup>

The continuing-domicile presumption often has determinative effect, even if the taxpayer fails to meet the definition of a domiciliary in the state that has the presumption in its favor, as shown by *Sanchez v. Commissioner of Revenue*.<sup>26</sup> Therefore, courts should use caution when applying it.

In *Sanchez*, the continuing-domicile presumption controlled even though a husband and wife ceased to meet the basic definition of Minnesota domiciliaries. In *Sanchez*, all parties agreed that the couple never intended to return to Minnesota after they sold their home and left the state.<sup>27</sup> But because the couple failed to rebut the continuing-domicile presumption, by failing to prove establishment of a new domicile, they were ruled to have continued their Minnesota domicile.<sup>28</sup>

The dispute centered on whether the couple had established a new domicile in South Dakota.<sup>29</sup> All parties agreed that the couple left Minnesota with no intent to return when they sold their Minnesota home. But the tax court framed the issue as whether the couple had met their burden to prove that they had established a new domicile in South Dakota, as required by the continuing-domicile presumption, after they sold their home.<sup>30</sup>

Before the couple sold their home in Minnesota, they took steps to establish their domicile in South Dakota.<sup>31</sup> The couple hired a South Dakota company that provided mail-forwarding and vehicle-registration services.<sup>32</sup> This hire allowed the couple to register their two vehicles in South Dakota, apply for South Dakota driver’s licenses, open a checking account and obtain credit cards from a bank in South Dakota, and register to vote in South Dakota.<sup>33</sup> They also notified their insurance company of their new South Dakota address.<sup>34</sup> All this activity, however, took place before the couple sold their Minnesota residence, which was the date all parties agreed that the couple “extinguished their domicile in Minnesota and left the State once and for all.”<sup>35</sup> The couple never rented or owned a home in South Dakota, nor did they spend any time in South Dakota after the sale of their Minnesota residence.<sup>36</sup> Rather, the couple traveled the United States by motor home

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<sup>25</sup> *Sarek v. Comm’r of Revenue*, No. 2524, 1979 WL 1107, at \*5 (Minn. Tax Ct. Apr. 19, 1979) (citation omitted).

<sup>26</sup> *Sanchez*, 770 N.W.2d 523.

<sup>27</sup> *Id.* at 526.

<sup>28</sup> *Sanchez v. Comm’r of Revenue*, No. 7910, 2008 WL 8679077, at \*5 (Minn. Tax Ct. Oct. 9, 2008).

<sup>29</sup> *Id.* at \*1.

<sup>30</sup> *Id.* at \*3.

<sup>31</sup> *Id.* at \*2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Sanchez*, 2008 WL 8679077, at \*2.

<sup>35</sup> *Id.* at \*3.

<sup>36</sup> *Id.* at \*2–3.

during the remainder of the tax year at issue.<sup>37</sup> The couple did state in an affidavit that they intended to return to South Dakota to rent or buy a home after their travel, but did not do so initially because they wanted to avoid the expenses and obligations of home ownership.<sup>38</sup>

Their stated intent was not enough, and their failure to couple physical presence with intent had unpleasant tax consequences for the husband and wife. In concluding that the couple failed to prove that they had established a new domicile in South Dakota, the tax court noted that all actions taken by the couple that allegedly demonstrated their intent to domicile in South Dakota took place before they had extinguished their domicile in Minnesota.<sup>39</sup> In essence, the husband and wife failed to couple their physical presence in South Dakota with their intent to make South Dakota their new home.<sup>40</sup> As such, the husband and wife failed to prove that they had established a new domicile in South Dakota and, therefore, failed to rebut the presumption that their domicile continued in Minnesota.<sup>41</sup>

The Minnesota Supreme Court affirmed the tax court's ruling.<sup>42</sup> The supreme court "stressed that a party does not need to prove *abandonment* of present domicile, but, instead rebut[] the presumption that he or she has not changed domicile by proving establishment of domicile in another jurisdiction."<sup>43</sup> The supreme court agreed with the tax court that the husband and wife had failed to establish the necessary coupling between physical presence in South Dakota and intent to make South Dakota their home, which, according to the supreme court, was required in order to find that the husband and wife had established a new domicile in South Dakota.<sup>44</sup> Accordingly, the court held that the couple continued to be Minnesota domiciliaries, even though the husband and wife each failed to meet the basic definition of a Minnesota domiciliary.<sup>45</sup>

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<sup>37</sup> *Id.* at \*2.

<sup>38</sup> *Sanchez*, 770 N.W.2d at 525.

<sup>39</sup> *Sanchez*, 2008 WL 8679077, at \*4.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at \*5. The tax court explained:

Where Appellants retained the services of a South Dakota mail forwarding business and obtained drivers licenses and registered to vote in South Dakota before, but admit their Minnesota domicile continued until after, they sold their house here, the Commissioner correctly determined that Appellants failed to overcome the presumption they remained domiciled in Minnesota. Although they declared their intent to change their domicile, they failed to return to South Dakota after leaving Minnesota, much less to integrate themselves into a new domicile.

*Id.*

<sup>42</sup> *Sanchez*, 770 N.W.2d at 524.

<sup>43</sup> *Id.* at 526 (alteration and emphasis in original) (quoting *Sandberg v. Comm'r of Revenue*, 383 N.W.2d 277, 283 (Minn. 1986)).

<sup>44</sup> *Id.* at 527.

<sup>45</sup> *See id.* at 526–28.

In his dissenting opinion, Justice Page asserted that the majority's holding would require future taxpayers to buy or rent property in the state they wished to establish a new domicile in and "remain physically present in that state for some undefined period of time."<sup>46</sup> In other words, taxpayers would have to "shackle" themselves to their new state.<sup>47</sup> To the dissent, the actions taken by the couple were "not actions that a taxpayer would undertake merely to create an illusion of changing domicile."<sup>48</sup> Those actions, according to the dissent, along with the couple having no intent to return to Minnesota, were enough to show the couple's intent to make South Dakota their permanent home.<sup>49</sup>

*Sanchez* illustrates the power of the continuing-domicile presumption: it can trump even the basic definition of domicile. Even if a taxpayer proves he never intends to return to his old domicile, thus failing to meet the basic definition of a domiciliary, he will still be considered a domiciliary of his old state until he can prove establishment of a new domicile. Though harsh, the continuing-domicile presumption is practical. Someone has to bear the burden of proving that a new domicile has been established.<sup>50</sup> And unlike an "abandonment" test, the continuing-domicile presumption ensures that a person always has a domicile. With an abandonment test, a taxpayer could prove abandonment of their old domicile but not prove establishment of a new domicile, leaving the taxpayer in domicile limbo. The continuing-domicile presumption avoids this unworkable result.<sup>51</sup>

Moreover, the presumption acts as a smoking-out tool. The taxpayer, often being the one claiming a new domicile, has better access to evidence to

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<sup>46</sup> *Id.* at 528 (Page, J., dissenting).

<sup>47</sup> *Id.*

<sup>48</sup> *Sanchez*, 770 N.W.2d at 528 (Page, J., dissenting).

<sup>49</sup> *Id.*

<sup>50</sup> Theoretically, the commissioner of revenue could claim that the taxpayer established a new domicile in Minnesota. If so, the commissioner would then have to rebut the continuing-domicile presumption. However, of all the cases reviewed for this article, not one case focused on the commissioner's attempt to prove establishment of a new domicile in Minnesota. Instead, the taxpayer has been attempting to prove establishment of a new domicile outside of Minnesota, and the commissioner has claimed either that the taxpayer is still a Minnesota domiciliary or that the taxpayer has failed to rebut the continuing-domicile presumption.

<sup>51</sup> A similar rationale for the continuing-domicile presumption has been judged necessary for resolving diversity-jurisdiction disputes:

The rule from which this presumption is derived—that a domicile once established continues unless and until a new one is shown . . . to have been acquired—represents the conflicts of law solution to the problem of locating the domicile of an individual who clearly has pulled up stakes with the intention of abandoning his present domicile, but either has not arrived physically at a new one or has arrived but has not yet formulated an intention to remain there for the indefinite future.

13E CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3612 (3d ed. 2013).

demonstrate acts and circumstances that prove his new domicile, besides his mere declarations. With the presumption often pushing against him, the taxpayer has an incentive to keep adequate records so he can prove that he established a new domicile.<sup>52</sup>

In sum, while not perfect, the continuing-domicile presumption delivers sufficient utility to a domicile analysis, unlike the other presumptions. Therefore, it is the only presumption kept by the proposed redraft of Rule 8001.0300.

### ***B. Family-Domicile Presumption***

The presumption that the place where the taxpayer's family is domiciled is also the taxpayer's domicile sets up double counting when family connections are involved in a domicile analysis: one for the presumption and one for the consideration of family ties in the factor analysis.<sup>53</sup> This is unfair and unnecessary. Taxpayers have had a difficult time proving establishment of a new domicile, regardless of the family-domicile presumption.<sup>54</sup> Ridding the rules of this presumption will not make the task easier, nor will it suddenly lead to swarms of people escaping Minnesota's domicile definition.

While not as prevalent as the continuing-domicile presumption, the family-domicile presumption is applied occasionally.<sup>55</sup> Even when not applied, where a person's family is located still has an effect on a court's decision.<sup>56</sup> So regardless of whether a court mentions the presumption, family ties carry weight. Therefore, because Rule 8001.0300 is already full of guidance on determining domicile, and because Minnesota courts already emphasize where a person's family is located, the proposed redraft strikes the family-domicile presumption.

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<sup>52</sup> See MINN. R. 8001.0300, subp. 5. The rule already requires that a person, who is domiciled outside of Minnesota and who claims to be a non-resident, to have "available for examination adequate records to substantiate that more than one-half of the tax year was spent outside Minnesota." This presumption, at least implicitly, extends that requirement to those who claim not to have retained their Minnesota domicile.

<sup>53</sup> See *infra* Part IV.C (describing how family ties affect the factor analysis).

<sup>54</sup> See, e.g., *Sanchez*, 770 N.W.2d 523; *Mauer v. Comm'r of Revenue*, 829 N.W.2d 59 (Minn. 2013); *Manthey v. Comm'r of Revenue*, 468 N.W.2d 548 (Minn. 1991).

<sup>55</sup> See *Dreyling v. Comm'r of Revenue*, No. 7721-R, 2007 WL 4088814, at \*8 (Minn. Tax Ct. Nov. 15, 2007) (concluding that the husband-taxpayer had failed to rebut the presumption that his domicile remained the same as his spouse's Minnesota domicile); *Morrissey v. Comm'r of Revenue*, No. 4866, 1988 WL 91653, at \*8 (Minn. Tax Ct. Aug. 15, 1988) [hereinafter *Morrissey II*] (concluding that the taxpayer-husband had overcome presumption that one's home is where one's family is domiciled).

<sup>56</sup> See *infra* Part IV.C (describing how family ties affect the factor analysis).

### C. Where-You-Live Presumption

Another presumption that is struck from the proposed redraft is the presumption that you are domiciled where you live.<sup>57</sup> In domicile disputes, where one lives is the sole issue. Individuals often have multiple residences in multiple states, meaning they “live” in multiple states. So the where-you-live presumption adds little to a domicile analysis.

Further, the presumption involves double counting. Certain factors already address where a person lives, so there is no need to pile on a presumption.<sup>58</sup> Thus, the presumption that “one’s domicile is the place where one lives” is struck from the proposed redraft of Rule 8001.0300. In its place, the proposed hierarchical categorization of the twenty-six factors will better capture where one truly “lives.”

### D. Foreign-Employment Negative Presumption

Finally, the presumption that a person has not lost their domicile merely because they accepted a job assignment in a foreign nation is also struck from the proposed redraft. Location of employment is already a factor.<sup>59</sup> So, once again, the current rule is double counting a particular circumstance. Therefore, the proposed redraft strikes this presumption. But to reflect the skepticism shown by courts towards those who claim foreign domiciles,<sup>60</sup> the proposed redraft places the factor concerning location of employment in category one of the new hierarchical factor analysis.

## IV. NOT ALL FACTORS ARE CREATED EQUAL

Besides presumptions, Rule 8001.0300 also lists twenty-six factors that should be considered when determining a person’s domicile.<sup>61</sup> This

<sup>57</sup> See MINN. R. 8001.0300, subp. 2.

<sup>58</sup> See *id.*, subp. 3 (listing factors that relate to living arrangements, which include “F. location of newly acquired living quarters whether owned or rented” and “G. present status of the former living quarters, i.e., whether it was sold, offered for sale, rented, or available for rent to another”).

<sup>59</sup> *Id.*, subp. 3(E).

<sup>60</sup> See *Setness v. Comm’r of Revenue*, No. 5261, 1989 WL 146003, at \*9 (Minn. Tax Ct. Nov. 30, 1989) (concluding that the taxpayer had not established a new domicile in Saudi Arabia); *Larson v. Comm’r of Revenue*, No. 4909, 1988 WL 91652, at \*6 (Minn. Tax Ct. Aug. 19, 1988) (concluding that the taxpayer had not transferred his domicile to Germany when he accepted temporary employment there).

<sup>61</sup> Minn. R. 8001.0300, subp. 3. The factors are:

A. location of domicile for prior years; B. where the person votes or is registered to vote, but casting an illegal vote does not establish domicile for income tax purposes; C. status as a student; D. classification of employment as temporary or permanent; E. location of employment; F. location of newly acquired living quarters whether owned or rented; G. present status of the former living quarters, i.e., whether it was sold,

26-factor list is nonexclusive<sup>62</sup>; no factor is determinative<sup>63</sup>; and, interestingly, charitable contributions made by a person cannot be considered.<sup>64</sup> Moreover, the Minnesota Supreme Court has rejected attempts “to elevate the importance of one factor over another” or to determine domicile by counting factors.<sup>65</sup> In other words, the “test” is not a test.<sup>66</sup> Rather, it’s a mess—ripe for abuse.<sup>67</sup>

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offered for sale, rented, or available for rent to another; H. 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; I. ownership of other real property; J. jurisdiction in which a valid driver’s license was issued; K. jurisdiction from which any professional licenses were issued; L. location of the person’s union membership; M. jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles; N. whether resident or nonresident fishing or hunting licenses purchased; O. whether an income tax return has been filed as a resident or nonresident; P. whether the person has fulfilled the tax obligations required of a resident; Q. location of any bank accounts, especially the location of the most active checking account; R. location of other transactions with financial institutions; S. location of the place of worship at which the person is a member; T. location of business relationships and the place where business is transacted; U. location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member; V. address where mail is received; W. 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; X. location of jurisdiction from which unemployment compensation benefits are received; Y. location of schools at which the person or the person’s spouse or children attend, and whether resident or nonresident tuition was charged; and Z. statements made to an insurance company, concerning the person’s residence, and on which the insurance is based.

*Id.*

<sup>62</sup> *Sanchez*, 2008 WL 8679077, at \*2.

<sup>63</sup> MINN. R. 8001.0300, subp. 3.

<sup>64</sup> MINN. STAT. § 290.01, subd. 7(c); MINN. R. 8001.0300, subp. 3.

<sup>65</sup> See *Dreyling v. Comm’r of Revenue*, 711 N.W.2d 491, 495 (Minn. 2006) [hereinafter *Dreyling I*] (rejecting both the “attempt to elevate the importance of one factor over another” and the notion that “the sheer quantity of factors favoring nondomiciliary status outweighs the factors favoring domicile in Minnesota”). In *Mauer v. Commissioner of Revenue*, the Minnesota Supreme Court reiterated its rejection of an approach that determines domicile by counting factors. 829 N.W.2d at 69 (citing *Dreyling I*, 711 N.W.2d at 495). The court then contradicted itself by proceeding to count factors. *See id.* at 70–74.

<sup>66</sup> Minnesota Supreme Court Justice G. Barry Anderson agrees: “a 26-factor domicile test is no test at all. . . . [T]he current approach to domicile by the Commissioner is hardly ‘common sense.’” *Id.* at 78 (Anderson, J., dissenting).

<sup>67</sup> The Minnesota Supreme Court has recently acknowledged this potential for abuse:

[W]e acknowledge and agree with the dissent’s desire to convey to both the Commissioner and the tax court that they 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

This part attempts to remedy that mess by proposing a categorization of factors into three hierarchical categories. Proper use of this new categorization will require focusing first—and solely—on category-one factors. These factors represent circumstances that best reflect a person’s domicile. If focus on category one does not lead to a conclusion, then category two should be consulted. If after consultation, a domicile still cannot be pinned down, then category three should be used as a tiebreaker, by counting category-three factors.

To help categorize factors, rather than exhaustively analyze each factor individually, this part highlights the weight Minnesota courts have placed on certain factors. Courts claim that one factor should not be elevated over another, but their rulings suggest otherwise, as they appear to implicitly favor some factors over others.<sup>68</sup> And in some cases, this favoritism appears more explicitly.

Besides relying on case-law guidance, the hierarchical categorization also takes a common-sense approach to categorizing factors. For example, a person’s real-property connections to a state should carry more weight than a person’s bank-account connections. Simply put, not all factors are created equal.

#### A. “Living Quarters”: Owned or Rented, Big House or Little House

Numerous factors address “living quarters.”<sup>69</sup> The nature and value of a person’s home or homes appear to carry considerable weight in a domicile analysis, and the absence of any home in a state may destroy any claim that a new domicile has been established. In *Sanchez*, both the Minnesota Tax Court and Minnesota Supreme Court were disturbed by the couple’s lack of residence in South Dakota, the claimed new domicile.<sup>70</sup> Even though the couple never intended to return to Minnesota and had established some connections to South Dakota, they neither rented nor owned any residence in South Dakota.<sup>71</sup> This seemed fatal to their claim that they had established a new domicile in South Dakota.

While Justice Page, in his dissent, challenged the court’s focus on the couple’s failure to establish a residence in South Dakota,<sup>72</sup> this focus is reasonable in light of the basic definition of domicile. Domicile is defined, in

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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*, 829 N.W.2d at 76 n.2.

<sup>68</sup> See *infra* Part IV.A–D (describing how the courts appear to implicitly place more weight on some factors as compared to others).

<sup>69</sup> MINN. R. 8001.0300, subp. 3(F)–(H).

<sup>70</sup> See *Sanchez*, 2008 WL 8679077, at \*4; *Sanchez*, 770 N.W.2d at 527.

<sup>71</sup> See *Sanchez*, 770 N.W.2d at 524–27.

<sup>72</sup> See *id.* at 528 (Page, J., dissenting).

part, as the “place in which a person’s habitation is fixed.”<sup>73</sup> Fixed does not necessarily mean a real-property connection to a state, but it means more than a transient connection. It means that some type of habitation has been established, even if minimally. Therefore, it is reasonable for a court to place significant weight on whether a person has established living quarters in the state claimed to be that person’s domicile.

But it is not just the mere establishment of living quarters that draws a court’s attention. Minnesota courts also look to whether the taxpayer rents or owns their living quarters. In *Morrissey v. Commissioner of Revenue*, the tax court ruled against a taxpayer who claimed that he was an Indiana domiciliary.<sup>74</sup> The court found it significant that the taxpayer neither owned nor rented real property in Indiana.<sup>75</sup> Instead, the taxpayer “merely had a room at an Indiana motel, a type of living arrangement typically transient and temporary.”<sup>76</sup>

Minnesota courts also look to the home’s value. In *Page v. Commissioner of Revenue*, the tax court ruled that the taxpayer had established a new domicile in Illinois, even while retaining numerous contacts with Minnesota.<sup>77</sup> The court placed significant weight on the home purchased by the taxpayer in Illinois: “The home selected in Chicago was a spacious, expensive, designer furnished, home that [the taxpayer] characterized as a dream house—hardly the type of accommodations one would seek for a temporary stay.”<sup>78</sup>

Home value also played a significant role in *Stamp v. Commissioner of Revenue*. In *Stamp*, the tax court ruled against taxpayers seeking to claim Florida as their new domicile.<sup>79</sup> Weighing heavily in that decision was the lack of investment in the taxpayers’ Florida home.<sup>80</sup> The court viewed the real-estate investment as insubstantial considering the taxpayers’ annual income and expected tax savings if Florida was their domicile.<sup>81</sup>

These cases show that ownership versus rental of living quarters and the value of living quarters are significant considerations when determining domicile. It also illustrates the general focus that Minnesota courts direct at real estate in domicile disputes, as they seemingly place substantial weight on real-estate connections and the circumstances surrounding those

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<sup>73</sup> MINN. R. 8001.0300, subp. 2.

<sup>74</sup> *Morrissey v. Comm’r of Revenue*, No. 4275, 1985 WL 6220, at \*7 (Minn. Tax Ct. Dec. 17, 1985).

<sup>75</sup> *Id.* at \*6.

<sup>76</sup> *Id.*

<sup>77</sup> *Page v. Comm’r of Revenue*, No. 4011, 1986 WL 15695, at \*3 (Minn. Tax Ct. Mar. 12, 1986).

<sup>78</sup> *Id.* at \*6.

<sup>79</sup> *Stamp v. Comm’r of Revenue*, No. 2572, 1979 WL 1117, at \*3 (Minn. Tax Ct. June 27, 1979).

<sup>80</sup> *Id.* at \*5.

<sup>81</sup> *Id.*

connections. As such, of the twenty-six factors, those that relate to living quarters are placed in category one.

Despite the focus on owning real estate and the value of that real estate in the cases referenced above, it is important to note that the value of the home or whether a person is renting or owning may not be as significant when the economics of the taxpayer's situation restricts the value of their home or their ability to own. In *Morrissey II*, the tax court concluded that, although a newly rented home was humble, the taxpayer "should not be penalized because he lived in a rooming house or apartment rather than an expensive home."<sup>82</sup> In *Morrissey II*, because of the realities of the taxpayer's economic circumstances, the court did not penalize the taxpayer's lack of ownership or value in the property.<sup>83</sup>

*Morrissey II* suggests that, at least with respect to taxpayers of modest means, the focus on home value and ownership may not be as critical. But for taxpayers with a high net worth, whether they choose to rent or buy expensive homes will carry considerable weight. In sum, courts will—and should—place substantial weight on the nature and value of a person's home or homes, taking into account the person's financial situation.

### ***B. Nature of Employment***

The nature of the taxpayer's employment in a state also carries significant weight in a domicile analysis. *Manthey v. Commissioner of Revenue* provides a forceful demonstration.<sup>84</sup> In *Manthey*, the Minnesota Supreme Court upheld the tax court's ruling that the taxpayer had not changed his domicile to Alaska.<sup>85</sup> The taxpayer had moved to Alaska to work on various construction projects related to the Alaskan pipeline.<sup>86</sup> His wife and children remained in Minnesota and were financially supported by him.<sup>87</sup> While the taxpayer maintained other connections to Minnesota and accepted some benefits accorded to Minnesota residents, most of his time was spent in Alaska.<sup>88</sup> Moreover, he "enjoyed certain rights peculiar to Alaskan citizens and established social and fraternal relations there."<sup>89</sup> These seemingly strong connections to Alaska, however, were not enough to sway the court, as the temporary nature of the taxpayer's employment in Alaska helped destroy his claim that he was domiciled there.

The court noted that the taxpayer intended to remain in Alaska only so long as he could work: "When work ran out . . . [he] returned to

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<sup>82</sup> *Morrissey II*, 1988 WL 91653, at \*7.

<sup>83</sup> *Id.*

<sup>84</sup> *Manthey*, 468 N.W.2d 548.

<sup>85</sup> *Id.* at 550.

<sup>86</sup> *Id.* at 549.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 550.

<sup>89</sup> *Id.*

Minnesota.”<sup>90</sup> According to the court, “[t]his conduct *alone* demonstrates [he] never intended to uproot himself from Minnesota.”<sup>91</sup> *Manthey* suggests that temporary employment in a new state weighs heavily against a taxpayer’s claim that he has changed his domicile.

Permanent employment, on the other hand, has the opposite effect. Permanent employment provides considerable support for a finding of domicile in the state where that employment exists. In *Morrissey II*, the tax court ruled in the taxpayer’s favor, concluding that he had established a new domicile in Indiana.<sup>92</sup> The court ruled in the taxpayer’s favor even though he retained numerous ties to Minnesota, including family, medical, and financial ties.<sup>93</sup> The court reasoned that the taxpayer’s acceptance of a permanent position in Indiana, which provided no chance of transfer back to Minnesota, signified his intent to become an Indiana domiciliary.<sup>94</sup> His employment, along with his renting and furnishing of an apartment in Indiana, was consistent with his intent to change domicile.<sup>95</sup>

Minnesota courts’ central focus on the nature of employment in a state demonstrates the substantial weight placed on this factor in domicile disputes. The significance placed on this factor is well-founded. The nature of employment is a good indicator of a person’s intent either to remain indefinitely in a state or to jump ship when their temporary employment runs out. The nature of employment indicates whether a person is in a transient or permanent position, which helps determine domicile. Therefore, the nature of employment is placed among category-one factors.

### *C. Family, Social, Business, and Professional Ties*

Minnesota courts’ treatment of family, social, business, and professional ties has been inconsistent. In some cases, these ties carried great weight, while in others, they carried less. In *Page*, the tax court noted that “‘family, social and business ties are not easily nor quickly relinquished, nor do they have to be to establish residence in another state.’”<sup>96</sup> *Page* implicitly suggests that less weight should be given to these associations. However, in *Sanchez*, a case decided after *Page*, the tax court reminded: “[t]he Minnesota Supreme Court has held that a taxpayer made an effective domicile change from Minnesota to Florida *only* when he ‘established certain business, social, political and religious associations in Florida and severed similar

<sup>90</sup> *Manthey*, 468 N.W.2d at 550.

<sup>91</sup> *Id.* (emphasis added).

<sup>92</sup> *Morrissey II*, 1988 WL 91653, at \*10.

<sup>93</sup> *Id.* at \*1, \*3, \*9.

<sup>94</sup> *Id.* at \*10.

<sup>95</sup> *Id.*

<sup>96</sup> *Page*, 1986 WL 15695, at \*7 (quoting *Truex v. Comm’r of Revenue*, No. 3246, 1982 WL 1509 (Minn. Tax Ct. Nov. 5, 1982)).

relationships in Minnesota.”<sup>97</sup> This reminder came from *Miller’s Estate v. Commissioner of Taxation*, a Minnesota Supreme Court case decided before both *Page* and *Sanchez*.<sup>98</sup> So these associations have apparently moved from significant to the extent of potentially determinative in *Miller’s Estate*, to receiving less significance in *Page*, to being significant again in *Sanchez*.<sup>99</sup> The significance attached to these ties has been holding strong recently, however, at least for family ties and professional services.

In *Larson II*, the Minnesota Supreme Court placed significant weight on family ties, independent of the family-domicile presumption, and on professional-service associations.<sup>100</sup> The court, in upholding the tax court’s decision that the taxpayer was domiciled in Minnesota rather than Nevada, noted that the taxpayer had “no family living in Nevada during the tax years” while “his sister, his three children, and his four grandchildren live[d] in Minnesota and his youngest son attended school in Minnesota during the tax years.”<sup>101</sup> The court made no reference to the family-domicile presumption.<sup>102</sup> Rather, it saw these family ties as suggestive of the taxpayer’s domicile under the factor analysis.

*Larson II* also placed substantial weight on professional services hired by the taxpayer in Minnesota. While the taxpayer had an attorney and a personal assistant in Nevada, he retained four Minnesota law firms and two Minnesota accounting firms.<sup>103</sup> He also retained a Minnesota personal assistant who managed his bank accounts, paid his bills, and received his mail.<sup>104</sup> These professional connections weighed heavily against the taxpayer’s claim that a new domicile had been established in Nevada.<sup>105</sup>

Currently, Minnesota courts seem to find certain ties, such as family and professional-service associations, telling of a person’s domicile. However, a domicile analysis is better served if these ties are not given priority consideration. As the tax court noted in *Page*, family, social, and

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<sup>97</sup> *Sanchez*, 2008 WL 8679077, at \*3 (emphasis added) (quoting *Miller’s Estate v. Comm’r of Taxation*, 59 N.W.2d 925, 926 (Minn. 1953)).

<sup>98</sup> *Miller’s Estate*, 59 N.W.2d at 926. This reminder, however, was misleading. In *Miller’s Estate*, the Minnesota Supreme Court, while placing significant emphasis on the taxpayer’s new associations in Florida and his severing of similar associations in Minnesota, stated: “The fact that [the taxpayer] retained certain business connections in Minnesota may be considered in determining the sincerity of his announced intent, but these circumstances do not conclusively establish that he never changed his domicile from Minnesota to Florida.” *Id.* at 927. This suggests a less significant emphasis on these connections, although more so than the tax court appears to have given in *Page*. See *supra* note 96 and accompanying text.

<sup>99</sup> This lack of consistency in applying these factors, like the courts application of other factors, may be a creature of the fact-intensive inquiry required in a domicile dispute. Because of this fact-intensive inquiry, the ability to discuss these factors in isolation, or to compare their application across cases, may be impaired.

<sup>100</sup> *Larson II*, 824 N.W.2d 329.

<sup>101</sup> *Id.* at 332.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> See *id.*

business ties are “not easily nor quickly relinquished, nor do they have to be to establish residence in another state.”<sup>106</sup> While family is important, where a taxpayer’s parents, siblings, and other relatives domicile should not carry inordinate weight in an analysis of the *taxpayer’s* domicile.

Likewise, a taxpayer should not be punished for failing to sever ties with his attorney and accountant—people with whom he has potentially spent considerable time creating professional relationships. Trust is an important aspect in these professional relationships and also in other business relationships. Moreover, professional and business relationships are compensated, which the Minnesota Tax Court has vaguely suggested diminishes the importance of these factors in a domicile analysis.<sup>107</sup>

When it comes to social connections, what clubs a person joins may suggest where a person considers “home,” but it should not carry excessive weight in a domicile analysis. Like professional and business relationships, relationships created in social organizations are developed over an extended period and are not easily severed.

In sum, while family, social, business, and professional ties may suggest a person’s domicile, they should not carry inordinate weight in a domicile analysis. Therefore, in the proposed redraft, factors that deal with family, social, business, and professional ties are relegated to category-two factors. The one exception is for a spouse’s domicile. Unless the couple is legally separated or the marriage has been dissolved, a spouse’s domicile should weigh heavily on a court’s analysis, and therefore, a spouse’s domicile is listed as a category-one factor.

#### *D. Posturing Factors*

The tax court has stated that certain factors are nothing more than “posturing” factors. In *Page*, the tax court considered a taxpayer’s acts such as “sending change of address cards to various credit card companies and other creditors, closing their Minneapolis bank accounts, and relying solely upon their Illinois bank accounts” as carrying little, if any, weight in a domicile analysis.<sup>108</sup> According to the court, “[t]o require such posturing in order to effect a change of domicile would be absurd.”<sup>109</sup> *Page* is not the only example of Minnesota courts placing less weight on similar factors.

In *Sanchez*, even though all parties agreed that the couple never intended to return to Minnesota, the couple still did not establish a new domicile in South Dakota, despite having many factors connecting them to

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<sup>106</sup> *Page*, 1986 WL 15695, at \*7 (citation omitted).

<sup>107</sup> See *Bradison v. Comm’r of Revenue*, No. 8286, 2012 WL 360461, at \*10 (Minn. Tax Ct. Jan. 31, 2012) (rejecting a claim of Wyoming domicile by noting, in part, that a connection to a Wyoming bank that was acting as a conservator carried less weight than Minnesota connections, as the bank was being paid a reasonable fee for its services).

<sup>108</sup> *Page*, 1986 WL 15695, at \*9.

<sup>109</sup> *Id.*

South Dakota.<sup>110</sup> The couple obtained a South Dakota mailing address and South Dakota driver's licenses.<sup>111</sup> They opened checking accounts and obtained credit cards in South Dakota.<sup>112</sup> They also registered their vehicle in South Dakota and registered to vote in the state.<sup>113</sup> In addition, the couple stated in an affidavit that they intended to return to South Dakota to rent or buy a home after their travels, but did not do so initially to avoid the expenses and obligations of home ownership.<sup>114</sup> Those actions were not enough for the court.

*Page* and *Sanchez* implicitly suggest that some factors—e.g., driver's licenses, voter and vehicle registrations, and certain financial connections—are qualitatively less important than others, such as living quarters. In *Sanchez*, the court seemed skeptical of the domicile claim because of the couple's lack of physical presence in the state. While this skepticism may have related more to the apparent failure of the husband and wife to couple physical presence and intent, the court's mention of this lack of physical presence is telling. It suggests that a court views rental or ownership of a residence as more revealing of a person's domicile than the state indicated on a person's driver's license or checking account.

Accordingly, the following factors are demoted to category three: location of voter and vehicle registrations, address indicated on a driver's license, and location of bank accounts and similar financial accounts. While mailing address was mentioned along with the other "posturing" factors, the proposed redraft places it in category two. Mailing address, unlike the other posturing factors, better signifies where a person believes their primary home is located. A person needs to get their mail, which suggests they would direct mail towards their primary residence. Similarly, where a person votes, unlike simply registering to vote, better signifies where a person believes they are domiciled. Voting in a state, especially in local elections, suggests a bond to the state, more so than merely registering to vote.<sup>115</sup> Therefore, where a person votes is considered along with category-two factors.

### ***E. Other State's Tax Treatment of Income***

Minnesota courts loathe any suggestion that a taxpayer's apparent desire to escape Minnesota's income tax is a factor used in determining intent. The Minnesota Supreme Court summed up this sentiment: "It is to be

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<sup>110</sup> *Sanchez*, 770 N.W.2d at 526; *Sanchez*, 2008 WL 8679077, at \*2, \*5.

<sup>111</sup> *Sanchez*, 2008 WL 8679077, at \*2.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Sanchez*, 770 N.W.2d at 525.

<sup>115</sup> For diversity jurisdiction, registration and voting may raise a presumption of domicile, or they may be at least considered "weighty" factors. See 13E CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3612 (3d. ed. 2013). However, "with residency requirements for voting registration greatly reduced as a result of certain Supreme Court decisions, this factor may carry less weight in the future." *Id.*

pointed out that if the necessary intention to change one's domicile is, in fact, present, the motive or purpose in making the change [e.g., tax avoidance] is unimportant."<sup>116</sup> This sentiment is unpracticed.

Minnesota courts have held it against taxpayers whom the courts perceived as motivated by tax avoidance. In *Manthey*, the Minnesota Supreme Court upheld the tax court's conclusion that a taxpayer had not established a new domicile in Alaska.<sup>117</sup> They did so even though the court confessed that the facts presented a close case.<sup>118</sup> In their opening fact discussion, the court noted that before Alaska repealed their income tax, the taxpayer had always filed Minnesota income tax returns, even though he spent most of his time in Alaska.<sup>119</sup> Then, after Alaska repealed its income tax, the taxpayer stopped filing a Minnesota income tax return, because he claimed Alaska as his domicile.<sup>120</sup> This change of heart did not go unnoticed. The court concluded that the timing of the taxpayer's decision was relevant to his intent, reasoning that "[t]he repeal of Alaska's personal income tax law . . . provide[d] a plausible explanation for [the taxpayer's] motivations and actions."<sup>121</sup> So while courts assert that a taxpayer's motive to avoid Minnesota's income tax should not be considered when determining a taxpayer's intent, the courts' actions suggest otherwise. Just as a taxpayer's acts should carry more weight than his declarations, so should a court's.<sup>122</sup>

Moreover, considering which states habitually vie for a taxpayer's domicile affection, it becomes clear that a state's tax treatment of income plays an implicit role in domicile disputes. States without an income tax are often involved in domicile disputes. Although there are only seven states that impose no state income tax,<sup>123</sup> these states are disproportionately at issue in domicile disputes before Minnesota courts.<sup>124</sup> This lopsided representation of no-income-tax states highlights that tax treatment of income plays an implicit role in domicile disputes.

Therefore, it's time to allow the commissioner of revenue—and courts—to explicitly take account of another state's tax treatment of income.

<sup>116</sup> *Miller's Estate*, 59 N.W.2d at 926 n.1 (citations omitted).

<sup>117</sup> *Manthey*, 468 N.W.2d at 550.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 549.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 550.

<sup>122</sup> See MINN. R. 8001.0300, subp. 2 ("No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts must be given more weight than declarations.").

<sup>123</sup> Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming. Mike Sauter, *Hate Paying Income Tax? Try These 7 States*, USA TODAY (Mar. 23, 2013), [www.usatoday.com/story/money/personalfinance/2013/03/23/states-income-tax/2002991/](http://www.usatoday.com/story/money/personalfinance/2013/03/23/states-income-tax/2002991/).

<sup>124</sup> For example, nineteen Minnesota taxpayer cases were reviewed for this article. Thirteen of those cases involved a claimed domicile in a no-income-tax state. Of the remaining six, three involved a claimed foreign domicile. Thus, only three cases involved a claimed domicile in a state that imposed a state income tax.

Accordingly, this article proposes adding a new factor to category one: other state's tax treatment of income. Allowing the commissioner and courts to explicitly consider this factor will help them better determine if a taxpayer really intended to establish a new domicile, as opposed to merely trying to avoid state income tax.

## V. A QUICK SUB-RULES SIDETRACK

While changes to the presumptions and factors are the focus of the proposed redraft, many of the sub-rules can also be struck without damaging the effectiveness of the redrafted rule. For example, the following portion of Rule 8001.0300 is struck in the redraft:

A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person's domicile. But if a person moves to another jurisdiction with the intention of remaining there permanently or for an indefinite time as a home, that person has lost that person's domicile in this state.<sup>125</sup>

This portion is nothing more than an application of the domicile definition to a specific fact situation. It provides no additional guidance for a court. Therefore, it is struck.<sup>126</sup>

Other sub-rules that are struck concern family ties.<sup>127</sup> Because family ties are sufficiently covered in the proposed redraft by category-one and category-two factors, these sub-rules are struck. The redraft also strikes the

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<sup>125</sup> MINN. R. 8001.0300, subp. 2.

<sup>126</sup> For similar reasons, the following sub-rules are also struck:

The mere intention to acquire a new domicile, without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person's status.

An absence of intention to abandon a domicile is equivalent to an intention to retain the existing one.

A person who is temporarily employed within this state does not acquire a domicile in this state if during that period the person is domiciled outside of this state.

*Id.*

<sup>127</sup> The family-ties sub-rules that are struck state:

The domicile of a spouse is the same as the other spouse unless there is affirmative evidence to the contrary or unless the husband and wife are legally separated or the marriage has been dissolved. When a person has made a home at any place with the intention of remaining there and the person's family neither lives there nor intends to do so, then that person has established a domicile separate from that person's family.

*Id.*

sub-rule that states: “The domicile of a single person is that person’s usual home.”<sup>128</sup> This sub-rule adds nothing. At its core, a domicile analysis attempts to identify a person’s “usual home.” But stating that fact does not guide anyone in determining where a person is domiciled. Therefore, the sub-rule is struck.

## VI. A PATH FORWARD

The following is a proposed redraft of Minnesota Rule 8001.0300, subparts 2 and 3—the subparts that relate directly to domicile. The redraft is based on this article’s critique of the current rule. The goal is to trim the fat, leaving a more principled, ordered rule.

### **Subp. 2. Domicile; definition, one domicile rule, and presumption**

The term “domicile” means the bodily presence of an individual person in a place coupled with an intent to make such a place one’s home. The domicile of any person is that place in which that person’s habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

An individual can have only one domicile at any particular time.

A domicile once shown to exist is presumed to continue until the contrary is shown. An intention to change a domicile may be proved by acts and declarations, and of the two forms of evidence, acts must be given more weight than declarations. The domicile considerations in subpart 3 may guide a court in its determination of intent.

### **Subp. 2a. Special domicile rules.**

In a case of a minor child who is not emancipated, the domicile of the child’s parents is the domicile of the child. The domicile of the parent who has legal custody of the child is the domicile of the child. A person who is a permanent resident alien in the United States may have a domicile in this state. The domicile of a member of the armed forces will be governed by the facts just before becoming a member of the armed forces.

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<sup>128</sup> *Id.*

**Subp. 3. Domicile Considerations; a hierarchical approach.**

With subpart 2 providing primary guidance, the following process may be undertaken to help determine where a person is domiciled. The process requires a step-by-step approach through a hierarchy of factors, divided into three categories.

Category-one factors must be given the most weight and are considered first. If a domicile can be identified based on category-one factors, that place is the person's domicile. If not, category-two factors should be considered. If a determination still cannot be made, category-three factors should be considered. If necessary, other factors that are indicative of the person's domicile may be considered along with category-three factors. A determination must ultimately be made after consideration of all three categories.

***Category one:***

- A. Location of domicile for prior years;
- B. Classification of employment as temporary or permanent;
- C. Location of employment;
- D. Location of newly acquired living quarters whether owned or rented;
- E. Present status of the former living quarters, i.e., whether it was sold, offered for sale, rented, or available for rent to another;
- F. 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;
- G. 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;
- H. Location of jurisdiction from which unemployment compensation benefits are received;
- I. Where the person's spouse is domiciled, but only if the couple is not legally separated or the marriage has not been dissolved;
- J. Other state's tax treatment of income.

***Category two:***

- A. Where the person legally votes;
- B. Status as a student;
- C. Ownership of other real property;
- D. Jurisdiction from which any professional licenses were issued;
- E. Location of the person's union membership;
- F. Physical location of the vehicles;
- G. Location of business relationships and the place where business is transacted;
- H. Location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member;
- I. Address where mail is received;
- J. Location of schools at which the person or the person's spouse or children attend, and whether resident or nonresident tuition was charged;
- K. Where the person's family, other than their spouse, is domiciled;
- L. Statements made to an insurance company, concerning the person's residence, and on which the insurance is based.

***Category three:***

- A. Where the person is registered to vote;
- B. Jurisdiction in which a valid driver's license was issued;
- C. Where the person's vehicle is registered;
- D. Whether an income tax return has been filed as a resident or nonresident;
- E. Whether the person has fulfilled the tax obligations required of a resident;
- F. Whether resident or nonresident fishing or hunting licenses were purchased;
- G. Location of any bank accounts, especially the location of the most active checking account;
- H. Location of other transactions with financial institutions;
- I. Location of the place of worship at which the person is a member;
- J. Charitable contributions made by a person.

## **VII. CONCLUSION**

A state that depends on overlapping presumptions, sub-rules, and factors to resolve a domicile dispute should expect unprincipled results. When everything matters, nothing matters. This article's proposed redraft will not ensure perfectly predictable results—domicile disputes are often unpredictable. But the redraft at least brings to the forefront factors that better signify a person's domicile, while trimming unnecessary presumptions and sub-rules. As it currently stands, Minnesota's application of Rule 8001.0300 in domicile disputes is unprincipled. This needs to change.