

Minnesota Department of Revenue

**NOTICE OF SUBMISSION OF RULES PROPOSED FOR ADOPTION WITHOUT A
PUBLIC HEARING TO THE OFFICE OF ADMINISTRATIVE HEARINGS**

**Amendments to Rules for Domicile Considerations, part 8001.0300;
Revisor's ID Number R-04772.**

TO: ALL INTERESTED PERSONS

In accordance with Minnesota Statutes, section 14.388, subdivision 2, this Notice is being sent to all persons who have registered their name with the agency under Minnesota Statutes, section 14.14, subdivision 1a. This notice is also posted on the website of the Department of Revenue.

The Department is using the good cause exemption process under Minnesota Statutes, section 14.388, subdivision 1, clauses (3) and (4), as authority for proposing the rule amendments cited above.

PLEASE TAKE NOTICE that the above-cited proposed rule amendments will be submitted to the Office of Administrative Hearings on the date of this notice, February 21, 2023. A copy of the proposed rule changes is attached to this notice.

Also attached is the "Findings & Statement of Supporting Reasons," which explain why the rule amendments qualify for the good cause exemption from rulemaking. The same "Findings & Statement of Support Reasons" was incorporated by reference into the Commissioner's proposed order adopting the rule, which was submitted to the Office of Administrative Hearings.

All interested persons have five business days after the date of this notice to submit comments to the Office of Administrative Hearings via its eComments website at <https://minnesotaoah.granicusideas.com/discussions> or via its mailing address at 600 N. Robert Street, P.O. Box 64620, St. Paul, MN 55164-64620. To be considered, comments must be received by OAH no later than 4:30 p.m. on February 28, 2023.

The agency contact person is Erik Zercher, Department of Revenue, 600 N. Robert St., St. Paul, MN 55146-2220, (651) 556-4084, Erik.Zercher@state.mn.us. Please contact this agency contact person with questions about this proposed rulemaking or for a special accommodation.

Signed by: Erik Zercher, Attorney, Appeals, Legal Services, and Disclosure Division
February 14, 2023

1.1 **Department of Revenue**

1.2 **Adopted Exempt Permanent Rules Relating to Residency Factors; Removing Obsolete**
1.3 **and Duplicative Provisions**

1.4 **8001.0300 RESIDENT AND DOMICILE DEFINED; CONSIDERATIONS.**

1.5 *[For text of subparts 1 and 2, see Minnesota Rules]*

1.6 Subp. 3. **Considerations.** The following items listed will be considered in determining
1.7 whether or not a person is domiciled in this state:

1.8 *[For text of items A to P, see Minnesota Rules]*

1.9 ~~Q.~~ location of any bank accounts, especially the location of the most active
1.10 checking account;

1.11 ~~R.~~ Q. location of other transactions with financial institutions;

1.12 ~~S.~~ R. location of the place of worship at which the person is a member;

1.13 ~~T.~~ S. location of business relationships and the place where business is transacted;

1.14 ~~U.~~ T. location of social, fraternal, or athletic organizations or clubs or in a lodge
1.15 or country club, in which the person is a member;

1.16 ~~V.~~ U. address where mail is received;

1.17 ~~W.~~ V. percentage of time (not counting hours of employment) that the person is
1.18 physically present in Minnesota and the percentage of time (not counting hours of
1.19 employment) that the person is physically present in each jurisdiction other than Minnesota;

1.20 ~~X.~~ W. location of jurisdiction from which unemployment compensation benefits
1.21 are received;

1.22 ~~Y.~~ X. location of schools at which the person or the person's spouse or children
1.23 attend, and whether resident or nonresident tuition was charged; and

2.1 ~~Z. Y.~~ statements made to an insurance company, concerning the person's residence,
2.2 and on which the insurance is based.

2.3 Any one of the items listed above will not, by itself, determine domicile.

2.4 ~~Charitable contributions made by a person will not be considered in determining whether~~
2.5 ~~that person is domiciled in Minnesota.~~

2.6 *[For text of subparts 4 to 10, see Minnesota Rules]*

Office of the Revisor of Statutes

Administrative Rules



TITLE: Adopted Exempt Permanent Rules Relating to Residency Factors; Removing Obsolete and Duplicative Provisions

AGENCY: Department of Revenue

REVISOR ID: R-4772

MINNESOTA RULES: Chapter 8001

The attached rules are approved as to form

A handwritten signature in black ink, appearing to read "Evan A. Powell", is written over a horizontal line.

Evan A. Powell
Senior Assistant Revisor

PROPOSED ORDER ADOPTING AMENDMENT OF RULES

Adoption of Permanent Exempt Rule Governing Tax Definitions: Amending Minnesota Rules, parts 8001.0300, subpart 3.

WHEREAS:

1. The rulemaking provisions of Minnesota Statutes, Chapter 14, are unnecessary when, as in this case, amendments are made to a rule that: a) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or b) make changes that do not alter the sense, meaning or effect of a rule. Minnesota Statutes, section 14.388.
2. The attached Findings & Statement of Supporting Reasons justifies the good cause exemption from rulemaking provided by Minnesota Statutes, section 14.388, and is hereby incorporated by reference.
3. This rulemaking complies with all applicable law, including the procedural requirements in Minnesota Statutes, section 14.388 and Minnesota Rules, part 1400.2400.
4. The attached certified copy of the rule demonstrates that the Office of the Revisor has approved its form, as required by Minnesota Statutes, section 14.386, paragraph (a)(1), and Minnesota Rules, part 1400.2400.

IT IS ORDERED that the above-captioned rule, in the form certified as approved by the Office of the Revisor, is adopted pursuant to authority vested in me by Minnesota Statutes, section 270C.06, WHICH PROVIDES THAT the Commissioner of Revenue shall “make, publish, and distribute rules for the administration and enforcement of...state tax laws.” Under these statutes, the Commissioner of Revenue has authority to amend this rule.

Date

Paul Marquart, Commissioner
Department of Revenue

FINDINGS & STATEMENT OF SUPPORTING REASONS

Adoption of Permanent Exempt Rule Governing Tax Definitions: Amending Minnesota Rules, part 8001.0300, subpart 3.

FINDINGS

Under the Minnesota Statutes, section 290.01, subdivision 7, paragraph (a), definition of resident, a resident generally is any individual domiciled in Minnesota. The Commissioner of the Department of Revenue promulgated Minnesota Rules, part 8001.0300, subpart 3, to provide factors for consideration in domicile determinations.

In Minnesota Rules, part 8001.0300, subpart 3, item Q, the “location of any bank accounts, especially the location of the most active checking account” will be considered in the determination of a person’s domicile. In 2017, Minnesota Statutes, section 290.01, subdivision 7, paragraph (c), was amended, in relevant part, as provided by Laws of Minnesota 2017, 1st Spec. Sess. chapter 1, article 1, section 5, to bar the commissioner and court from considering the “place of business of a financial institution at which the individual applies for any new type of credit or at which the individual opens or maintains any type of account” when determining a taxpayer’s domicile. Because the taxpayer’s bank account location is explicitly barred from consideration under subdivision 7, Minnesota Rules, part 8001.0300, subpart 3, item Q, no longer has any effect. This part of the rule is now inconsistent with statute and should be removed from Minnesota Rules, part 8001.0300.

In Minnesota Rules, part 8001.0300, subpart 3, not under any item label, is the provision “[c]haritable contributions made by a person will not be considered in determining whether that person is domiciled in Minnesota.” Minnesota Statutes, section 290.01, subdivision 7, paragraph (c), clause (1), bars the consideration of charitable contributions, whether made in or out of the state, in the determination of a person’s domicile. This language has been included in Minnesota Rules, part 8001.0300, subpart 3, since 1989. Minnesota Statutes, section 290.01, subdivision 7, paragraph (c), clause (1), was enacted into law during the 1999 Regular Session (Laws of Minnesota 1999, chapter 243, article 2, section 2). As this part of the rule has been codified into statute, it is duplicative of the statute and no longer needs to be included in Minnesota Rules, part 8001.0300, subpart 3.

The proposed amendments to Minnesota Rules, part 8001.0300, subpart 3 incorporate specific changes set forth in Minnesota Statutes, section 290.01, subdivision 7. Additionally, these changes do not alter the sense, meaning, or effect of Minnesota Rules, part 8001.0300, subpart 3.

STATEMENT OF SUPPORTING REASONS

An amendment must meet one of the criteria of Minnesota Statutes, section 14.388, to be adopted under good cause exemption procedures. The third clause, “to incorporate specific changes set forth in applicable statutes when no interpretation of law is required,” applies in this instance. The fourth clause – “make[s] changes that do not alter the sense, meaning, or effect of a rule” – also applies.