HOUSE RESEARCH

Bill Summary

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Authors: Davids

Subject: Definition of resident for income and estate tax purposes

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Overview

This bill modifies the definition of "resident" for purposes of the income and estate taxes so that the location of an individual's lawyer, certified public accountant, or financial adviser cannot be considered in determining whether the individual is domiciled in Minnesota. In addition, the financial institution where an individual opens or maintains an account cannot be considered.

The bill also modifies statutory residency test (or physical presence test) to provide that medical days do not count in determining whether the taxpayer has spent more than one-half of the year in Minnesota.

The author's amendment (A1) is technical. Laws 2017, chapter 1 (federal conformity) amended the section of statute being amended by this bill; the amendment re-draws the bill to Minnesota Statutes, section 290.0671, subdivision 1, as amended by Laws 2017, chapter 1.

Section

1 **Resident definition; individual income tax – domicile test**. Modifies the domicile test under the individual income tax's definition of "resident," so that the location of:

- The individual's attorney, certified public accountant, or financial adviser; and
- The place of business of a financial institution where the individual opened or maintains an account

Section

cannot be considered by the Department of Revenue (DOR) or a court in determining where the individual intends his or her permanent home to be (i.e., the domicile test). For example, using a Minnesota or an out-of-state lawyer would not be relevant evidence of the taxpayer's intent as to the location of his permanent home state.

Background. The domicile rule or test is a common law rule that considers the taxpayer to be a resident (or domiciliary) of the state that he or she intends to be his or her permanent home. In determining a taxpayer's intent, DOR and courts use a 26-factor test under an administrative rule promulgated in the early 1980s that identifies the types of evidence that are relevant to determine this intent. The location of "business relationships and the place where business is transacted" and "bank accounts" are factors under the administrative rule. The bill would reverse that for the listed professionals and banking arrangements.

Being treated as a resident subjects the taxpayer's entire income, regardless of type or the location that it is derived from, to Minnesota income tax. (A credit applies to offset tax imposed by another state on that income.) By contrast, a nonresident is subject to tax only on Minnesota-source income (e.g., income from work performed in Minnesota or investment income from tangible property or a business located in Minnesota).

Resident definition – individual income tax – physical presence test. The statutory residency test provides that an individual who maintains a permanent dwelling in Minnesota and is physically present in the state for 183 days or more in a calendar year is a resident for income tax purposes. This section provides that days spent in Minnesota by taxpayers who travel to the state primarily to receive medical treatment (for the taxpayer, spouse, or a dependent) do not count as Minnesota days. Requires travel to Minnesota for the treatment to have been claimed as a medical expense deduction on the income tax return for days to count as medical treatment days.

Effective date: Tax year 2017

2 **Estate tax.** Extends application of section 1's rules to the definition of domicile under the estate tax. Residency status does not affect the estate taxation of tangible property (e.g., real estate, vehicles, jewelry, art, and so forth), but does determine whether intangible property (e.g., stocks, bonds, and bank accounts) are subject to Minnesota estate tax. (Minnesota real estate is subject to tax and tangible personal property is subject to tax if it is normally kept in Minnesota.) The physical presence or statutory residency test does not apply to the estate tax.

Effective date: Decedents dying after December 31, 2016