Reg. § 1.5811(11)(A)(i) **DOMICILE** (Effective 8/6/04)

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Reg. § 1.5811(11), § 1.5401(7), (14) § 1.6066(c) **DOMICILE** (Effective 8/6/04)

Section 1 **Introduction**

Domicile is a legal concept that has implications for Vermont income tax, the statewide education tax and property tax adjustments.

With regard to income tax, resident individuals are taxed on more of their taxable income than nonresidents. An individual qualifies for residency for the portion of the year in which the individual is domiciled in the state. 32 V.S.A. § 5811(11).

The statewide education tax is affected because the tax is imposed at different rates on homestead property and nonresidential property. A homestead is the principal dwelling owned and occupied by a resident individual as the individual's domicile. 32 V.S.A. § 5401(7). Domicile is defined with respect to the statewide education tax at 32 V.S.A. § 5401(14).

Finally, to be eligible for a property tax adjustment under Chapter 154 of Title 32, a claimant must be domiciled in the state. 32 V.S.A. § 6066(c).

This rule provides guidelines that are consistent with the definition in 32 V.S.A. § 5401(14) for determining domicile. It further clarifies that domicile has the same definition for purposes of income tax, statewide property tax and property tax adjustments.

Section 2 **Definition of Domicile**

(a) Domicile means the place where an individual has a true, fixed permanent home, and to which place, whenever the person is absent, he or she has the intention of returning. An individual may have several places of abode in a year, but at no time can he or she have more than one domicile. Domicile is not limited to a specific structure, but refers rather to a place or an area to which the individual expects to return.

(b) Domicile is established by birth, operation of law, or choice.

(c) Once established, domicile is never lost, changed or destroyed unless there is an actual change in the residence, together with steps manifesting an intention to abandon the former residence and acquire a new one. A mere intent or desire to make a change in domicile is not sufficient to effectuate a change; voluntary and positive steps must be taken.

(d) Domicile does not change if an individual leaves his or her place of domicile:

1. for a period of rest or vacation;

2. to complete a particular transaction, perform a particular contract, or fulfill a particular engagement, but intends to return to the state whether or not the transaction, contract or engagement is completed; or

3. to accomplish a particular purpose, but does not intend to remain in the new place once the purpose is accomplished.

(e) An individual who is in transit between old and new domiciles is domiciled in the old domicile until the new one is established.

Section 3 **Relevant Factors**

The factors which are deemed of primary relevance to a fair determination of an individual's domicile are the facts and circumstances that are not readily changeable by the taxpayer in order to alter their domicile for tax reasons. The following factors, in no particular order, shall be considered in determining an individual's domicile.

(a) **Home**. The Department will consider what residences are owned or rented (for the taxpayer's use) by the taxpayer; where they are located; how they are used; and the sizes, values and uses of each residence.

(b) **Time**. The Department will consider where and how the individual spends time during the tax year; whether the taxpayer is retired or actively involved in a business or profession; how much the individual travels; the nature of the travel; where the individual spends time when not required to be at a location for employment reasons, and the overall pattern of residence of the individual.

(c) **Items Near and Dear**. The Department will consider where items or possessions that the individual considers "near and dear" to his or her heart are located, e.g. items of significant sentimental value, family heirlooms, collections of valuables or possessions that enhance the quality of the individual's life.

(d) **Active Business Involvement**. The Department will consider how the individual earns a living; where the individual's place of employment is; whether the individual is actively involved in any business ownership or professions, and if so, the degree; where the business or professional office is located and the proportion of in-state to out-of-state business activities. "Actively involved" means the individual participates in the day-to-day operation, or in a policy-making position, of a business.

(e) **Family Connections**. The Department will consider where members of the individual's immediate family reside; where minor children attend school, and the type of school facility. "Immediate family" means the spouse, civil union partner, child, or parent of an individual.

Other factors which may be considered include home address and legal residence listed on federal tax returns, place where the individual is registered to vote, place of vehicle registration, state of driver's or professional license, place of club and organization memberships, place where mail is received. There may be other similar factors. However, because these factors may be altered without a true commitment to such location they will generally not carry as much weight as factors (a) through (e) above.

Charitable contributions shall not be considered in determining domicile. "Charitable contribution" means the donation of property, money, or uncompensated time to an organization that qualifies for a federal deduction.

Section 4 **Intent to Change Domicile**

(a) Intent is a decisive factor in the determination of whether a place which a person occupies is his or her domicile. Since a domicile continues until superseded by another, a change of residence without the intention of creating a new domicile leaves the last established domicile unaffected. Change of domicile may be made on a whim or fancy, for business, health, or pleasure, to secure a change of climate, or for any other reason, provided there is an absolute and fixed intention to abandon one domicile and acquire another, and the acts of the individual confirm this intention. The fact that a person is motivated by self-interest does not prevent a change of domicile. Nearly everyone who changes domicile does so because they believe it to be to their advantage in one way or another. Therefore, the fact that a change of domicile was motivated primarily by a desire to gain a tax advantage is immaterial if the intention of the individual to acquire a new domicile is absolute and fixed and the actions of the individual confirm that intention.

(b) In addition to the factors addressed in Section 3 above, the following factors will be considered with respect to a claimed change of domicile.

1. location of domicile for prior years;
2. registration as voter;
3. voting by absentee ballot;
4. place of filing of federal income tax returns;
5. filing and payment of state income taxes;
6. declaration of place of residence in will;
7. recitals in deeds and legal documents;
8. written and oral declarations generally;
9. situs of bank accounts and securities;
10. membership in churches, clubs, lodges, societies;
11. automobile registration and license;
12. claiming or filing homestead exemptions;
13. school attended by minor children.

None of these factors will be conclusive. They will be weighed in view of all the facts and circumstances known to the Department. A declaration of intent to abandon domicile is insufficient alone to abrogate Vermont domicile. Physical presence elsewhere is also insufficient by itself to abrogate Vermont domicile.

Section 5 **Burden of Proof**

(a) The party claiming domicile, or a change of domicile, shall carry the burden of proof.

(b) The evidence required to establish both a change of residence and the intention to effect a change of domicile must be clear and convincing. The intent to change a domicile must be manifested by unequivocal acts.

(c) A person's course of conduct is accorded more weight than self-serving declarations of domicile.

(d) An individual trying to establish Vermont as his or her domicile shall be subject to the same burden of proof as an individual claiming to have abandoned Vermont as his or her domicile.

Section 6 **Married Individuals**

It is presumed that the domiciles of a husband and wife or civil union partners are the same, unless there is affirmative evidence to the contrary. However, spouses who are separated may acquire separate domiciles, even though no judgment or decree of separation has been rendered provided the requisite move and intent are present.

Section 7 **Minor Children**

The domicile of the custodial parent is the domicile of an unmarried minor, and cannot be changed by the minor's own act. The domicile of a child for whom a guardian has been appointed is not necessarily determined by the domicile of the guardian. Rather, the same factors which establish an adult individual's domicile, the domicile of the guardian and the domicile of the parents will all be considered.

Section 8 **Students**

A student who moves to another state to attend college but who does not intend to remain in that state after graduation has not changed domicile. Moreover, a student who is being supported by a parent or parents does not establish a domicile separate from the parent(s) simply by attending school in another state regardless of whether the student takes such steps as acquiring a driver's license or registering to vote in the state in which he or she attends school.

Section 9 **Armed Forces Personnel**

(a) An individual in military service retains as his or her domicile the state from which he or she entered service until a change in domicile is affected. Therefore, if an individual was a Vermont resident on the date he or she entered military service, the individual is presumed to be a Vermont domiciliary during his or her entire military career unless positive action is taken to change his or her domicile to another state (see the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. 574).

(b) To change domicile, the individual must not only be present in the new location but must establish that the move was made with the intention of remaining domiciled in the new location indefinitely and not simply until the employer assigns the individual to a new base or location. A person does not acquire a domicile by his or her presence in a place under legal compulsion because ordinarily he or she has not signified an intent to acquire a domicile.

(c) The domicile of a civilian spouse or civil union partner of a member of the military is established under general domicile rules. If the spouse or civil union partner moves to a military base or location with the intent of staying there only as long as the military member's assignment lasts, there has not been a change in domicile and the spouse's or civil union partner's last established domicile continues to be his or her domicile whether that was the state from which the military spouse or civil union partner entered service or some other state.

Section 10 **Aliens & Persons Living in Foreign Countries**

(a) Domicile is not dependent on citizenship. An alien can retain his or her foreign nationality and citizenship if he or she establishes a domicile in Vermont. For example, an immigrant who has permanently established his or her home in Vermont is domiciled here regardless of whether such individual has become a United States citizen.

(b) The presumption is that a person who leaves this state to accept a job assignment in a foreign nation has not lost his or her Vermont domicile. To effect a change of domicile, it must be clearly shown that such individual intends to remain there permanently.