
Mark L. Zauhar and Sharon R. Zauhar,

Appellants,

vs.

Comissioner of Revenue,

Appellee.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT**

File No. 9139-R

Filed: August 19, 2020

This matter came on for trial before The Honorable Bradford S. Delapena, Chief Judge of the Minnesota Tax Court.

Masha M. Yevzelman, Lynn S. Linné, and Gauri S. Samant, Fredrikson & Byron, P.A., represent appellants Mark L. Zauhar and Sharon R. Zauhar.

Thomas S. Madison and Jennifer A. Kitchak, Assistant Minnesota Attorneys General, represent appellee Commissioner of Revenue.

Appellants Mark L. Zauhar and Sharon R. Zauhar appeal an order of Appellee Commissioner of Revenue determining that Mark was a Minnesota domiciliary resident for tax years 2013 and 2014 and assessing the Zauhars additional Minnesota individual income tax, penalty, and interest. Because we find that Mark was a Florida domiciliary for the tax years in issue, we reverse.

The court, having heard and considered the evidence adduced at trial and the arguments of counsel, and upon all of the files, records, and proceedings herein, now makes the following:

FINDINGS OF FACT

1. Appellants Mark and Sharon Zauhar, husband and wife, were both Minnesota domiciliary residents in 2012.

2. Between 2006 and approximately May 2010, Mark and Sharon intended to retire to Florida together.

3. Beginning in approximately May 2010, the Zauhars concluded that Mark would retire to Florida to pursue competitive trapshooting, but that Sharon would continue to live in Minnesota to provide their disabled adult daughter LZ with a home base in Minnesota.

4. In late 2012, Mark traveled to Florida with an actual and honest subjective intent to make his Odessa, Florida residence his home on a permanent basis.

5. In 2013, Mark's domicile changed from Minnesota to Florida.

6. Mark was a Florida domiciliary in 2013.

7. Mark was a Florida domiciliary in 2014.

CONCLUSIONS OF LAW

1. The Zauhars submitted sufficient evidence to rebut the prima facie validity of the Commissioner's assessment.

2. The Zauhars presented sufficient evidence to rebut the presumption that Mark's domicile remained in Minnesota by proving that he established a Florida domicile in 2013.

3. The Zauhars presented sufficient evidence to rebut the presumption that Mark and Sharon had the same domicile in 2013 and 2014.

4. The Zauhars presented sufficient evidence to rebut the presumption that Mark was domiciled in the same place as his family in 2013 and 2014.

5. The Zauhars proved by a preponderance of the evidence that Mark was a Florida domiciliary in 2013 and 2014.

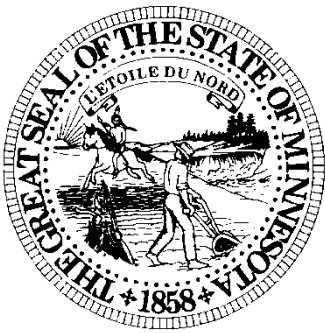
6. Mark was not a Minnesota resident for tax years 2013 and 2014.

ORDER FOR JUDGMENT

The Commissioner's September 12, 2017 Order assessing appellants \$327,757.29 in additional Minnesota individual income tax, penalty, and interest for tax year 2013, and \$1,226,449.43 in additional tax, penalty, and interest for tax year 2014, is reversed.

IT IS SO ORDERED. THIS IS A FINAL ORDER. ENTRY OF JUDGMENT IS STAYED FOR 30 DAYS. LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:



A handwritten signature in black ink, appearing to read "Bradford S. Delapena", written over a horizontal line.

Bradford S. Delapena, Chief Judge
MINNESOTA TAX COURT

Dated: August 19, 2020

MEMORANDUM

I. HISTORICAL FACTS

This matter involves Mark Zauhar's residency during 2013 and 2014.¹ Although the court's analysis will focus primarily on facts pertaining to those two years, one interval of a human life can rarely be understood in isolation. In this case, unique circumstances render a broader context particularly important. *See Larson v. Comm'r of Revenue*, 824 N.W.2d 329, 332 (Minn. 2013) ("In reviewing whether the taxpayer intended to change his or her domicile, we examine more than simply acts occurring at the time of and shortly after the taxpayer's physical move to another state.").

¹ Partial Stipulation of Facts ("Stip.") ¶¶ 1-2 (filed July 24, 2019).

A. The Zauhars

Sharon Zauhar (née Zimpel) met Mark Zauhar “in sixth grade under the fire escape at Franklin Elementary School in Crosby, Minnesota.”² Although their last names ensured the two always sat close by, Mark and Sharon did not date in high school.³ Both attended the University of Minnesota; they “dated through ... graduation ... , and were married in August of 1971.”⁴ Sharon testified that because the couple did not have the eldest of their two daughters for another eleven years, “we had a wonderful opportunity to become best friends.”⁵ By the time of trial, the Zauhars had been married for 48 years.⁶

Mark and Sharon each retired in 2012: Mark from his job as President of Pride Engineering, Inc.;⁷ Sharon from her position as Vice President of Administrative Services at Thomson Reuters.⁸ Although the Zauhars had originally assumed that they would retire together to Florida,⁹ circumstances pertaining to their eldest daughter LZ intervened.¹⁰

LZ was born in 1982.¹¹ In 1985, when she was only three, LZ was seriously injured in a sledding accident.¹² LZ’s head hit a tree.¹³ A branch penetrated her skull just above her right

² Tr. 226.

³ Tr. 227.

⁴ Tr. 227; Stip. ¶ 8.

⁵ Tr. 227; Stip. ¶ 9.

⁶ Tr. 111.

⁷ Tr. 25-28; Stip. ¶¶ 44-45.

⁸ Tr. 224-25; Stip. ¶ 16.

⁹ Tr. 129, 229.

¹⁰ We follow here the Attorney General’s commendable practice of referring to LZ by her initials only.

¹¹ Stip. ¶ 9.

¹² Tr. 113; Stip. ¶ 12.

¹³ Tr. 113.

eye, and entered her hypothalamus.¹⁴ LZ was in the hospital for three months.¹⁵ The parties have stipulated that LZ “sustained a traumatic brain injury. As a result, [she] suffers from several medical issues, including epilepsy. [LZ] requires 24/7 care. [She] is, and has been since the injury, followed by a team of medical professionals in Minnesota.”¹⁶ Trial testimony indicated that LZ continues to see numerous specialists for a variety of conditions, and that the physicians on her medical team communicate with one another to actively coordinate LZ’s care and treatment.¹⁷ LZ takes over 20 pills in the morning and over 20 pills at night.¹⁸

Despite her ongoing medical issues, LZ was mainstreamed and graduated from high school.¹⁹ Afterwards, she spent nine months in Bethesda Hospital in anger management care, achieving significant results.²⁰ Owing to LZ’s injuries, she qualifies for the Brain Injury Waiver program administered by the Minnesota Department of Human Services.²¹ This allowed funding for LZ to live either in a group home in the community or in the Zauhars’ home (with financial support).²²

Based on the advice of LZ’s healthcare team—but with significant reservations—the Zauhars decided in 2001 that it would be best for LZ to live in a group setting.²³ Although LZ adapted to and liked group living, the Zauhars were concerned that LZ was the highest

¹⁴ Tr. 113.

¹⁵ Tr. 113.

¹⁶ Stip. ¶ 12.

¹⁷ Tr. 131, 142, 237-39, 249, 291-92.

¹⁸ Tr. 239.

¹⁹ Tr. 115-16.

²⁰ Tr. 115.

²¹ Tr. 259-60.

²² Tr. 242-43, 259-60.

²³ Tr. 117.

functioning client in the home, and noticed that her behavior improved when she spent extended periods with either Mark or Sharon.²⁴

The Zauhars' second daughter, Kelsey, was born in 1986.²⁵

B. Trapshooting

Mark started trapshooting in the late 1980s.²⁶ “Trapshooting is a sport in which participants use shotguns to shoot at clay targets.”²⁷ Mark initially joined a club in Inver Grove Heights, joined a team, and shot once per week.²⁸ Soon, he was shooting twice per week.²⁹ Eventually, some club members encouraged Mark to shoot at Amateur Trapshooting Association (ATA) events.³⁰ Mark did so during the late 1980s, and enjoyed the events; his interest “ballooned from there.”³¹ Mark joined a second gun club in Minnesota.³²

Mark also joined the ATA,³³ which “serves as the governing body for the sport of American style trapshooting.”³⁴ Each state has its own ATA affiliate governed by ATA rules.³⁵ A person can be a member of only one state affiliate at a time.³⁶ Before the years in issue, Mark

²⁴ Tr. 117-18, 123-24, 130.

²⁵ Stip. ¶ 9.

²⁶ Tr. 86-88.

²⁷ Stip. ¶ 17.

²⁸ Tr. 87.

²⁹ Tr. 87.

³⁰ Tr. 87.

³¹ Tr. 87-88.

³² Tr. 93.

³³ Tr. 93.

³⁴ Stip. ¶ 63.

³⁵ Tr. 93-94.

³⁶ Tr. 94, 99.

was a longtime a member of the Minnesota Trapshooting Association.³⁷ He was MTA's vice president in 2005 and its president from 2006 to 2010.³⁸ During that time, Mark helped develop and fund the Clay Target League, a youth trapshooting association that grew from a local high school league with 13 teams and 140 shooters during its first year, to a multistate high school organization with 340 teams with approximately 12,000 shooters in 2019.³⁹ During his presidency, Mark also organized and helped operate the Minnesota Youth Shooting Foundation, a charitable organization that raised money to purchase targets.⁴⁰

Trapshooting is competitive.⁴¹ Each ATA state affiliate selects members for its state team.⁴² In addition, "[e]very state has its state shoot ... [at which] you can earn All American points."⁴³ Based on All American points, the ATA selects members for an All American Team.⁴⁴ Participation on the ATA All American Team places one among "the best shooters in the country."⁴⁵

Mark testified that participation at the sport's highest level "was something that I never though I could ever obtain."⁴⁶ He "worked hard at practicing," however, and took clinics from

³⁷ Tr. 93-94.

³⁸ Tr. 94.

³⁹ Tr. 99-102. Mark testified that he was eventually asked to serve on the Board of the Clay Target League, which he did and continues to do. Tr. 101-03. As a result of its expansion into 24 states, and its eventual inclusion of college shooters, the organization is now known as the U.S.A. Clay Target League. Tr. 102-03.

⁴⁰ Tr. 103-05.

⁴¹ Tr. 87-88.

⁴² Tr. 94.

⁴³ Tr. 139.

⁴⁴ Tr. 88-89, 94, 96-99, 139; *see also* Ex. J17 (ATA All-American team requirements).

⁴⁵ Tr. 88.

⁴⁶ Tr. 88.

top shooters.⁴⁷ Mark “developed and shot more and more and more and suddenly it looked like in might be possible.”⁴⁸

I found that the more I shot the better I shot. My registered target counts were anywhere from 15,000 a year to 30,000 a year. But in addition to that, I was shooting leagues at two different clubs. So I was probably shooting somewhere between 30 and 40,000 targets a year.⁴⁹

Mark explained that “every target you shoot in competition is registered. So the scores are sent in and the ATA keeps track of them.... So they track every target you shoot, where you shot it, what day it was, what your score was.”⁵⁰ ATA counts do not include targets from practice shooting and unregistered events.⁵¹

ATA All American points are earned at large shoots, which are held primarily during the summer months.⁵² Large shoots typically start on Monday and run through the following Sunday, with competition for All American points commencing on Wednesday.⁵³ A participant can shoot singles, doubles, handicap, or “multiple[s] of those events on any one day.”⁵⁴ A participant shooting three 100-target rounds might spend six hours on the range.⁵⁵ Mark testified, “I always shoot every event.”⁵⁶

⁴⁷ Tr. 88.

⁴⁸ Tr. 88.

⁴⁹ Tr. 89.

⁵⁰ Tr. 91-92.

⁵¹ Tr. 92-93.

⁵² Tr. 139, 213.

⁵³ Tr. 89.

⁵⁴ Tr. 20, 90.

⁵⁵ Tr. 91.

⁵⁶ Tr. 20.

In 2004, Mark started traveling to Florida to attend large shoots at which he could earn All American points.⁵⁷ Mark rented a temporary RV pad (with electricity and water) on the grounds of the Silver Dollar Golf, Trap Club, and RV Resort in Odessa.⁵⁸ “The Silver Dollar is one of the largest shooting clubs in the United States and offers daily competitive shooting events.”⁵⁹ Mark testified that the Silver Dollar “is unique in that it’s the only place in the county where you can have a permanent home and have on grounds the ability to shoot and play golf.”⁶⁰ The club is bisected by Patterson Road with a gun club on one side and a golf club on the other.⁶¹ Each side has a clubhouse with a full bar and restaurant that can seat approximately 300 persons.⁶²

During 2004 and 2005, the Zauhars’ younger daughter, Kelsey, accompanied Mark during his stays in Florida.⁶³ Sharon remained in Minnesota, continuing her career at Thomson Reuters.⁶⁴ Like her father, Kelsey is a competitive trapshooter, who Mark characterized as a pioneer on the women’s side of the sport.⁶⁵ Kelsey shot with Mark at ATA events, earning herself a place on the women’s All American Team.⁶⁶ Kelsey later earned a spot on the United States trap team and competed for the sole spot on the United States Olympic team.⁶⁷

⁵⁷ Tr. 20, 24-25, 50.

⁵⁸ Stip. ¶¶ 19-20; Tr. 22-25, 49-50.

⁵⁹ Stip. ¶ 19.

⁶⁰ Tr. 46.

⁶¹ Tr. 47-49.

⁶² Tr. 49.

⁶³ Tr. 118-19, 230.

⁶⁴ Tr. 25, 230-31.

⁶⁵ Tr. 101, 112.

⁶⁶ Tr. 101.

⁶⁷ Tr. 101, 112.

Beginning in 2006, LZ (rather than Kelsey) accompanied Mark to Florida.⁶⁸ Mark and Sharon considered the Silver Dollar a safe and congenial environment for LZ, where she could enjoy significant autonomy and independence.⁶⁹ Because the facility was a retirement community, there were older women who took an interest in the outgoing LZ, spending time with her and taking her to lunch and bingo.⁷⁰ LZ could safely travel the grounds on her bike,⁷¹ and enjoyed spending time at the clubhouse while Mark played cards and shot.⁷² Due to her outgoing nature, LZ served as Mark's social coordinator.⁷³ The two had a circle of friends and acquaintances with whom they frequently attended evening potlucks and dinners.⁷⁴

Whereas shooting season in Minnesota runs from April through early September, Mark could shoot registered targets almost every day of the year at the Silver Dollar.⁷⁵ Presence in Florida also allowed Mark to conveniently shoot that state's three All American point tournaments.⁷⁶ Mark and LZ generally went to Florida in January and remained there through

⁶⁸ Tr. 230.

⁶⁹ Tr. 120-22, 232-33.

⁷⁰ Tr. 22, 121-22, 128, 232.

⁷¹ Tr. 121, 232.

⁷² Tr. 126, 232. Sharon testified that LZ "loves to be teased. And Mark teases her all the time. And all the guys that Mark played cards with tease her." Tr. 232.

⁷³ Tr. 119-22. Mark testified: "It was rare that it wasn't Mark and [LZ]." Tr. 120.

⁷⁴ Tr. 22-23.

⁷⁵ Tr. 212.

⁷⁶ Tr. 24-25.

most of April.⁷⁷ They then traveled together to major shoots in other states, where Mark likewise could earn All American points.⁷⁸

C. Pride Engineering, Inc.

In 2001, Mark “and three other minority partners founded” Pride Engineering, Inc.⁷⁹ Located in Brooklyn Park, Pride “was a designer and manufacturer of highly engineered, mission critical machine tools and equipment used globally in the production of two-piece metal cans for the food and beverage industry.”⁸⁰ Mark designed and patented the tooling on which Pride’s business was based and “was a 70 percent owner.”⁸¹ “Mark and the other three partners were on Pride Engineering’s Board of Directors.”⁸² In addition, Mark was Pride’s president from 2001 until he formally retired in 2012.⁸³

D. Retirement Plans

The Zauhars began discussing their retirement in approximately 2006.⁸⁴ Mark’s partners had already agreed to run Pride Engineering’s day-to-day operations so that Mark could travel to pursue his interest in competitive trapshooting.⁸⁵ Although LZ was living in a group setting in Minnesota, she was free to travel with Mark (and eventually to visit the Zauhars during their

⁷⁷ Tr. 24-25.

⁷⁸ Tr. 124, 139-40, 154-55, 183, 213-14. Mark’s typical circuit of shoots might include Wisconsin, Iowa, Illinois, Nebraska, Kansas, Minnesota, Michigan, Wyoming, Arizona, Washington, Pennsylvania, New York, and Georgia. Tr. 139-40, 213-14. Mark estimated that one year, he and LZ spent six months away from Minnesota, either residing in Florida or traveling to shoots. Tr. 124, 134, 154.

⁷⁹ Stip. ¶ 44; Tr. 28.

⁸⁰ Stip. ¶¶ 42-43; Tr. 26.

⁸¹ Tr. 26, 29; Stip. ¶ 44.

⁸² Stip. ¶ 44.

⁸³ Stip. ¶ 45; Tr. 28-29.

⁸⁴ Tr. 20-21.

⁸⁵ Tr. 31-32, 227-28.

retirement) so long as she spent at least one day per month in the group setting.⁸⁶ The Zauhars assumed that LZ would live indefinitely in a group setting and that they would retire somewhere warm together.⁸⁷

In addition to Florida, the Zauhars considered Nevada and Arizona.⁸⁸ Mark testified that “in the end, Florida’s weather was superior and the trapshooting availability was far superior, particularly because of the Silver Dollar shooting facility.”⁸⁹ Sharon agreed: “I mean, [Mark] is in love with trapshooting. And he was able to shoot in the wintertime down there.”⁹⁰

Weather was important to Mark for at least two practical reasons. First, Mark suffers from arthritis and has had both knees replaced.⁹¹ Mark found that his arthritis symptoms significantly abated or disappeared after spending time in Florida.⁹² Second, Mark could shoot registered targets almost every day at the Silver Dollar.⁹³ During trial, Mark acknowledged that it was possible to practice outdoors in Minnesota during the winter months, but explained that it was unwise for a competitive shooter:

[M]ind is about 90 percent of your ability to hit the target. And when you are standing out there shivering and thinking, jeez, I’ve got five more to go and then I can go inside where it’s warm, you kind of quit concentrating and you start developing bad habits. So it’s not a smart thing to do really.⁹⁴

⁸⁶ Tr. 130, 229-32.

⁸⁷ Tr. 21-22, 129, 136, 229.

⁸⁸ Tr. 21, 228.

⁸⁹ Tr. 21; *see also* Tr. 105.

⁹⁰ Tr. 235.

⁹¹ Tr. 21, 211, 228.

⁹² Tr. 21, 228, 235.

⁹³ Tr. 212.

⁹⁴ Tr. 106.

Bad habits must be avoided in a sport so competitive that victory often requires hitting all 100 targets.⁹⁵

The Zauhars were also influenced to choose Florida for retirement because Mark's sister and her husband live in Naples.⁹⁶ When Mark and LZ were in Florida, they spent the major holidays with Mark's sister.⁹⁷ Maintaining connection with his sister, the sole remaining member of his own family, was important to Mark.⁹⁸

E. Period Preceding The Years In Issue

Mark testified that he first made the ATA All American Team sometime during the late 2000s. "There were 32 men out of the country that were selected for the team. I was number 32. So I just barely made it. I had missed it a couple of years before that. Close. So it was an achievement I was pretty proud of."⁹⁹

"In 2009, Mark purchased a 2009 PREV motorhome for \$1,200,000. The 2009 PREV motorhome had one bedroom, two bathrooms, a kitchen, living room, and three slide-outs. It was 45 feet long."¹⁰⁰ Rather than renting a temporary spot at the Silver Dollar as he had done since 2004, Mark now purchased a permanent spot there for \$30,000, with a street address of 17104 Target Way.¹⁰¹ In addition to water and power hookups, permanent spots also have concrete slabs and sewer service.¹⁰² This "purchase," which essentially secured Mark the right

⁹⁵ Tr. 90; *see id.* at 106.

⁹⁶ Stip. ¶ 18; Tr. 32-33, 235, 256.

⁹⁷ Tr. 32-33.

⁹⁸ Tr. 32-33, 156-57, 235.

⁹⁹ Tr. 89.

¹⁰⁰ Stip. ¶ 21.

¹⁰¹ Stip. ¶¶ 20, 22; Tr. 50-52.

¹⁰² Tr. 50.

to *rent* the particular spot every year, assured Mark of a nice location at the Silver Dollar and a spot capable of handling his very large motorhome.¹⁰³ Mark improved the pad by coating the concrete, building a carport, and substantially renovating a shed on the property (including the installation of a washer/dryer and hot water heater).¹⁰⁴ Mark also installed a carport cover in front of the shed and put up lights for cooking and hosting potlucks.¹⁰⁵ “Mark parked the 2009 PREV motorhome on the permanent parking pad whenever he was in Florida.”¹⁰⁶

In mid-2010, the Zauhars concluded that it would be best for LZ to leave the group home and to move back into their Lakeville, Minnesota residence.¹⁰⁷ This change in LZ’s living arrangements significantly affected Sharon’s life. Although still occupying a demanding position at Thomson Reuters, Sharon became LZ’s primary caretaker starting in May 2010.¹⁰⁸ Funding for LZ’s social and medical needs was available through a program called Consumer Directed Community Supports (CDCS).¹⁰⁹ As LZ’s primary caretaker, Sharon prepared a budget and rationale.¹¹⁰ Sharon chose Lifeworks Services Inc. “to be the fiscal intermediary to administer the budget that the County had approved for [LZ] based on the documentation that [Sharon] had provided justifying the need for those dollars.”¹¹¹

¹⁰³ Tr. 50-52; Ex. J4 (photograph of PREV with trailer).

¹⁰⁴ Tr. 51-52.

¹⁰⁵ Tr. 52.

¹⁰⁶ Stip. ¶ 22.

¹⁰⁷ Stip. ¶ 14; Tr. 123-24, 130, 230.

¹⁰⁸ Tr. 130-31, 134, 244, 246, 260-61; Stip. ¶ 14 (providing that in May 2010 “Sharon became [LZ’s] primary caretaker and has continued as such through the present”).

¹⁰⁹ Tr. 243.

¹¹⁰ Tr. 243. Sharon testified that if she had not undertaken to prepare the budget, the county would have paid someone to do it. Tr. 244.

¹¹¹ Tr. 243.

Sharon explained during trial that CDCS “allowed for funding through the traumatic brain injury waiver for ... the one-on-one care for [LZ], for the behavioral analyst from Courage Center, for the Lifeworks services, for the transportation, [and] for her Project Explore. Which was a social interaction piece.”¹¹² In addition to the items just listed, the program allowed Sharon and Mark to become Lifeworks employees, and to each be paid up to 40 hours per week for one-on-one care for LZ, who was now 28 years old.¹¹³ It is common for family members to serve as paid caregivers to adults with disabilities.¹¹⁴

Sharon interviewed and hired personal care attendants (who also became Lifeworks employees) for the times she and Mark were unable to provide one-on-one care.¹¹⁵ In addition, the personal care attendant provided respite care for Mark and Sharon: “So [LZ] could go away for the weekend with the personal care attendant away from our home and then that would give Mark and I time together alone.”¹¹⁶

Sharon was not planning to retire in 2010, when LZ returned home.¹¹⁷ To the contrary, Sharon anticipated that she would work another 6 years or so, until she was 66.¹¹⁸ When asked whether LZ’s return home would affect Sharon’s ability to become a Florida resident, Sharon

¹¹² Tr. 243.

¹¹³ Tr. 243, 246.

¹¹⁴ Tr. 281-82.

¹¹⁵ Tr. 244, 246-47.

¹¹⁶ Tr. 247.

¹¹⁷ Tr. 233.

¹¹⁸ Tr. 228-29. Sharon was 70 years old in January 2020, Tr. 128, and was thus 60 in 2010.

responded: “You know, I think that we knew that [LZ] would remain in Minnesota, so I would have to stay with her.”¹¹⁹

For two reasons, the Zauhars considered it critical that LZ remain a Minnesota resident. The first was continuity of medical care.¹²⁰ LZ continues to see numerous specialists for a variety of conditions, and the physicians on her Minnesota medical team work with one another to coordinate LZ’s care and treatment.¹²¹ LZ has seen the same providers for up to 30 years, and the same actual physicians for 5 to 10 years.¹²² Sharon testified that she did not even consider securing analogous or replacement medical care for LZ in Florida: “[T]he group of physicians that she has here in Minnesota communicate with each other. And the continuity of care was just really critical for us.”¹²³ Mark testified: “[W]e really to this day believe that continuity of the medical care is absolutely the most important thing for [LZ].”¹²⁴

The second reason the Zauhars thought it important that LZ remain a Minnesota resident was her quality of life after their own deaths. Through Lifeworks, LZ attended a day program in Apple Valley, boarding a bus each weekday at 7:00 a.m. and returning home at 3:00 p.m.¹²⁵ LZ participated in Lifeworks’ vocational program for persons with special needs, through which she was paid by a private company to remove staples from documents to be put on microfiche.¹²⁶ She also participated in a Lifeworks’ social enrichment program that focused on reading, art, and

¹¹⁹ Tr. 233.

¹²⁰ Tr. 128, 249-50, 291-92.

¹²¹ Tr. 131, 142, 237-39, 249, 291-92.

¹²² Tr. 238.

¹²³ Tr. 249-50.

¹²⁴ Tr. 127.

¹²⁵ Tr. 239-40.

¹²⁶ Tr. 241-42.

social interaction.¹²⁷ LZ sang in a special needs choir called Special Delivery that performed in retirement communities and at the Holidazzle parade in Minneapolis.¹²⁸ She also belonged to a group called Just Friends, which furnished social opportunities through activities such as bingo, movie outings, and pizza parties.¹²⁹ Sharon and LZ's social worker created a protocol that allowed LZ to spend up to 4 hours alone in the community.¹³⁰

When asked at trial why the Zauhars wished LZ to remain a Minnesota resident, Mark responded:

Sharon and I are now 70. Hopefully we will be around a long time. At some point in time we won't. And [LZ] has more age-appropriate contacts in Minnesota than she does in Florida. The women that she calls that babysat or taught her, her speech pathologist. There is a pretty good list. It's important that she -- [LZ] is a -- she tries to be very, very social, even though she's not going to be going on dates and that kind of thing. She does the way she can do it. She would not do well if she didn't have people that she could relate to. And we think her opportunity would be far greater in Minnesota than it would be in Florida.¹³¹

Sharon similarly testified that those in LZ's Minnesota social network "are people she has known all her life. So they are her friends and she needs to be able to have them to turn to when Mark and I are gone."¹³² Sharon succinctly summarized the Zauhars' overall concern: "We felt that she needed to have a home base here. And because of the continuity of care and because of the social interaction, the friendships that she has already built here."¹³³

¹²⁷ Tr. 242.

¹²⁸ Tr. 240.

¹²⁹ Tr. 240.

¹³⁰ Tr. 240-41. Sharon explained that LZ was provided a cell phone and a book with instructions for medical care and contact information should she experience a seizure. Tr. 241.

¹³¹ Tr. 128-29.

¹³² Tr. 292.

¹³³ Tr. 250.

Mark and LZ continued their annual stays at the Silver Dollar between 2010 and 2012.¹³⁴ Sharon, who was still working full time, flew down to join them for perhaps a week and a long weekend.¹³⁵

F. Year Preceding The Years In Issue

Mark formally retired from Pride Engineering in 2012 at the age of 62.¹³⁶ In April 2012, Thomson Reuters eliminated Sharon's position.¹³⁷ She received a year of severance pay and 18 months of COBRA, which covered Mark and LZ.¹³⁸ Although Sharon initially planned to seek other work, she had decided by year's end simply to retire instead.¹³⁹

During 2012, the Zauhars engaged in significant estate planning.¹⁴⁰ On July 23, 2012, Sharon, as settlor, created the Sharon Zauhar Trust with she and Mark as co-trustees.¹⁴¹ This revocable trust agreement "operates as a will substitute that facilitates the administration of Mrs. Zauhar's assets privately and efficiently in the event of Mrs. Zauhar's death or disability."¹⁴² During 2012, all major assets that Mark and Sharon owned jointly were transferred to the Sharon Zauhar Trust *except* their Pride Engineering stock, which was more valuable than the balance of the Zauhar's other assets.¹⁴³ Assets transferred included the Zauhars' Lakeville residence, three

¹³⁴ Tr. 24-25, 125-26; Stip. ¶ 23.

¹³⁵ Tr. 126. LZ's social and financial workers were aware of the time LZ spent in Florida and approved of it. Tr. 282, 301-02.

¹³⁶ Stip. ¶ 45; Tr. 19, 25, 31.

¹³⁷ Stip. ¶ 16; Tr. 225, 257.

¹³⁸ Tr. 225-26, 258.

¹³⁹ Tr. 225-26.

¹⁴⁰ Tr. 250-55.

¹⁴¹ Suppl. Stip. Facts ¶ 69 (filed July 31, 2019) (Suppl. Stip.).

¹⁴² Suppl. Stip. ¶ 69; Ex. J22 (Trust Agreement of Sharon R. Zauhar).

¹⁴³ Tr. 253.

parcels of real property located in Crow Wing County, Minnesota, some vehicles, and the couple's bank accounts.¹⁴⁴ If Sharon were to revoke the trust, trust assets would be distributed to her directly.¹⁴⁵ Sharon may dispose of trust assets without Mark's input or permission.¹⁴⁶

The Zauhars' 2012 estate planning activities also included the creation of a supplemental needs trust for LZ "to direct how assets are to be used for the care and support of [LZ],"¹⁴⁷ and the creation of the Mark Zauhar Trust, about which no further information was furnished.¹⁴⁸

Mark testified that in 2012, in conjunction with his formal retirement, he started moving to Florida.¹⁴⁹ "I took my guns, my tools, the vehicle that I needed. Basically I moved my toys to Florida."¹⁵⁰ Mark also took his dog, Ace.¹⁵¹ Sharon testified that the Zauhars went to Florida sometime in December, and spent Christmas with Mark's sister in Naples.¹⁵²

G. The Years In Issue: 2013 and 2014

Mark knew that his 400 square-foot PREV motorhome, although luxurious, was not large enough to comfortably accommodate three adults for long-term living.¹⁵³ In January 2013, Mark agreed to purchase 17106 Target Way, the permanent pad immediately adjacent to the one he

¹⁴⁴ See Ex. J8 (affidavit of estate planning attorney) ¶¶ 6-8, 11-17, 19-20; Ex. J9 (quitclaim deed); Ex. J10 (certificate of trust); Tr. 211-12, 250-51, 253-55.

¹⁴⁵ Tr. 254-55.

¹⁴⁶ Ex. J22 at 2, ¶ 1.4 (appointing Sharon "Senior Trustee" with the power "to act independently and without the consent or approval of the other trustee(s)"); Tr. 254-55.

¹⁴⁷ Tr. 194.

¹⁴⁸ Tr. 194-95.

¹⁴⁹ Tr. 19, 32.

¹⁵⁰ Tr. 33.

¹⁵¹ Tr. 33-34.

¹⁵² Tr. 255-56.

¹⁵³ Tr. 53-57, 66-67.

already owned at 17104.¹⁵⁴ The \$30,000 sale closed in March.¹⁵⁵ The new pad was equipped with “a 2005 park-model trailer home . . . , which was permanently located at the Silver Dollar” and was “not moveable” because it was bolted to the pad.¹⁵⁶ Attached to one side of the Park Model was an additional structure known as a Florida Room.¹⁵⁷ Mark estimated that, taken together, the Park Model and Florida Room were about 1,000 square feet.¹⁵⁸ The parties have stipulated to the following:

After purchasing the Park Model, Mark made major improvements to the property, including installing all new floors, painting all rooms, installing all new plumbing fixtures except the tub, all new countertops in the bathroom and the kitchen, decorative coating on the cement apron, new roof, new central air, remodeling of the “Florida room” from storage to a finished bedroom, and adding a family room and a bath with a shower. Mark, along with a neighbor, performed primarily all the work on the Park Model.¹⁵⁹

Mark estimated that he spent about \$25,000 for these improvements.¹⁶⁰ “From March 2013 through December 2014, Mark resided at the Park Model whenever he was in Florida.”¹⁶¹ He now began leaving personal possessions in Florida, including shells, a golf cart, tools, his clothing, and bicycles.¹⁶²

¹⁵⁴ Tr. 57-60.

¹⁵⁵ Stip. ¶ 24; Tr. 59, 183.

¹⁵⁶ Stip. ¶ 24; Tr. 63.

¹⁵⁷ Tr. 57, 60-61.

¹⁵⁸ Tr. 57.

¹⁵⁹ Stip. ¶ 25; *see also* Exs. 1 (post-renovation interior photographs) & J5-A (exterior photograph).

¹⁶⁰ Tr. 184.

¹⁶¹ Stip. ¶ 24.

¹⁶² Tr. 34.

Mark continued to serve on the Board of Pride Engineering after his retirement, attending Board meetings without compensation.¹⁶³ He had no involvement in the company's day-to-day operations,¹⁶⁴ but received dividends from Pride Engineering Export Services.¹⁶⁵

Sometime in 2012 or 2013, the founders of Pride Engineering, including Mark, decided to sell the company and engaged Franklin Partners to assist in the process. In early 2014, Pride Engineering was sold to May River Capital, LLC ("May River"), a Chicago-based private equity investment firm. As part of the sale, May River created a "new" company, Pride Engineering, LLC, and required Mark to purchase a 13 percent interest in the "new" company.¹⁶⁶

Mark served on the Board of the new Pride Engineering, earning \$20,000 in 2014, on which he paid Minnesota income tax.¹⁶⁷ He had no control over the company and no involvement in its day-to-day operations.¹⁶⁸

As previously indicated, a person can be a member of only one ATA state affiliate at a time.¹⁶⁹ In February 2013, Mark joined the Florida Trapshooters Association, thus surrendering his MTA membership.¹⁷⁰ The ATA, however, imposes a six-month waiting period for any residency change,¹⁷¹ and selects All American Team members based on a shooter's performance

¹⁶³ Stip. ¶¶ 46, 48; Tr. 30-31, 107.

¹⁶⁴ Stip. ¶ 46; Tr. 106.

¹⁶⁵ Stip. ¶ 49. Pride Engineering Export Services was an "interest-charge domestic international sales corporation ('IC-DISC') pursuant to Internal Revenue Code §§ 991-994. An IC-DISC is a corporation that serves as a sales commission agent for a U.S. exporter." *Id.* Pride Engineering Export Services was owned by the shareholders of Pride Engineering. *Id.* Pride Engineering Export Services filed its final return in 2014. *Id.* ¶¶ 47, 49.

¹⁶⁶ Stip. ¶ 47; *see also* Ex. J13 (press release concerning sale); Tr. 107-09.

¹⁶⁷ Stip. ¶¶ 46, 48; Tr. 109-10; Ex. J2 (2014 Individual Income Tax return).

¹⁶⁸ Stip. ¶ 46; Tr. 110.

¹⁶⁹ Tr. 94, 99.

¹⁷⁰ Tr. 94-96, 98.

¹⁷¹ Tr. 95-96, 98; *see also* Ex. J16 (ATA Official Rules).

during the *former* “target year.”¹⁷² As a result of these rules, the ATA considered Mark a Minnesota shooter through July 2013.¹⁷³ Mark made the 2013 All American Team as a Minnesota shooter based on targets he shot between September 1, 2011, and August 31, 2012, and the 2014 All American Team as a Minnesota shooter based on targets he shot between September 1, 2012, and August 31, 2013.¹⁷⁴

“In February 2014, Mark sold the 2009 PREV motorhome and purchased [a] 2015 Millennium Motorhome ... for \$1,975,000,” a 45-foot vehicle with “one bedroom, two bathrooms, a kitchen, living room, and four slide-outs.”¹⁷⁵ When in Florida, Mark parked the Millennium motorhome on the concrete pad at 17104 Target Way.¹⁷⁶

When Mark traveled to Minnesota during the years at issue, he stayed at the Lakeville residence, except when he attended the state shoot in Alexandria (about one week) and when he went deer hunting in Deerwood or in Canada.¹⁷⁷ The parties have stipulated that during the years at issue, Mark spent his time in the following locations:¹⁷⁸

	Minnesota	Florida	Other
2013	136	137	92
2014	145	183	37

When Sharon and LZ were in Florida, they spent time together getting pedicures and manicures, going to parks, riding bicycles, and engaging in other similar activities.¹⁷⁹ LZ also began

¹⁷² Tr. 97; Ex. J17, at 1.

¹⁷³ Tr. 95.

¹⁷⁴ Tr. 96-99.

¹⁷⁵ Stip. ¶¶ 26-27; Ex. J7 (photograph of Millennium motorhome).

¹⁷⁶ Stip. ¶ 28.

¹⁷⁷ Tr. 184-85; Stip. ¶ 22.

¹⁷⁸ Stip. ¶ 40.

¹⁷⁹ Tr. 135, 247-48.

attending a group for adults with special needs called Gro Group.¹⁸⁰ The Zauhars and LZ spent every major holiday (Thanksgiving, Christmas, and Easter) in Florida during the years at issue.¹⁸¹ Kelsey traveled there to spend Christmas with her parents and sister.¹⁸² The family typically celebrated the holidays with Mark's sister and brother-in-law in Naples.¹⁸³

In February 2013, LZ qualified for Medicare benefits based on Mark's Social Security.¹⁸⁴ During the years at issue, Medicare was LZ's primary insurance and Medicaid was her secondary insurance.¹⁸⁵ Once Mark moved to Florida, he stopped receiving compensation from Lifeworks Services for providing LZ care.¹⁸⁶

H. Period Following The Years In Issue

Mark continued to serve on the Board of the new Pride Engineering until 2019, and was paid \$10,000 to attend each of the company's quarterly Board meetings.¹⁸⁷ Mark made the ATA All American Team every year between 2014 and 2018 as a Florida shooter.¹⁸⁸

"On August 7, 2017, Mark and Sharon purchased a home located at 18132 Patterson Road in Odessa, Florida for \$1,538,000. The house is located approximately 2 miles from the

¹⁸⁰ Tr. 135, 248.

¹⁸¹ Tr. 136-37.

¹⁸² Tr. 137.

¹⁸³ Tr. 136, 256.

¹⁸⁴ Tr. 289.

¹⁸⁵ Tr. 289-90.

¹⁸⁶ Tr. 280. Sharon received approximately \$28,000 in wages from Lifeworks in 2013 and approximately \$32,000 in 2014. Tr. 264-65, 285-86; Ex. A (2013 W-2 Wage and Tax Statement); Ex. J1 (2013 Individual Income Tax return); Ex. J2 (2014 Individual Income Tax return). She paid Minnesota tax on these wages. Tr. 283, 286-88; Exs. J1, J2. Sharon stopped receiving compensation for caregiving services in October 2018. Tr. 288.

¹⁸⁷ Tr. 109, 153.

¹⁸⁸ Tr. 99.

Silver Dollar,”¹⁸⁹ and sits on five acres “bounded on two sides by a wildlife area.”¹⁹⁰ Mark estimated that he spent approximately \$500,000 after purchase to update and renovate the house.¹⁹¹ It has four bedrooms, five baths, and a total living space of 6,600 square-feet.¹⁹² The grounds include a fountain, a pool, and a spa area, along with a 40’ by 60’ shed.¹⁹³ Mark testified that he had been looking for a house near the Silver Dollar “all along,” but explained that the supply of nicer homes in the area was tight, especially when he first moved to Florida.¹⁹⁴ Having purchased the Patterson Road house, the Zauhars sold the Park Model at 17106 Target Way in November 2017.¹⁹⁵ They continue to park the Millennium motorhome on the pad at 17104 Target Way.¹⁹⁶

As of the date of trial, Sharon and LZ had been spending increasingly more time in Florida with Mark, typically driving down to Florida in early October and remaining in Florida until late May (between 7 and 8 months).¹⁹⁷

Sharon testified that despite spending a significant amount of time in Florida after her retirement, she was not and had no intention of becoming a Florida resident.¹⁹⁸ Sharon testified that her primary social circle is in Minnesota, and that she would spend less time in Florida were

¹⁸⁹ Stip. ¶ 39.

¹⁹⁰ Tr. 69.

¹⁹¹ Tr. 76-78.

¹⁹² Tr. 69.

¹⁹³ Tr. 69, 73.

¹⁹⁴ Tr. 70, 78-79.

¹⁹⁵ Tr. 78.

¹⁹⁶ Tr. 69.

¹⁹⁷ Tr. 256.

¹⁹⁸ Tr. 288, 290-91.

Mark to pass away.¹⁹⁹ When asked by counsel, “Why have you not changed your residency to Florida,” Sharon responded: “Because I live here and I need to be here because of [LZ].”²⁰⁰ The parties have stipulated that “[d]uring the years at issue, Sharon was a Minnesota resident and resided at 18756 Knollwood Circle, Lakeville, Minnesota.”²⁰¹

II. PROCEDURAL HISTORY

The Zauhars timely filed 2013 and 2014 Joint Minnesota Individual Income Tax Returns and paid the tax showing as due.²⁰² The returns indicated that Mark was a “Full-year Nonresident of MN” and that Sharon was a Minnesota resident.²⁰³ The Commissioner audited the returns.²⁰⁴ At the Commissioner’s request, Mark and Sharon each filled out and submitted a Residency Questionnaire.²⁰⁵

On September 12, 2017, the Commissioner issued an Order determining that Mark was a domiciliary resident of Minnesota during 2013 and 2014 and assessing the Zauhars \$1,554,206.72 in additional individual income tax, penalty, and interest.²⁰⁶ The Zauhars timely appealed the Commissioner’s order directly to the Tax Court.²⁰⁷

¹⁹⁹ Tr. 290-91.

²⁰⁰ Tr. 292.

²⁰¹ Stip. ¶ 3.

²⁰² Stip. ¶ 2; Exs. J1, J2.

²⁰³ Stip. ¶ 2; Ex. J1 at 1, 5; Ex. J2 at 1, 6.

²⁰⁴ Stip. ¶ 4.

²⁰⁵ See Ex. M (Residency Questionnaire of Mark Zauhar); Ex. N (Residency Questionnaire of Sharon Zauhar).

²⁰⁶ Stip. ¶¶ 5-6; Ex. J3, at 2, 28-50.

²⁰⁷ Not. Appeal (filed Dec. 7, 2017).

III. GOVERNING LAW

All net income of a Minnesota resident individual, wherever earned, is subject to Minnesota income tax. Minn. Stat. § 290.014, subd. 1 (2018).²⁰⁸ As relevant here, “resident” means “any individual domiciled in Minnesota.” Minn. Stat. § 290.01, subd. 7(a).²⁰⁹ Minnesota Rule 8001.0300 (2013) (the Rule) provides that “domicile” is “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.” *Id.*, subp. 2. “To establish ‘domicile,’ one must have ‘bodily presence ... in a place coupled with an intent to make such a place one’s home.’ ” *Sanchez v. Comm’r of Revenue*, 770 N.W.2d 523, 526 (Minn. 2009) (quoting Minn. R. 8001.0300, subp. 2). Although a person may have multiple *residences*, “[a]n individual can have only one *domicile* at any particular time.” Minn. R. 8001.0300, subp. 2 (emphasis added).

Once a person’s domicile is established in Minnesota, “it is presumed to continue until another domicile is actually established.” *Mauer v. Comm’r of Revenue*, 829 N.W.2d 59, 68 (Minn. 2013) (quoting *Sanchez*, 770 N.W.2d at 526); *see also* Minn. R. 8001.0300, subp. 2 (“A domicile once shown to exist is presumed to continue until the contrary is shown.”). For 40 years the Minnesota Supreme Court has emphasized that the proper focus of inquiry is on *whether a new domicile has been established elsewhere*, not on whether a Minnesota domicile has been abandoned: “This court has stressed that a party does not need to prove *abandonment*

²⁰⁸ In contrast, nonresidents pay Minnesota income tax on only income specifically allocated to Minnesota because, for example, it was earned while working in Minnesota. *See* Minn. Stat. §§ 290.014, subd. 2 (2018), 290.17, subd. 2 (2018).

²⁰⁹ “ ‘Resident’ also means any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota ...” Minn. Stat. § 290.01, subd. 7(b) (2018). The Commissioner concluded that Mark “was not a resident of Minnesota in either of the years at issue pursuant to the definition of ‘resident’ in Minn. Stat. § 290.01, subd. 7(b), because he was in Minnesota for less than 183 days in each of the years at issue.” Stip. ¶ 7; *see* Ex. J3, at 21, 30.

of present domicile, but, instead, rebuts the presumption that he or she has not changed domicile by proving establishment of domicile in another jurisdiction.” *Sandberg v. Comm’r of Revenue*, 383 N.W.2d 277, 283 n.7 (Minn. 1986) (citing *Comm’r of Revenue v. Stamp*, 296 N.W.2d 867, 870 (Minn. 1980)); *see also Mauer*, 829 N.W.2d at 68; *Sanchez*, 770 N.W.2d at 526.

When a Minnesota domiciliary acquires an out-of-state *residence*, the issue of whether the person’s *domicile* has changed is “ordinarily a question of fact, depending ... upon the purpose and intent of the change.” *Mauer*, 829 N.W.2d at 67-68 (internal quotation marks omitted). “[I]f 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 [Minnesota].” Minn. R. 8001.0300, subp. 2. The taxpayer has the burden of proving the establishment of a new domicile. *Sanchez*, 770 N.W.2d at 526.

It is generally presumed “that the place where a person’s family is domiciled is that person’s domicile. 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.” Minn. R. 8001.0300, subp. 2. Like the presumption that an established domicile continues, these presumptions are rebuttable. *See Dreyling v. Comm’r of Revenue (Dreyling II)*, 753 N.W.2d 698, 702-03 (Minn. 2008); *Morrissey v. Comm’r of Revenue*, No. 4866, 1988 WL 91653, at *8 (Minn. T.C. Aug. 15, 1988) (finding presumptions overcome). Indeed, the Rule itself provides: “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.” Minn. R. 8001.0300, subp. 2.

To assist in evaluating domicile, the Rule sets forth 26 separate “[c]onsiderations.” *Id.*, subp. 3. These “factors” are “nonexclusive.” *Dreyling v. Comm’r of Revenue (Dreyling I)*, 711 N.W.2d 491, 494 (Minn. 2006). The Minnesota Supreme Court has rejected the mechanical tallying of factors for or against Minnesota domicile. *Id.* at 495 (“Nothing in either the statute or the rules supports such a formulaic approach.”). Instead, “[t]he factors must be *weighed* in each particular case.” *Mauer*, 829 N.W.2d at 70 (emphasis added). The need to weigh all relevant considerations arises because “[n]o positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile[.]” Minn. R. 8001.0300, subp. 2.

In addition to setting forth factors, the Rule provides that an intention to change domicile “may be proved by acts and declarations, and of the two forms of evidence, acts must be given more weight than declarations.” *Id.*; *Seccomb v. Bovey*, 135 Minn. 353, 356, 160 N.W.2d 1018, 1020 (1917) (noting that a person’s conduct is given greater weight than a declaration of domicile). In evaluating declarations, greater weight is given to those made for reasons other than to establish domicile. *Zavadil v. Comm’r of Revenue*, No. 8433-R, 2015 WL 1331322, at *21 (Minn. T.C. Mar. 18, 2015).

IV. THE PARTIES’ CONTENTIONS

The Zauhars contend that Mark established a Florida domicile in 2013.²¹⁰ They note that the objective factors set forth in Rule 8001.0300 are intended simply to assist the court evaluating domicile,²¹¹ and emphasize that the court’s ultimate task is to determine the subjective sincerity of Mark’s stated intention to make Florida his home.²¹² Among other things, the Zauhars note the parties’ stipulation that Mark “spent more time in Florida than in Minnesota”

²¹⁰ Appellants’ Post-Trial Br. 5, 35-37 (filed Mar. 26, 2020).

²¹¹ Appellants’ Post-Trial Br. 33-34.

²¹² Appellants’ Post-Trial Br. 32, 33.

during both of the years in issue,²¹³ and they argue that his continuing Minnesota connections (which they frankly acknowledge) do not “suggest[] that [Mark] intended to remain a Minnesota resident.”²¹⁴ The Zauhars further contend that they presented “affirmative evidence” that since 2013, Mark and Sharon have had different domiciles.²¹⁵ In sum, the Zauhars insist that proper analysis compels only one conclusion—that Mark established a Florida domicile beginning in 2013.²¹⁶

The Commissioner contends that Mark “did not relinquish his Minnesota domicile,”²¹⁷ and that he made statements inconsistent with “an intent to abandon his Minnesota domicile.”²¹⁸ Consistent with this focus on abandonment, the Commissioner concentrates almost exclusively on evidence that Mark had continuing connections with Minnesota (which he did not sever), rather than candidly acknowledging and evaluating evidence that Mark took recommended measures to *establish* a domicile in Florida.²¹⁹ When discussing the Rule, for example, which she acknowledges “provides for consideration of the twenty-six factors,” the Commissioner addresses only the 13 factors that (allegedly) support her conclusion that Mark remained a

²¹³ Appellants’ Post-Trial Br. 36-37.

²¹⁴ Appellants’ Post-Trial Br. 43.

²¹⁵ Appellants’ Post-Trial Br. 38-42.

²¹⁶ Appellants’ Post-Trial Br. 5-6, 35-53.

²¹⁷ Comm’r’s Post-Trial Br. 1 (filed Mar. 26, 2020).

²¹⁸ Comm’r’s Post-Trial Br. 2.

²¹⁹ Comm’r’s Post-Trial Br. 1-3, 5-6, 12-15, 16-23.

Minnesota domiciliary.²²⁰ The Commissioner also emphasizes that Mark spent a lot of time with Sharon and LZ,²²¹ and argues that “State benefits received by LZ, as a ward and protected person for whom Mr. Zauhar was responsible, favor a determination that his domicile continued in Minnesota.”²²² According to the Commissioner, “Appellants simply have not proven, as they must, that Mr. Zauhar was physically removed from his Minnesota domicile during the years at issue.”²²³

V. PRIMA FACIE VALIDITY

“[T]he order of the commissioner ... in every case shall be prima facie valid.” Minn. Stat. § 271.06, subd. 6 (2018). A prima facie case “simply means one that prevails in the absence of evidence invalidating it.” *S. Minn. Beet Sugar Coop v. Cty. of Renville (SMBSC)*, 737 N.W.2d 545, 558 (Minn. 2007) (citations omitted). Presumptive validity thus “imposes on the taxpayer the burden of going forward with evidence to rebut or meet the presumption.” *Conga Corp. v. Comm’r of Revenue*, 868 N.W.2d 41, 53 (Minn. 2015) (citing *SMBSC*, 737 N.W.2d at 558).

“When a taxpayer presents substantial evidence that the Commissioner’s assessment order is invalid or incorrect,” the court must decide the case based on the evidence presented by the parties as though “the presumption had never existed.” *Id.* Even after overcoming prima

²²⁰ Comm’r’s Post-Trial Br. 16-23 (addressing only Factors A, E, G, H, I, M, P, Q, R, T, U, V, and Z). The Commissioner addressed Factors B, F, N, and W only in her *responsive* brief (to which the Zauhars had no opportunity to respond in writing). Comm’r’s Post-Trial Resp. Br. 12-19 (filed Apr. 30, 2020). We will not countenance such sandbagging. *Cf. Pike v. Caldera*, 188 F.R.D. 519, 532 n.23 (S.D. Ind. 1999) (defining “sandbagging” as withholding an argument “until the opposing party does not have an adequate opportunity to respond”); *cf. also State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (ruling that an argument made for the first time in a reply brief was “waived and stricken”).

²²¹ Comm’r’s Post-Trial Br. 1, 3-5, 13, 15-16.

²²² Comm’r’s Post-Trial Br. 24-25.

²²³ Comm’r’s Post-Trial Br. 2.

facie validity, the taxpayer bears the ultimate burden of persuasion by a preponderance of the evidence. *Minn. Energy Res. Corp. v. Comm’r of Revenue*, 909 N.W.2d 569, 573 (Minn. 2018).

We conclude that the Zauhars introduced during trial substantial evidence that the Commissioner’s order is incorrect. In addition, as the Zauhars observe, the Commissioner’s assessment is defective because it is based on numerous legal errors.²²⁴ Most importantly, the Commissioner analyzed whether Mark had abandoned his Minnesota domicile, not whether he had established a Florida domicile: “The department contends that Mr. Zauhar did not abandon his MN domicile, *a necessary action in order to claim FL as his new domicile.*”²²⁵

VI. ANALYSIS

In commencing our de novo review, *see* Minn. Stat. § 271.06, subd. 6, we bear in mind the Minnesota Supreme Court’s admonition that this court “must strive to apply the Department’s factors in a consistent and equitable manner” because “it is vitally important that taxpayers be able to understand ... how those factors are applied in any given situation.” *Mauer*, 829 N.W.2d at 76 n.2. For two reasons, the Commissioner makes this task more difficult.

First, the Commissioner has applied the factors using the wrong governing standard: abandonment of a Minnesota domicile rather than establishment of a Florida domicile.²²⁶ The difference makes a difference because abandonment inevitably focuses attention on whether Minnesota connections remain (have not been severed), rather than on whether Florida

²²⁴ Appellants’ Post-Trial Br. at 30-32 (enumerating legal errors).

²²⁵ Ex. J3, at 47 (emphasis added); *see also id.* at 33 (asserting that certain evidence “does not show that [Mark] abandoned his MN domicile”); *id.* at 44 (reciting the “Department Position” that “[t]he taxpayer has the burden of proof to show that he abandoned Minnesota as his residence during the audit period”); *id.* at 50 (concluding that Mark remained a Minnesota resident “along with his wife and daughter for the tax years 2013 and 2014” because he “did not abandon his Minnesota domicile”).

²²⁶ Comm’r’s Post-Trial Br. 1, 2, 13.

connections have been created.²²⁷ See, e.g., *Mauer*, 829 N.W.2d at 76 (noting that “there are several well-established, reasonable, and concrete steps that a taxpayer can take in order to establish domicile”).

Second, the Commissioner’s lack of candor about even *stipulated* facts, and her own inconsistent application of the factors, deprives us of her genuine assistance. As the Zauhars observe, for example, the Commissioner omits from the factor analysis in her opening post-trial submission any discussion of Factor W (percentage of time the taxpayer spends in respective jurisdictions), thereby declining to acknowledge the parties’ stipulation that Mark spent 183 days in Florida in 2014—more than half the year.²²⁸

²²⁷ The Commissioner’s decision to apply an abandonment standard in her *post-trial* brief appears to be intentional. In her *pretrial* brief, the Commissioner commented that “Mr. Zauhar carries the burden of proving that he established a new domicile in Florida,” and anticipated that trial evidence would show that he “did not establish domicile in Florida.” Comm’r’s Pretrial Br. 4 (filed Aug. 7, 2019). The Commissioner’s effort to emphasize the correct *establishment-of-domicile* standard even prompted her to suggest that the Department had applied that standard on audit. *Id.* at 2 (asserting that the Department “determined Mr. Zauhar ... had not established a new domicile in Florida”). As just noted, the Department had actually applied an abandonment standard. Ex. J3, at 33, 44, 47, 50. Although the Rule provides, that “[a]n absence of *intention to abandon* a domicile is equivalent to an intention to retain the existing one,” Minn. R. 8001.0300, subp. 2 (emphasis added), the Minnesota Supreme Court has repeatedly held that a taxpayer “does not need to prove abandonment of present domicile.” See *supra* § III. The Commissioner’s refusal to acknowledge evidence that Mark took steps to establish a Florida domicile, along with her comment that he “did not *relinquish* his Minnesota domicile,” Comm’r’s Post-Trial Br. 1 (emphasis added), demonstrate that she actually applies an incorrect abandonment-of-domicile standard in her post-trial submission.

²²⁸ Appellants’ Post-Trial Resp. Br. 19-20 (filed Apr. 30, 2020); Stip. ¶ 40.

A. Enumerated Domicile Factors

Factors C, D, E, K, L, S, X, Y, and Z have no application to the facts of the case and will not be considered.²²⁹ To promote a more coherent discussion, we will group the factors that do have some application under the following topical headings: Living Quarters and Other Real Property; Licenses and Registrations; Taxes; Financial Accounts and Activities; Business Contacts; and Social and Community Contacts.

1. Living Quarters and Other Real Property

Factor A is the “location of domicile for prior years.” Mark was a Minnesota domiciliary through 2012.²³⁰ Factor A thus favors a Minnesota domicile for 2013.

Factor F is the “location of newly acquired living quarters whether owned or rented.” In March 2013, Mark purchased 17106 Target Way, the permanent pad immediately adjacent to the one he already owned at 17104.²³¹ The \$30,000 pad was equipped with “a 2005 park-model trailer home ..., which was permanently located at the Silver Dollar” and was “not moveable” because it was bolted to the pad.²³² Mark extensively renovated the Park Model and the attached Florida Room for an additional \$25,000, and lived in the residence when he was in Florida.²³³

²²⁹ Factor C pertains to status as a student; Factor D to classification of employment as temporary or permanent; Factor E to location of employment; Factor K to professional licenses; Factor L to union memberships; Factor S to places of worship; Factor X to unemployment compensation benefits; Factor Y to schools; and Factor Z to statements made to insurance companies concerning residence on which insurance is based.

²³⁰ Stip. ¶ 10.

²³¹ Tr. 56-60; Stip. ¶¶ 22, 24.

²³² Stip. ¶ 24; Tr. 59, 63, 183.

²³³ Tr. 60-62, 184; Stip. ¶¶ 24-25; *see also* Exs. 1, J5-A.

In August 2017, Mark and Sharon purchased a \$1.5 million house on Patterson Road, approximately 2 miles up the street from the Silver Dollar.²³⁴ Mark explained why he waited to purchase such a residence:

If [the Patterson Road house] would have been for sale when I moved to Florida, I would have bought it. My criteria was I either wanted to be on the grounds [of the Silver Dollar] or very, very close. You know, at the time when I moved to Florida real estate was a bit depressed. Starting to be depressed. And houses had come off the market because people couldn't get what they wanted. So there wasn't a lot. And in that area there is just not a lot of homes for sale of this quality. In fact, the only place along Patterson where you can buy a home of this quality is ours and our neighbors.²³⁵

Three months after they purchased the Patterson Road home, the Zauhars sold the Park Model.²³⁶

Mark's purchase and renovation of the Park Model substantially strengthened his ties to Florida. It increased his living space at the Silver Dollar from 400 square feet (in the PREV motorhome) to 1,400 square feet (the PREV plus the new lodgings).²³⁷ It also gave Mark fixed living quarters in Florida. *See Morrissey*, 1988 WL 91653, at *9 (finding that the taxpayer's domicile changed when he "rented and eventually purchased living quarters, a place to call home in Indiana"). That Mark was unable to purchase a residence such as the Patterson Road house until 2017 is of no consequence. *Id.* at *7 ("Mr. Morrissey should not be penalized because he lived in a rooming house or apartment rather than an expensive home."). Factor F thus favors a Florida domicile for 2013 and 2014.

Factor G is the "present status of the former living quarters, i.e., whether it was sold, offered for sale, rented, or available for rent to another." Before the years at issue, Mark and

²³⁴ Stip. ¶ 39.

²³⁵ Tr. 78-79.

²³⁶ Tr. 78.

²³⁷ Tr. 53-57, 66-67.

Sharon owned and lived together in the Lakeville residence.²³⁸ In 2012, the Zauhars transferred the property to the Sharon Zauhar Trust, which owned it during the years in issue.²³⁹

The parties have stipulated that “[d]uring the years at issue, Sharon was a Minnesota resident and resided at” the Lakeville property.²⁴⁰ Because spouses may have different domiciles, *see* Minn. R. 8001.0300, subp. 2, and Sharon continues to consider the Lakeville residence *as her home*, there is no reason to consider whether “it was sold, offered for sale, rented, or available for rent to another.” *Cf. Page v. Comm’r of Revenue*, No. 4011, 1986 WL 15695, at *7 (Minn. T.C. Mar. 12, 1986) (finding that there “was no incentive for [the taxpayers] to sell their home until they discontinued going to Minnesota in the off-season”). In this case, Factor G has no bearing on Mark’s intent with respect to domicile.²⁴¹

Factor H pertains to homestead status of new and former living quarters. The parties have stipulated that “[t]he Lakeville Property was homesteaded for property tax purposes during the years at issue” and that its homestead status “did not impact the amount of assessed property taxes” during those years.²⁴² Minnesota law expressly permits the Sharon Zauhar Trust to homestead the Lakeville residence because (a) the trust owns the property and (b) Sharon, the trust’s grantor, occupies and uses it as a homestead. *See* Minn. Stat. § 273.124, subd. 21 (2018).

²³⁸ Stip. ¶ 29.

²³⁹ *See* Ex. J8 ¶¶ 6-10; Ex. J9; Ex. J10; Tr. 211-12, 250-51, 253-55.

²⁴⁰ Stip. ¶ 3.

²⁴¹ Additionally, the Minnesota Supreme Court has explained that a taxpayer is *not* “required to sell his Minnesota residence to establish domicile in another state, especially when the taxpayer has sufficient means to maintain more than one home.” *Mauer*, 829 N.W.2d at 70; *see also Miller’s Estate v. Comm’r of Taxation*, 240 Minn. 18, 21, 59 N.W.2d 925, 927 (1953) (holding that the appellant changed his domicile from Minnesota to Florida even though he “never actually disposed of his former residence in St. Paul but, in fact, actually resided there while in Minnesota”).

²⁴² Stip. ¶ 35.

The record contains no information about the homestead status of the Park Model. Under the circumstances, Factor H has no bearing on Mark’s intent with respect to domicile.

Factor I is “ownership of other real property.” Before the years in issue, Mark and Sharon owned several parcels of real property located in Crow Wing County with a total value of \$600,000.²⁴³ One contained a single story structure without electrical power, running water, or sewer; the other two were unimproved.²⁴⁴ In 2012, the Zauhars transferred the parcels to the Sharon Zauhar Trust, which owned them during the years in issue.²⁴⁵

The Commissioner urges us to disregard the 2012 transfer of the Crow Wing parcels to the Sharon Zauhar Trust.²⁴⁶ The Zauhars contend that all of the 2012 property transfers were undertaken at the advice of estate planning counsel and were entirely legitimate.²⁴⁷ We need not resolve this dispute. This court commented in a recent residency case that it is not bound by “the formalities of [property] ownership.” *Zavadil*, 2015 WL 1331322, at *24. But considering that it is unnecessary to sell a former Minnesota *residence* to establish domicile elsewhere, *see Mauer*, 829 N.W.2d at 70, it is likewise unnecessary to part with other real property to do so. Indeed, this court recently concluded that the status of a taxpayer’s real estate interests favored domicile *elsewhere* even though the taxpayer owned “a cabin in Laporte, Minnesota, where [he] stayed when in Minnesota.” *Dudley v. Comm’r of Revenue*, No. 8666-R, 2015 WL 1814047, at *8 (Minn. T.C. Apr. 15, 2015).

²⁴³ Stip. ¶ 36. The parties dispute the ownership of the property for the years at issue. *Id.*; *see id.* ¶¶ 30-32.

²⁴⁴ Stip. ¶¶ 36-37.

²⁴⁵ *See* Ex. J8 ¶¶ 11-17, 20; Tr. 211-12, 253-55.

²⁴⁶ Comm’r’s Resp. Br. 14-15.

²⁴⁷ Appellants’ Resp. Br. 30-34.

Mark hunts on the Crow Wing County properties.²⁴⁸ Especially considering that Sharon remains domiciled in Minnesota, it is no surprise that the Zauhars did not sell the properties. We find that Factor I slightly favors a Minnesota domicile.

Factor V is “address where mail is received.” The record indicates that Mark received mail at both the Lakeville residence and in Florida.²⁴⁹ Mark explained he had his mail forwarded from Minnesota to Florida, and vice versa, by friends or the post office depending on where he and Sharon were going to be, and how important the mail was.²⁵⁰ We find that Factor V is neutral.

2. Licenses and Registrations

Factor B is “where the person votes or is registered to vote,” Factor J the “jurisdiction in which a valid driver’s license was issued.” The parties have stipulated that Mark obtained a Florida driver’s license and registered to vote in Florida on February 19, 2013.²⁵¹ Mark voted in Florida (probably by absentee ballot) in 2014, 2015, and 2016.²⁵² We find that Factors B and J favor a Florida domicile.

²⁴⁸ Tr. 184-85.

²⁴⁹ Tr. 79-85, 172-73, 189, 303-06.

²⁵⁰ Tr. 189.

²⁵¹ Stip. ¶ 51. Mark voted in Florida in 2014, 2015, and 2016. Ex. 43 (Sept. 13, 2016 letter from the Florida Department of State to the Minnesota Department of Revenue detailing Mark’s Florida voting record).

²⁵² Ex. 43; Tr. 40-41.

Factor N is “whether resident or nonresident fishing or hunting licenses [were] purchased.” The parties have stipulated that Mark obtained a Minnesota nonresident hunting license in 2013.²⁵³ We find that Factor N favors a Florida domicile.

Because the factors are nonexclusive, we consider here some additional evidence for the sake of convenience. Since the 1970s, Mark has held a federal firearms license with the trade name Mark’s Gun Shop.²⁵⁴ Mark acknowledged that although he had changed the address on the license when moving from Inver Grove Heights to Lakeville, he did not change it again during the years in issue.²⁵⁵ During those years, consequently, both the mailing and premises addresses on the license listed the Lakeville residence.²⁵⁶ When asked *why* he did not change the address a second time, Mark credibly replied: “[T]he fact is [] that the Silver Dollar would not allow me to have the license on their site.”²⁵⁷ During the years in issue, Mark had a Florida Concealed Weapon or Firearm License and a Minnesota Permit to Carry a Pistol listing Mark’s Florida address.²⁵⁸ We find that these additional permits and licenses weight slightly in favor of a Florida domicile.²⁵⁹

²⁵³ Stip. ¶ 52; *see* Ex. J15 (2013 Nonresident Firearm Deer License); Tr. 41-42. Mark’s residency questionnaire indicates that he purchased nonresident hunting licenses in both 2013 and 2014. Ex. M, at COR000939. Mark testified, however, that he could not locate his 2014 license. Tr. 41-42, 192-93.

²⁵⁴ Tr. 173-77, 212; Stip. ¶ 54.

²⁵⁵ Tr. 177.

²⁵⁶ Tr. 174-75; Stip. ¶ 54.

²⁵⁷ Tr. 212.

²⁵⁸ Exs. 39-40 (firearm permits); Tr. 42-44; Stip. ¶ 53.

²⁵⁹ The Commissioner never acknowledges the stipulated fact that Mark obtained a Florida driver’s license in February 2013, Stip. ¶ 51, but she seizes on Mark’s failure to change the address on a federal firearm license the parties stipulated he used only three time during the years in issue, once to donate a firearm to a gun club. Tr. 175-76, 212; Stip. ¶ 54. This is but a single instance of the Commissioner’s inconsistent approach to weighing evidence of domicile.

Factor M is the “jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles.” The parties have stipulated that the Zauhars registered the following vehicles in Minnesota and Florida, respectively, in 2013, 2014, and 2015:²⁶⁰

Vehicle	Notes	MN	FL
2012 BMW 750L	To Florida in 2013	2013 to 3/4/2014	3/4/2014
BMW M6s: • 2013 BMW M6 • 2014 BMW M6	2013 M6 traded for 2014 M6 on 6/13/2014; not taken to Florida until 2015	2013 to 2/26/2015	2/26/2015
Pickup Trucks: • 2008 Chev. K2500 • 2013 GMC Sierra	2008 Chevrolet K2500 traded for 2013 GMC Sierra in late 2013	2013 to 2014	—
2002 SHPK (Park Model)	Park Model	—	3/4/2013
Motorhomes: • 2009 PREV • 2015 UCHW (Millennium)	2009 PREV traded for 2015 Millennium	2013 to 3/13/2014	3/13/2014
Featherlite Trailers: • 2003 Featherlite • 2004 Featherlite	For pulling car(s) behind motorhome; 2003 trailer traded for 2004 trailer in 2015	2013 to 2014	2/26/2015
2005 Karavan	Boat Trailer	2013 to 2014	—
2003 Felling Tandem Trailer	Trailer used to haul skid steer	2013 to 2014	—

Before 2012, Mark traveled to Florida in the PREV motorhome towing the Corvette in a Featherlite Trailer.²⁶¹ In 2012, Mark began taking the BMW 750L instead of the Corvette, because it more comfortably seated three during Sharon’s visits.²⁶² Mark eventually traded the Corvette for a 2013 BMW M6, which he later exchanged for a 2014 M6.²⁶³

²⁶⁰ Stip. ¶ 55.

²⁶¹ Tr. 215; *see* Stip. ¶ 55.

²⁶² Tr. 215.

²⁶³ Tr. 187, 215-16; Stip. ¶ 55.

In late 2014 or early 2015, Mark took the 2014 M6 to Florida in addition to the 750L.²⁶⁴ Accordingly, he acquired a Featherlite that could transport two cars.²⁶⁵ Mark registered the 750L in Florida in early 2014.²⁶⁶ Also in 2014, Mark traded the PREV motorhome for the Millennium, which he registered in Florida.²⁶⁷

Mark registered the 2014 M6 and the Featherlite Trailer in Florida in February 2015.²⁶⁸ About the same time, Mark decided that having three cars and keeping one “in Minnesota all winter long made no sense.”²⁶⁹ Mark thus sold the M6 and started to take his pickup with him to Florida instead.²⁷⁰

As the Commissioner emphasizes, a “majority” of the Zauhars’ vehicles were registered in Minnesota during 2013 and in 2014.²⁷¹ The Minnesota Supreme Court has explained, however, that emphasis must be placed on a taxpayer’s “primary motor vehicles.” *See Mauer*, 829 N.W.2d at 71 (“Considering the relative makes, models, and years of Mauer’s Minnesota vehicles, it is fair to presume that the Minnesota vehicles were Mauer’s primary motor vehicles.”). Indeed, the court observed that “moving one’s primary motor vehicles to the new state” is among the “several well-established, reasonable, and concrete steps that a taxpayer can take in order to establish domicile.” *Id.* at 76. As this passage also makes clear, our focus must be on how vehicle registrations and uses bear on Mark’s individual intent.

²⁶⁴ Tr. 215; Stip. ¶ 55.

²⁶⁵ Tr. 215; *see* Stip. ¶ 55.

²⁶⁶ Stip. ¶ 55.

²⁶⁷ Stip. ¶¶ 26, 55; Ex. J6 (purchase agreement); *see also* Tr. 67-68.

²⁶⁸ Stip. ¶ 55.

²⁶⁹ Tr. 215.

²⁷⁰ Tr. 215.

²⁷¹ Comm’r’s Post-Trial Br. 19.

We do not believe that the location and registration of the boat trailer or skid trailer are probative of Mark's intent with respect to domicile.²⁷² Mark acknowledged that he kept the pickup truck in Minnesota because he used it when he was there.²⁷³ Considering relative makes, models and years, Mark's primary vehicles during the years at issue were the PREV motorhome and the 2012 BMW 750L. Although these vehicles spent significant time in Florida in 2013, they remained registered in Minnesota. Factor M slightly favors a Minnesota domicile for 2013. In March 2014, however, Mark registered both the Millennium motorhome and the 750L in Florida. In addition, he registered the 2014 M6 and the Featherlite Trailer in Florida in February 2015. Under the circumstances, Factor M slightly favors a Florida domicile for 2014.

3. Taxes

Factor O inquires "whether an income tax return has been filed as a resident or nonresident," Factor P "whether the person has fulfilled the tax obligations required of a resident." "In judging the sincerity of the taxpayer's claims of nonresidency, we also consider whether the taxpayer claimed resident or nonresident status on her income tax returns, both filed in Minnesota and elsewhere." *Zavadil*, 2015 WL 1331322, at *30.

Mark was not required to declare residency on a Florida income tax return, because Florida does not have an income tax. The Zauhars filed their 2013 and 2014 federal income tax returns using Mark's Florida address.²⁷⁴ They likewise filed their Minnesota income tax returns using Mark's Florida address.²⁷⁵ Each Minnesota return claimed Mark was a "Full-year

²⁷² Mark obtained insurance for his vehicles in the state in which he registered them. *Compare* Stip. ¶ 55 (registration information), *with id.* ¶ 56 (insurance information). Consequently, we do not separately discuss vehicle insurance coverage.

²⁷³ Tr. 186.

²⁷⁴ Exs. J19, J20.

²⁷⁵ Exs. J1, J2.

Nonresident of MN” and a resident of Florida.²⁷⁶ The Zauhars’ income tax filings are consistent with their claim that Mark was a Florida resident. *Cf. Ayeni v. Comm’r of Revenue*, No. 8697, 2015 WL 496152, at *10-11 (Minn. T.C. Feb. 2, 2015) (noting that the taxpayer’s claims of residency were inconsistent with her income tax filings). Factor O thus favors a Florida domicile.

The Commissioner argues that Factor P favors a Minnesota domicile because the Zauhars paid their property taxes.²⁷⁷ As the Zauhars note, however, “obligations to pay property taxes are entirely unrelated to whether someone is a resident of the state.”²⁷⁸ We agree and find that Factor P is neutral.

4. Financial Accounts and Activities

Factor Q is the “location of any bank accounts, especially the location of the most active checking account,” Factor R the “location of other transactions with financial institutions.”

During the years at issue, the Sharon Zauhar Trust maintained a deposit account at Wells Fargo Bank, N.A., in Minneapolis consisting of a checking account linked to a savings account.²⁷⁹ Mark used the Wells Fargo account for deposits and to pay living expenses.²⁸⁰ When he was in Florida, Mark used a Wells Fargo branch in Tampa, located about 10 minutes from his Odessa residence, to access the Wells Fargo account.²⁸¹ Mark testified that, owing to the convenience of the Tampa branch, he felt no need to open a new bank account in Florida.²⁸²

²⁷⁶ Exs. J1, J2.

²⁷⁷ Comm’r’s Post-Trial Br. 19.

²⁷⁸ Appellants’ Resp. Br. 37 n.87.

²⁷⁹ Stip. ¶ 59; Tr. 254.

²⁸⁰ Tr. 158-59.

²⁸¹ Stip. ¶ 60; Tr. 209.

²⁸² Tr. 209.

The Zauhars contend that because Mark “primarily” used the Tampa branch, Factor Q is neutral.²⁸³ We agree. *Cf. Dudley*, 2015 WL 1814047, at *9 (noting that taxpayer “accessed bank accounts in both Minnesota and Nevada”).

Mark had a wealth management account in Minnesota during 2014.²⁸⁴ The Zauhars acknowledge that Factor R thus favors Minnesota for 2014, but argue that the factor should be given minimal weight.²⁸⁵ We agree on both counts, and find that Factor R is neutral for 2013 and slightly favors Minnesota for 2014.

5. Business Contacts

Factor T is the “location of business relationships and the place where business is transacted.” Mark formally retired from Pride Engineering in 2012 at the age of 62 and remained retired during the years at issue.²⁸⁶ Mark continued to serve on Pride Engineering’s Board after his retirement, attending Board meetings in 2013 (some of which were outside Minnesota) without compensation.²⁸⁷ He had no involvement in the company’s day-to-day operations,²⁸⁸ but received dividends from Pride Engineering Export Services.²⁸⁹

“In early 2014, Pride Engineering was sold to May River Capital As part of the sale, May River created a ‘new’ company, Pride Engineering, LLC, *and required Mark to purchase a 13 percent interest in the ‘new’ company.*”²⁹⁰ Mark served on the Board of the new Pride

²⁸³ Appellants’ Post-Trial Br. 23, 52.

²⁸⁴ Stip. ¶ 62.

²⁸⁵ Appellants’ Post-Trial Br. 52 & n.234.

²⁸⁶ Stip. ¶¶ 45-46; Tr. 19, 25, 31.

²⁸⁷ Stip. ¶¶ 46, 48; Tr. 30-31, 107.

²⁸⁸ Stip. ¶ 46; Tr. 106.

²⁸⁹ Stip. ¶ 49.

²⁹⁰ Stip. ¶ 47 (emphasis added).

Engineering, earning \$20,000 in 2014, on which he paid Minnesota income tax.²⁹¹ He had no control over the company and no involvement in its day-to-day operations.²⁹² The Zauhars argue that Mark's involvement with Pride Engineering is neutral with respect to domicile.²⁹³ The Commissioner claims it favors a Minnesota domicile.²⁹⁴

During the years at issue, Mark had annual physicals with Dr. Chutka at the Mayo Clinic in Rochester, Minnesota.²⁹⁵ At Sharon's behest, Mark had been seeing Dr. Chutka as part of the Mayo Clinic Executive Health Program since the early 2000s.²⁹⁶ Mark credibly testified that his participation in this program made a Florida physician unnecessary.²⁹⁷ Although Mark rarely goes to the dentist, he saw an Eagan, Minnesota dentist in May 2014.²⁹⁸

Mark purchased the Millennium motorhome in Florida for approximately \$2 million in February 2014.²⁹⁹

Based primarily on Mark's continued involvement in 2013 with the original Pride Engineering, we find that Factor T weighs in favor of Minnesota domicile for 2013. Because his involvement with the new Pride Engineering beginning in 2014 was essentially compelled by May River, we do not consider it probative of Mark's intent with respect to domicile. Nevertheless, based on Mark's remaining business contacts, we find that Factor T slightly favors Minnesota domicile for 2014.

²⁹¹ Stip. ¶ 48; Tr. 109-10; *see* Ex. J2.

²⁹² Stip. ¶ 46; Tr. 110.

²⁹³ Appellants' Post-Trial Br. 45-46.

²⁹⁴ Comm'r's Post-Trial Br. 20-21; Comm'r's Resp. Br. 17.

²⁹⁵ Tr. 168-69.

²⁹⁶ Tr. 168, 209-11.

²⁹⁷ Tr. 221.

²⁹⁸ Tr. 169-70.

²⁹⁹ Stip. ¶ 26; Ex. J6.

6. Social and Community Contacts

Factor U is the “location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member.” Mark was a member of the Minneapolis Gun Club during the years at issue (listing his Florida address).³⁰⁰ In Florida, Mark was a member of the Silver Dollar Shooters Club³⁰¹ and the Florida Trapshooters Association.³⁰²

We agree with the Zauhars³⁰³ that Mark’s activities with the U.S.A. Clay Target League³⁰⁴ and the Minnesota Youth Shooting Foundation³⁰⁵ were charitable in nature, and thus may not be considered. *See* Minn. R. 8001.0300, subp. 3 (“Charitable contributions made by a person will not be considered in determining whether that person is domiciled in Minnesota.”). Because considering Mark’s involvement in the Paralyzed Veterans of America Florida Chapter would likewise bear on “whether [Mark] is domiciled in Minnesota,”³⁰⁶ it, too, must be excluded from this analysis. Factor U slightly favors a Florida domicile.

Factor W is the “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.” The parties stipulated that Mark spent his time in the following locations during the years at issue:³⁰⁷

³⁰⁰ Tr. 194, 218.

³⁰¹ Tr. 218.

³⁰² Stip. ¶ 67.

³⁰³ Appellants’ Resp. Br. 43-44.

³⁰⁴ Tr. 101-03.

³⁰⁵ Tr. 103-05.

³⁰⁶ Tr. 49, 105.

³⁰⁷ Stip. ¶ 40.

	Minnesota	Florida	Other
2013	136	137	92
2014	145	183	37

Despite having stipulated to these figures, the Commissioner asserts that the Zauhars “simply have not proven, as they must, that Mr. Zauhar was physically removed from his Minnesota domicile during the years in issue.”³⁰⁸ This assertion is contrary to precedent.

In *Mauer*, the supreme court cautioned that it would be “skeptical when a taxpayer spends more time in Minnesota than in his asserted new domicile.” *Mauer*, 829 N.W.2d at 72-73. The Court also commented:

[T]here are several well-established, reasonable, and concrete steps that a taxpayer can take in order to establish domicile These steps, which can demonstrate a credible and sincere resolve to establish a change in domicile, include spending more time in one’s new state than in Minnesota, *the “physical removal” described in the rule.*

Id. at 76 (emphasis added). Mark spent more time in Florida than he did in Minnesota during both years at issue.³⁰⁹ He thereby accomplished the required “physical removal” and demonstrated (in part) his “sincere resolve to establish a change in domicile.” Factor W weighs slightly in favor of a change in domicile for 2013, and heavily in favor of a change for 2014.

B. Acts And Declarations Bearing On Intent

The intention to change domicile “may be proved by acts and declarations, and of the two forms of evidence, acts must be given more weight than declarations.” Minn. R. 8001.0300, subp. 2.

1. Change in ATA Affiliation

Particularly important to our evaluation of the sincerity of Mark’s intent to make Florida his home are his acts and declarations concerning his Amateur Trapshooting Association

³⁰⁸ Comm’r’s Post-Trial Br. 2.

³⁰⁹ Stip. ¶ 40.

affiliation. At the start of 2013, Mark had been a long-time member of both the ATA and the Minnesota Trapshooting Association.³¹⁰ Owing to ATA residency requirements, a person cannot be a member of two state ATA affiliates at the same time.³¹¹ The parties have stipulated as follows:

Mark requested a change in residency with the ATA from Minnesota to Florida in approximately February 2013. Because the ATA requires a six month waiting period before a trapshooter may officially change his or her residency for ATA purposes, Mark shot as a resident of his formerly reported state (Minnesota) until approximately August 2013.³¹²

The parties have further stipulated:

As of March 2013, Mark also became a member of the Florida Trapshooters Association (“FTA”). FTA members must provide a paid up ATA average card indicating that their principle domicile is within the State of Florida. Additionally, FTA members must have a valid Florida Driver’s License ... to prove residency before competing for Florida resident awards.³¹³

Mark had achieved great success as a Minnesota shooter. In early 2013, however, he declared to the ATA that he was a Florida resident and thereby initiated a change in his ATA state affiliation from Minnesota to Florida. He likewise declared to the FTA that he was a Florida resident and wished to be an FTA member, thereby relinquishing his membership in the MTA. For a person whose life revolves around competitive trapshooting, these are significant acts and declarations and strongly favor a Florida domicile.

2. Well Being Report

The Commissioner would have us conclude that Mark did not intend to make Florida his home because he signed a July 2014 Well Being Report in LZ’s guardianship proceedings

³¹⁰ Tr. 93-95.

³¹¹ Tr. 94, 99; Stip. ¶ 64.

³¹² Stip. ¶ 65.

³¹³ Stip. ¶ 67; *see also* Ex. J18 (FTA By-laws).

indicating that LZ was living with her parents in the Zauhars' Lakeville residence.³¹⁴ During trial, Mark indicated that Sharon prepared all paperwork filed in relation to those proceedings.³¹⁵ Although acknowledging that he signed many documents Sharon prepared, he did not remember either the particular document or the cited statement.³¹⁶ Sharon agreed that she prepared the report and—based on counsel's questioning of Mark—assumed the report contained the cited statement.³¹⁷ Before trial, the report itself was excluded from evidence. *See generally Zauhar v. Comm'r of Revenue*, No. 9139-R, 2020 WL 2478861 (Minn. T.C. May 7, 2020) (awarding expenses, including attorney fees, in connection with a pretrial order granting the Zauhars' motion in limine to exclude exhibits for nondisclosure and violation of the governing scheduling order). Because Sharon prepared the report, which accurately indicated that LZ lived in the Lakeville residence where Mark concededly stayed when he was in Minnesota, we find that it has no bearing on Mark's intent with respect to domicile.

3. Residency Questionnaire

At the Commissioner's request, Mark filled out and submitted during audit a Residency Questionnaire.³¹⁸ The Commissioner contends that Mark "himself listed the Lakeville Home as a place where he lived during the years at issue."³¹⁹ In a questionnaire section captioned "Housing," Mark listed the Lakeville residence as one of the "addresses where you lived during the tax years under review."³²⁰ Directly *above* that entry, however, Mark listed "17104 &

³¹⁴ Comm'r's Post-Trial Br. 2, 14; Tr. 195-201

³¹⁵ Tr. 196, 200.

³¹⁶ Tr. 196-201.

³¹⁷ Tr. 269-70.

³¹⁸ *See* Ex. M.

³¹⁹ Comm'r's Post-Trial Br. 3.

³²⁰ Ex. M, at COR000935.

17106 Target Way, Odessa, FL 33556,” the same address he listed as his “Street Address” at the start of questionnaire.³²¹ We find that Mark’s response reveals both his candor and his intent to establish a Florida domicile.

4. Acquisition of Florida Health Insurance

When Thompson Reuters eliminated Sharon’s position in April 2012, she received 18 months of COBRA, which covered Mark.³²² In approximately October 2013, Mark obtained health insurance in Florida from Blue Cross Blue Shield.³²³ This action favors a Florida domicile for both years at issue.

C. Benefits Received By LZ

The Commissioner contends that “State benefits received by LZ, as a ward and protected person for whom Mr. Zauhar is responsible, favor a determination that his domicile continued in Minnesota.”³²⁴ Asserting an analogy to Factor Y, which pertains to “location of schools at which the person or the person’s spouse or children attend, and whether resident or nonresident tuition was charged,” Minn. R. 8001.0300, subp. 3.Y, the Commissioner argues:

LZ received health insurance in the form of Minnesota Medicaid during the years at issue, and she continued to receive care and treatment from a team of medical professionals in Minnesota. LZ’s Minnesota Medicaid health insurance coverage required that she be a resident of Minnesota. When LZ saw the doctors and specialists comprising her medical team, the billing was submitted directly to Minnesota Medicaid. During the years at issue, only minimal reimbursement or co-pays were required for the medical care provided to LZ through Minnesota

³²¹ Ex. M, at COR000934-35.

³²² Stip. ¶ 16; Tr. 225-26, 257-58.

³²³ See Ex. 45 (showing that Mark had Florida Blue Cross Blue Shield since at least December 8, 2016); Tr. 44-46 (indicating that Mark likely obtained Florida health insurance in mid-2013).

³²⁴ Comm’r’s Post-Trial Br. 24.

Medicaid, and that was in the form of a medication co-pay of approximately \$30 at the end of the year.³²⁵

The Commissioner also notes that “[f]unding for LZ’s care services came through Minnesota’s Brain Injury Waiver Program.”³²⁶ Based on the foregoing, the Commissioner argues: “Because Mr. Zauhar was guardian and conservator to LZ during the years at issue, the significant state benefits she received constituted ‘deep roots’ for Mr. Zauhar which remained ‘embedded in the social and economic life of [his] old community’ (i.e. Minnesota).”³²⁷

The Zauhars respond that the Commissioner improperly “asks this Court to attribute [LZ’s] Minnesota connections to Mr. Zauhar when evaluating where he subjectively intended to be domiciled during the years at issue.”³²⁸ Although LZ “is an adult with disabilities subject to a guardianship and conservatorship,” the Zauhars contend, she retains “a right to government care and programs.”³²⁹ They thus argue that LZ

is independently entitled to her Minnesota benefits and programs without regard to her guardians or conservators. For this reason, the government considers only [LZ’s] income and assets when determining whether she is eligible for government programs and services (and does not consider the income or assets of Mr. or Mrs. Zauhar).³³⁰

³²⁵ Comm’r’s Post-Trial Br. 24-25 (citations omitted).

³²⁶ Comm’r’s Post-Trial Br. 25.

³²⁷ Comm’r’s Post-Trial Br. 25 (citation omitted).

³²⁸ Appellants’ Resp. Br. 49.

³²⁹ Appellants’ Resp. Br. 50 (citing Minn. Stat. § 524.5-120(7) (a ward has the right to “care, comfort, social and recreational needs, training, education, habilitation, and rehabilitation care and services, within available resources”)).

³³⁰ Appellants’ Resp. Br. 50; *see* Tr. 289. The Zauhars further argue that, in his capacity as LZ’s guardian and conservator, Mark: (1) is legally obliged to meet LZ’s needs through government benefits and services, rather than through LZ’s estate; (2) has no duty to pay for her care, but instead has a right to compensation for services and expenditures; (3) does not personally benefit from LZ’s receipt of benefits; and (4) need not be domiciled in Minnesota. Appellants’ Resp. Br. 50-52 (citing authorities).

Sharon and Mark have been appointed as guardians and conservators for LZ.³³¹ LZ qualifies for Minnesota Medicaid because she is an adult with disabilities and cannot earn enough income to support herself.³³² The income and assets of a disabled adult's parents are not relevant in determining whether an adult with disabilities qualifies for Minnesota Medicaid.³³³

Even if we assume that the Commissioner's analogy to Factor Y is generally sound, we would agree with the Zauhars that LZ's receipt of benefits is not probative of Mark's intent with respect to domicile. This court recently concluded that the in-state tuition available to a taxpayer's adult child is irrelevant to the taxpayer's intent where the child is entitled to such tuition without regard to the taxpayer's domicile. *Clifford v. Comm'r of Revenue*, No. 8718 R, 2015 WL 5332074, at *10 (Minn. T.C. Sept. 8, 2015); *see also Rao v. Comm'r of Revenue*, No. 9255-R, 2019 WL 4648566, at *12 (Minn. T.C. Sept. 18, 2019) (holding that because the taxpayers' sons, who attended the University of Minnesota during the years at issue, "were adults and entitled to their own residency determinations," Factor Y did "not weigh in favor of domicile in either Minnesota or Florida"). Here, similarly, it is nonsensical to attribute to Mark an intention to remain domiciled in Minnesota to obtain for LZ benefits to which she is independently entitled.

³³¹ Tr. 195.

³³² Stip. ¶ 13; Tr. 289.

³³³ Tr. 289.

D. Contextual Evaluation

Many domicile cases involve taxpayers moving to places in which they have few or no prior contacts, usually in response to a major life-change.³³⁴ They thus involve numerous entirely new connections to another jurisdiction and feature actions that a taxpayer *must* perform to demonstrate an intent to change domicile (because the Commissioner will seize upon any failure to perform them³³⁵), but that can be accomplished with relative ease. *See, e.g., Mauer*, 829 N.W.2d at 75 (noting that many of Mauer’s actions “mainly required making an assertion or signing a document, or both”). Neither the Commissioner nor the courts should be naïve about the possibility that such spontaneous changes *can be* the manipulation of residency to avoid legitimate tax obligations (even though they can also be entirely legitimate). This case involves no such spontaneous change.

Mark began his annual travel to Florida in 2004 so he could attend Florida’s large shoots and earn All American points.³³⁶ He rented a temporary RV pad at the Silver Dollar,³³⁷ “one of the largest shooting clubs in the United States [that] offers daily competitive shooting events.”³³⁸ Whereas shooting season in Minnesota runs from April through early September, Mark could shoot registered targets almost every day of the year at the Silver Dollar.³³⁹ Mark

³³⁴ *See, e.g., Mauer*, 829 N.W.2d at 64 (move to Florida after release from confinement); *Larson*, 824 N.W.2d at 330 (move to Nevada to purchase a business); *Clifford*, 2015 WL 5332074, at *5 (new job in Texas); *Dudley*, 2015 WL 1814047, at *4 (new job in Nevada); *Zavadil*, 2015 WL 1331322, at *14 (retirement to Nevada).

³³⁵ *See, e.g., Morrissey*, 1988 WL 91653, at *9 (reciting but rejecting the Commissioner’s argument that the taxpayer remained a Minnesota domiciliary because he neglected to obtain an Indiana driver’s license and to register as an Indiana voter).

³³⁶ Tr. 20, 24-25, 50.

³³⁷ Stip. ¶ 20; Tr. 49-50.

³³⁸ Stip. ¶ 19.

³³⁹ Tr. 212.

first made the ATA All American Team sometime during the late 2000s.³⁴⁰ In 2009, Mark purchased the 2009 PREV motorhome along with a permanent spot at the Silver Dollar (at 17104 Target Way).³⁴¹ Over the next few years, Mark was spending approximately 4 months per year in Florida.³⁴²

Mark established significant social connections at the Silver Dollar.³⁴³ During a typical week, he attended and/or hosted two potlucks, went to dinner with friends, and played cards five to six times in the Silver Dollar clubhouse.³⁴⁴ Some of Mark's friends from the Silver Dollar also traveled the country to attend ATA events.³⁴⁵ Mark testified that "we built a real strong relationship to the point where I started hunting with them as well. And they have really become my close circle of friends."³⁴⁶

In 2012, in conjunction with his formal retirement, Mark started moving to Florida.³⁴⁷ In March 2013, he purchased 17106 Target Way, the permanent pad immediately adjacent to the one he already owned at 17104.³⁴⁸ The new pad was equipped with "a 2005 park-model trailer home."³⁴⁹ Mark extensively renovated the Park Model and attached Florida Room, and lived there while he was in Florida.³⁵⁰

³⁴⁰ Tr. 89.

³⁴¹ Stip. ¶¶ 20-22; Tr. 50-52.

³⁴² Tr. 24-25, 147.

³⁴³ Tr. 22-23.

³⁴⁴ Tr. 23, 52.

³⁴⁵ Tr. 33.

³⁴⁶ Tr. 33.

³⁴⁷ Tr. 19, 32.

³⁴⁸ Tr. 56-59, 183; Stip. ¶ 24.

³⁴⁹ Stip. ¶ 24.

³⁵⁰ Tr. 60-62; Stip. ¶¶ 24-25; *see also* Exs. 1, J5-A.

The parties have stipulated to the number of registered targets Mark shot in Minnesota and Florida during the years 2003 to 2017:³⁵¹

Year	Minnesota	Florida
2017	1100	5300
2016	1500	4900
2015	2100	5400
2014	1500	4500
2013	1100	5100
2012	1700	6700
2011	2900	9025
2010	2200	7000
2009	1900	7725
2008	2300	10500
2007	3000	12800
2006	6100	7300
2005	7100	6500
2004	4600	2700
2003	3300	0

Mark estimated that, overall, he was “probably shooting somewhere between 30 and 40,000 targets a year.”³⁵² Mark made the ATA All American Team every year between 2013 and 2018, initially as a Minnesota shooter, then as a Florida shooter.³⁵³

“On August 7, 2017, Mark and Sharon purchased a home located at 18132 Patterson Road in Odessa, Florida for \$1,538,000. The house is located approximately 2 miles from the Silver Dollar.”³⁵⁴ Mark’s time in Florida has increased from approximately 4 months per year before 2013,³⁵⁵ to 4½ months in 2013,³⁵⁶ to over 6 months in 2014,³⁵⁷ to between 7 and 8 months beginning in 2017.³⁵⁸

³⁵¹ Stip. ¶ 68.

³⁵² Tr. 89.

³⁵³ Tr. 96-99.

³⁵⁴ Stip. ¶ 39.

³⁵⁵ Tr. 24-25, 147.

³⁵⁶ Stip. ¶ 40.

³⁵⁷ Stip. ¶ 40.

³⁵⁸ Tr. 256.

Even this brief recapitulation demonstrates that Mark's connections with Florida have been genuine from the start; began long before his asserted change of domicile; and have increased in quantity and quality continuously and organically.

The Minnesota Supreme Court has approvingly noted that examining "the focus of [a taxpayer's] life to assess domicile is consistent with Minn. R. 8001.0300, subp. 3, and tax court precedent." *Larson*, 824 N.W.2d at 333. A focus can have both a *what* and a *where*. The *what* during Mark's later life has been competitive trapshooting. The *where* began in Minnesota, but has migrated to Florida. The unmistakable impetus underlying Mark's desire to make Florida his home, along with the slow accretion of genuine Florida connections, ameliorates any concern that Mark has cynically manipulated his residency to avoid tax obligations.³⁵⁹

A simple tally of factors for 2013 indicates 4 in favor of Minnesota (A, I, M, and T, with 2 of those only slightly favoring); and 7 in favor of Florida (B, F, J, N, O, U, and W, with 2 slightly favoring). For 2014, the figures are 3 in favor of Minnesota (I, R, and T, all slightly favoring); and 8 in favor of Florida (B, F, J, M, N, O, U, and W, with 2 slightly favoring). Mark's 2013 change of ATA affiliation from Minnesota to Florida strongly favors a Florida domicile for both years in issue (given the absolute centrality of competitive trapshooting to

³⁵⁹ There is thus no merit to the Commissioner's assertion that Mark was "obviously motivated to minimize his time and contacts with Minnesota during the years at issue to claim his domicile changed and to avoid the Minnesota income tax obligations associated with being a resident." Comm'r's Post-Trial Br. 14 n.3; *see also* Comm'r's Resp. Br. 3, 13. Mark's contacts with Florida began in 2004, only three years after he *formed* Pride Engineering, Inc. The notion that his long engagement with Florida has been part of a 10-year plan to evade the taxes that would arise upon its eventual sale in 2014 is utterly implausible. The Commissioner's charge of insincerity could be made in *every* domicile case. Moreover, the charge itself it is made possible only by the Commissioner's refusal to acknowledge factual context.

Mark testified that he decided to retire to Florida because its "weather was superior and the trapshooting availability was far superior, particularly because of the Silver Dollar shooting facility." Tr. 21. Sharon agreed: "I mean, [Mark] is in love with trapshooting. And he was able to shoot in the wintertime down there." Tr. 235. This credible testimony perfectly captures Mark's *motive* for moving to Florida.

Mark's life during this period). His 2013 acquisition of Florida health insurance likewise favors a Florida domicile for both years.

In an attempt to persuade the court that Mark's domicile did not change *during the years in issue*, the Commissioner: (1) suggests that Mark's domicile likely changed in 2017, with the purchase of the Patterson Road residence;³⁶⁰ and (2) asserts that Mark's "time in Florida during the years in issue was similar in nature to prior years."³⁶¹ This reasoning implicitly acknowledges that the real question in this case is: *When* did Mark become a Florida domiciliary? By the same token, it overemphasizes the value of the Patterson Road residence, *see Morrissey*, 1988 WL 91653, at *7 (refusing to penalize taxpayer who did not live in "an expensive home"), and ignores copious evidence that Mark's Florida contacts increased dramatically beginning in 2013.

The Zauhars contend that "[b]y 2013, Mr. Zauhar reached the tipping point in which he was more firmly rooted in Florida than Minnesota and began considering Florida to be his home."³⁶² They cite (in part) evidence of the following Florida contacts Mark had for the first time in 2013:

- Purchased and substantially renovated 17106 Target Way, residing there when in Florida (rather than in the PREV, as previously);
- Obtained a Florida driver's license (and had his Minnesota license clipped);
- Registered to vote in Florida;
- Joined the FTA (and thereby surrendered his MTA membership);
- Informed the ATA of his change in state affiliation;
- Acquired health insurance from Florida Blue Cross Blue Shield;

³⁶⁰ Comm'r's Resp. Br. 11.

³⁶¹ Comm'r's Post-Trial Br. 6.

³⁶² Appellants' Resp. Br. 16.

- Started leaving personal property in Florida whenever he departed;
- Obtained a Florida Concealed Weapon or Firearm License.

The parties have stipulated, in addition, that Mark spent more days in Florida (137) than in Minnesota (136) in 2013, and that he obtained a Minnesota nonresident hunting license. Plainly, Mark's Florida connections increased substantially in 2013 as compared with prior years.

The increase continued during and after 2014. In 2014, Mark registered and insured two vehicles in Florida and voted in a Florida election. By March 2015, he had registered two additional vehicles in Florida. The parties have stipulated that Mark spent 183 days in Florida in 2014, and 145 in Minnesota. Although Mark had continuing contacts with Minnesota during both years at issue, Minnesota law does not require a taxpayer to sever all Minnesota ties to establish a domicile elsewhere. *See, e.g., Mauer*, 829 N.W.2d at 68, 70. As we stated in *Marcotte v. Commissioner of Revenue*:

Because of long-term business and social relationships and the ownership of property in Minnesota, many ties were not broken and probably never will be broken. This is not necessary. All that is necessary is physical presence in another state with the requisite intent to make that state one's new home.

No. 4541, 1987 WL 10252, at *2 (Minn. T.C. Mar. 13, 1987); *see also Page*, 1986 WL 15695, at *7.

The Minnesota Supreme Court has explained that each domicile case “turns on its own peculiar facts and circumstances,” *Dreyling I*, 711 N.W.2d at 495, and that “the factors [must be] considered together with the tax court's judgment about the sincerity of the taxpayer's statements and purported efforts to change domicile,” *Mauer*, 829 N.W.2d at 72. Based on the entire record, we find that Mark became a Florida domiciliary in 2013 and remained one during 2014.

“To establish ‘domicile,’ one must have ‘bodily presence ... in a place coupled with an intent to make such a place one's home.’” *Sanchez*, 770 N.W.2d at 526 (quoting Minn. R. 8001.0300, subp. 2). Mark satisfied these criteria. He spent more time in Florida than

Minnesota during both years at issue; had a clear and genuine reason to make Florida his home; and demonstrated through numerous concrete actions that establishing a Florida domicile was his sincere intention. *See Mauer*, 829 N.W.2d at 67-68 (commenting that whether a change in domicile has occurred depends on “the purpose and intent of the change” (internal quotation marks and citation omitted)). In sum, by introducing the evidence discussed above, the Zauhars have rebutted “the presumption that [Mark] has not changed domicile by proving establishment of domicile in another jurisdiction.” *Sandberg*, 383 N.W.2d at 283 n.7.

Factor W, the time spent in each jurisdiction, furnishes our sole hesitation in finding that Mark had a Florida domicile in 2013. *Cf. Mauer*, 829 N.W.2d at 72-73 (commenting that the court would be “skeptical when a taxpayer spends more time in Minnesota than in his asserted new domicile”). That year he spent 137 days in Florida, only one more than the 136 days he spent in Minnesota.³⁶³ When considering whether a change of domicile has occurred, however, a court may “examine more than simply acts occurring at the time of and shortly after the taxpayer’s physical move to another state.” *Larson*, 824 N.W.2d at 332. Just as 2012 provides context for the many additional Florida contacts Mark had in 2013, so 2014 and later years provide context for considering the time Mark spent in Florida in 2013. Beginning in 2014, Mark has spent at least 6 months in Florida.³⁶⁴ Viewed in this light, 2013 must be considered the first year of a new era in Mark’s life, in which he spent more time in Florida than in Minnesota.

Although our domicile determinations are strongly supported by an analysis of the Rule’s factors (along with probative acts and declarations), it is based on no mere mechanical tallying. *See Dreyling I*, 711 N.W.2d at 495. Instead, we have attempted to fairly evaluate the manner in which each item bears on the sincerity of Mark’s announced intent with respect to domicile

³⁶³ Stip. ¶ 40.

³⁶⁴ Stip. ¶ 40; Tr. 256.

during the years at issue. Weighing all the indications, we find that beginning in 2013, Florida was “that place in which [Mark’s] habitation [wa]s fixed, without any present intentions of removal therefrom, and to which, whenever absent, [Mark] intend[ed] to return.” Minn. R. 8001.0300 subp. 2.

E. Marital And Family Presumptions

The Rule generally presumes

that the place where a person’s family is domiciled is that person’s domicile. 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.

Minn. R. 8001.0300, subp. 2.

The Commissioner contends that the Zauhars “failed to overcome the ... presumption that [Mark’s] domicile was the same as his immediate family,”³⁶⁵ asserting that spouses may acquire separate domiciles only if they *maintain physical separation*.³⁶⁶ Because the Zauhars “have a tight-knit family” and “wanted to spend their time together,”³⁶⁷ the Commissioner reasons that they *cannot* establish separate domiciles: “[H]ere they are together as a family, and the question is where -- where is their domicile as a family unit. Where is their domicile together as a family.”³⁶⁸ The Commissioner insists that the court must *not* inquire into Mark’s *actual individual intention* with respect to domicile, but should instead attribute a *collective intention* to the Zauhars as a family unit: “Their intent is viewed together, and that’s how the decision should

³⁶⁵ Comm’r’s Post-Trial Br. 2; *see also id.* at 15-16.

³⁶⁶ Tr. (May 19, 2020) at 41-44.

³⁶⁷ Tr. (May 19, 2020) at 44.

³⁶⁸ Tr. (May 19, 2020) at 45-46.

be made pursuant to the rule.”³⁶⁹ The Commissioner goes so far as to suggest that because Sharon—who continues to consider Minnesota her home³⁷⁰—spent approximately 8 months in Florida with Mark in 2017, Sharon may have become a Florida domiciliary in 2017 by virtue of a supposed *collective family intent*, her own actual intent notwithstanding.³⁷¹

We reject the Commissioner’s family-intent proposal as contrary to the language of controlling law. The governing statute defines “resident,” in part, as “any *individual* domiciled in Minnesota.” Minn. Stat. § 290.01, subd. 7(a) (emphasis added). The Rule provides that “domicile” 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.” Minn. R. 8001.0300, subp. 2 (emphasis added); *see also id.* (consistently phrasing sub-rules and presumptions in terms of a single “person”). The very presumption on which the Commissioner relies *presupposes* that the domicile of each spouse ultimately will be determined *separately*. All precedent of which we are aware treats domicile and its related intent as individual inquiries. *See, e.g., Stamp*, 296 N.W.2d at 869 (“[W]here there are definite statements of intent to make a new abode one’s home, the trier of fact may consider the acts and circumstances of that person in evaluating the sincerity of the announced intent.”).

We likewise reject the Commissioner’s view that the establishment of separate domiciles for spouses imposes on them an obligation of physical separation. Although the Rule generally presumes that spouses have the same domicile, it allows spouses who are *not separated or divorced* to establish separate domiciles by presenting “affirmative evidence” rebutting the

³⁶⁹ Tr. (May 19, 2020) at 44; *see also* Comm’r’s Post-Trial Br. 8 (asserting that the Zauhars “had shared intentions, as a couple, toward both Minnesota and Florida during the years at issue”).

³⁷⁰ Tr. 292; Stip. ¶ 3.

³⁷¹ Tr. (May 19, 2020) at 47-51; Comm’r’s Resp. Br. 7 & n.2, 11-12, 11 n.4.

presumption. Minn. R. 8001.0300, subp. 2. The Rule does state (as the Commissioner observes)³⁷² that “[w]hen 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.* We cannot agree with the Commissioner’s suggestion, however, that this *affirmative* sub-rule entails *by negative implication* that periods of cohabitation preclude the establishment of a new domicile where the law’s requirements are otherwise satisfied. *See Christianson v. Henke*, 831 N.W.2d 532, 535 n.3 (Minn. 2013) (“Virtually all the authorities who discuss the negative-implication canon emphasize that it must be applied with great caution, since its application depends so much on context.” (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012))). We have recognized that a taxpayer’s visits to his family’s Minnesota residence, and his family’s reciprocal visits to his out-of-state residence, do not defeat an otherwise valid change in domicile. *Morrissey*, 1988 WL 91653, at *7-10.

The Zauhars presented compelling evidence that, beginning in May 2010, they intended to spend their retirements in different places. The Zauhars originally planned to retire to Florida together. Their plans changed in May 2010, however, when they decided to remove LZ from the group setting and to have Sharon become her primary caretaker. Mark would still retire to Florida, as previously planned, to continue his pursuit of competitive trapshooting. The Zauhars recognized, however, that Sharon would now have to remain based in Minnesota so that LZ would have a base in Minnesota, the place the Zauhars believe will make the best home for LZ after their own deaths.

³⁷² Tr. 39-40.

The fact that the Zauhars spent so much time apart between 2004 and 2012 (between 4 and 6 months per year) verifies that they were untroubled by the physical separation that Mark's separate retirement to Florida would entail (at least while Sharon continued working).³⁷³ Although Sharon's unexpected retirement allowed the Zauhars to spend more time together during the years in issue than they had anticipated, this does not affect the strength of the evidence the Zauhars presented concerning their intention to establish and maintain separate homes.

B.S.D

³⁷³ When asked about the amount of time the Zauhars spent apart during those years, Mark testified: "A lot of people asked how we were able to do that. I think Sharon gave the best answer. It works for us." Tr. 134. Sharon testified: "I don't think it was all bad. I think there was a lot of good that came out of that." Tr. 235.