

# **ARIZONA DEPARTMENT OF REVENUE**

## **ARIZONA INDIVIDUAL INCOME TAX PROCEDURE ITP 92-1**

### **PROCEDURE FOR DETERMINING RESIDENCY STATUS**

#### **ISSUE:**

Who is an Arizona resident for Arizona income tax purposes?

#### **APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 43-102 provides that it is the intent of the Legislature to impose on each resident of Arizona a tax measured by taxable income wherever derived and to impose on each nonresident a tax measured by taxable income which is the result of activity within or derived from sources within this state.

A.R.S. § 43-104 defines the terms "resident" and "nonresident" for income tax purposes.

The term "resident" includes:

- (a) Every individual who is in Arizona for other than a temporary or transitory purpose.
- (b) Every individual domiciled in Arizona who is outside Arizona for a temporary or transitory purpose. Any individual who is a resident of Arizona continues to be a resident even though temporarily absent from Arizona.
- (c) Every individual who spends, in the aggregate, more than nine months of the taxable year within Arizona is presumed to be a resident. The presumption may be overcome by competent evidence that the individual is in the state for a temporary or transitory purpose.

The term "nonresident" means every individual other than a resident.

## LEGAL REFERENCES:

Jizmejian v. Jizmejian, 16 Ariz. App. 270, 492 P.2d 1208, (1972) in which the court discusses elements of abandoning domicile in another state and establishing domicile in Arizona.

DeWitt v. McFarland, 112 Ariz. 33, 537 P.2d 20 (1975) in which the court discusses elements of abandoning domicile in Arizona and establishing domicile in another state.

## DISCUSSION:

For Arizona income tax purposes, A.R.S. § 43-104 defines the term "nonresident" to mean every individual other than a resident.

A.R.S. § 43-104 also defines the term "resident." This section provides that every individual who is in the state for other than a temporary or transitory purpose is a resident. There is also a presumption under Arizona law that every individual who spends, in the aggregate, more than nine months of the taxable year within the state is a resident. This presumption may be overcome by competent evidence that the individual is in the state for a temporary or transitory purpose. Arizona statutes do not define the terms "temporary" and "transitory."

Arizona law further states that an individual who is domiciled in Arizona continues to be a resident even though temporarily absent from the state. Generally, domicile is the place where an individual has his true, fixed, permanent home and principal establishment and to which he has the intention of returning whenever he is absent. The term "permanent" describes that which is not merely "temporary," or a dwelling which there is no present existing intent to give up.

Generally, domicile is presumed to follow residence. However, actual residence is only one circumstance and, therefore, this presumption is not conclusive. Domicile, once established, is presumed to continue until change is shown. The burden of proof to rebut this presumption is on the person contending to the contrary.

A new residence or domicile can be acquired only by the concurrence of an intention to establish a new residence or domicile and acts evidencing such an intention. An individual may be domiciled in another state but be a resident of Arizona for income tax purposes. In order for an individual to determine whether or not he or she is an Arizona resident for income tax purposes, the statutory definitions contained in A.R.S. § 43-104 must be applied to each individual case. Therefore, the purpose and intent of an individual's presence in or absence from Arizona, as evidenced by factual circumstances, must be examined to obtain criteria upon which to base a determination.

Examples of actions which are considered in determining a person's residency are:

- (1) physical presence of an individual, and his or her spouse and children, if any, in the new locality;
- (2) registration of an automobile;
- (3) application for a driver's license or renewing or relinquishing an old one;
- (4) location of bank accounts and business connections;
- (5) purchase of a home and/or sale of an old home;
- (6) payment of personal or real property taxes;
- (7) payment of state income taxes;
- (8) registering to vote in the location of the new domicile and notifying voter registration officials in the old locality of such change of domicile;
- (9) consistent use of new permanent address on all appropriate records and correspondence.

#### **CONCLUSION:**

The question of residency for state income tax purposes cannot be answered by a general rule but depends largely on the circumstances of each case. Generally, no one single factor is controlling, but all relevant facts must be considered in determining residency.

The determination of residency is dependent on physical presence and an intent to abandon the former residence and remain in the new residence for an indefinite period of time. A new residence can only come into being when both of these criteria coexist.

Paul Waddell, Director

Signed December 28, 1992