

SECTION .3900 - NONRESIDENTS AND PART-YEAR RESIDENTS

17 NCAC 06B .3901 DEFINITION OF RESIDENT

(a) Only One Domicile. -- Domicile means the place where an individual has a true, fixed permanent home and principal establishment, and to which place, whenever absent, the individual has the intention of returning. In many cases, a determination must be made as to when or whether a domicile has been abandoned. A long standing principle in tax administration, repeatedly upheld by the courts, is that an individual can have but one domicile; and, once established, it is not legally abandoned until a new one is established. A taxpayer may have several places of abode in a year, but at no time can an individual have more than one domicile. A mere intent or desire to make a change in domicile is not enough; voluntary and positive action must be taken.

(b) Factors. -- Some of the tests or factors to be considered in determining the legal residence of an individual for income tax purposes are as follows:

- (1) Place of birth of the taxpayer, the taxpayer's spouse, and the taxpayer's children.
- (2) Permanent residence of the taxpayer's parents.
- (3) Family connections and close friends.
- (4) Address used for federal tax returns, military purposes, passports, driver's license, vehicle registrations, insurance policies, professional licenses or certificates, subscriptions for newspapers, magazines, and other publications, and monthly statements for credit cards, utilities, bank accounts, loans, insurance, or any other bill or item that requires a response.
- (5) Civic ties, such as church membership, club membership, or lodge membership.
- (6) Professional ties, such as licensure by a licensing agency or membership in a business association.
- (7) Payment of state income taxes.
- (8) Place of employment or, if self-employed, place where business is conducted.
- (9) Location of healthcare providers, such as doctors, dentists, veterinarians, and pharmacists.
- (10) Voter registration and ballots cast, whether in person or by absentee ballot.
- (11) Occasional visits or spending one's leave "at home" if a member of the armed services.
- (12) Ownership of a home, insuring a home as a primary residence, or deferring gain on the sale of a home as a primary residence.
- (13) Location of pets.
- (14) Attendance of the taxpayer or the taxpayer's children at State supported colleges or universities on a basis of residence—taking advantage of lower tuition fees.
- (15) Location of activities for everyday "hometown" living, such as grocery shopping, haircuts, video rentals, dry cleaning, fueling vehicles, and automated banking transactions.
- (16) Utility usage, including electricity, gas, telecommunications, and cable television.

(c) When Change Occurs. -- The following events indicate a change in residency:

- (1) Selling a house and buying a new one.
- (2) Directing the U.S. Postal Service to forward mail to a new address.
- (3) Notifying senders of statements, bills, subscriptions, and similar items of a new address.
- (4) Transferring family medical records to a new healthcare provider.
- (5) Registering a vehicle in a new jurisdiction.
- (6) Transferring memberships for church, a health club, a lodge, or a similar activity.
- (7) Applying for professional certifications in a new jurisdiction.

(d) Military Service. -- A legal resident of North Carolina serving in the United States Armed Forces is liable for North Carolina income tax and North Carolina income tax shall be withheld from that individual's military pay whether the individual is stationed in this State or in some other state or country. An individual who enters military service while a resident of North Carolina is presumed to be a resident of this State for income tax purposes. Residency in this State is not abandoned until residency is established elsewhere. To change residency, an individual in military service must not only be present in the new location with the intention of making it a new domicile, but must also factually establish that the individual has done so.

History Note: Authority G.S. 105-153.3(15); 105-153.4; 105-262;
Eff. June 1, 1990;
Amended Eff. August 1, 2002; July 1, 1999; June 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.