

RESPONSE: A determination of residency depends on the specific circumstances of each case. Pursuant to Regulation 2.26-51-102(9), a three prong test is used to determine whether or not a person is a resident of Arkansas. Satisfaction of any one prong is sufficient to establish residency. The first prong states that a taxpayer is a resident if domiciled in the State of Arkansas.

a) any person domiciled in the state of Arkansas. Domicile is comprised of an act coupled with an intent. A domicile is acquired by (1) physical presence at a place coinciding with (2) the state of mind (that is, intent) of regarding the place as a permanent home. A domicile arises instantaneously when these two facts occur. Every person must have one domicile but can have no more than one domicile, regardless of how many residences a person may have at any given time. A domicile, once established, continues until a new domicile of choice is legally established. An established domicile does not end by lack of physical presence alone nor by mental intent alone. The old domicile must be abandoned with the intention not to return to it. If one moves to a new location but intends to stay there only for a limited period of time (no matter how long), the domicile does not become the new location but rather remains unchanged.

In the fact situation you describe, the taxpayer is domiciled in Texas, left Texas in response to an emergency, and plans to return to Texas in the near future. She has not abandoned her Texas domicile. The second prong is whether the taxpayer has established a permanent place of abode in Arkansas.

b) [A]ny person who maintains a permanent place of abode within Arkansas and spends in the aggregate more than six (6) months of the year within Arkansas. Place of abode means a place where a person has established a permanent home, even though such person may be absent therefrom for a long period of time. A temporary home or residence would not be considered a place of abode, as there must be at least some degree of permanence. In addition, a person must actually spend more than six months of the tax year in Arkansas to fall within the scope of this provision. A person who has spent either less than six months or exactly six months in Arkansas would not fall within the scope of this provision.

Place of abode and residence are considered to mean roughly the same thing. However, domicile and residence are not considered to be synonymous. Residence denotes only an act (the act of residing), while domicile denotes an act (the act of residing) coupled with the intent that the residence be a permanent home. The distinction between domicile and place of abode is that although a person can have several homes (or places of abode) at one time, only one of those homes can be the person's domicile. The home that the person intends or considers to be their permanent home (as in home base) would be the domicile.

The taxpayer as you describe her has not established a permanent place of abode in the state. Although her stay may exceed six months, it is a temporary home or residence without the requisite degree of permanence. Therefore, she is not a resident. The final prong is only used if it is not clear if the requirements of either domicile or place of abode are met and involves looking at a number of factors. Insufficient information is provided for that analysis. However, you

should review the factors as the presence of factors supporting residency could bring the conclusions I made above into doubt. Ultimately the taxpayer's behavior is more determinative than her stated intent. A taxpayer, for instance, who registered to vote in Arkansas or obtained an Arkansas drivers license would seem to be establishing residence or even domicile in Arkansas even if they still owned residential property in Texas and stated an intent to return there. You may review the Regulation 2.26-51-102(9) at,

http://www.arkansas.gov/dfa/income_tax/ind_tax/pdf/individual_income_tax_regulations.pdf.

You are requesting information based on an anonymous client or for general information purposes, therefore, please be aware of Arkansas Regulation GR-75, which provides that a letter opinion may only be relied on by a seller if it is addressed to him or is tendered by a customer to whom it is addressed. Requests for letter opinions must specifically describe the person claiming an exemption and set forth all material facts relevant to the questioned sale or transaction. In order to receive a binding opinion you must submit a request specifically describing the person claiming an exemption, and specifically detailing that person's factual circumstances. A letter opinion may not be relied on if more than three (3) years old, but may be renewed on request.