

Kansas Administrative Regulations

Kansas Department of Revenue

Article 12.—Income Tax

92-12-4a. Resident individual.

(a) As used in this regulation, the term "Kansas resident" shall have the same meaning as that assigned to the term "resident individual" in K.S.A. 79-32,109, and amendments thereto.

(b) This subsection shall apply in determining whether a natural person is a "resident individual," as the term is defined in K.S.A. 79-32,109 and amendments thereto, on the basis that the person's domicile is within Kansas.

(1) Subject to the further conditions and requirements in this subsection, "domicile" shall mean that place in which a person's habitation is fixed, without any present intention of removal, and to which, whenever absent, that person intends to return.

(2) Each person shall have only one domicile at any particular time. Once shown to exist, a domicile shall be presumed to continue until the contrary is shown. The absence of any intention to abandon an existing domicile shall be considered to be equivalent to the intention to retain the domicile.

(A) A person who leaves that person's domicile to go into another jurisdiction for temporary purposes shall not be considered to have lost the domicile. The mere intention to acquire a new domicile, without the fact of physical removal, shall not change a person's domicile, and the fact of physical removal from a person's domicile, without the intention to remain absent, shall not change that person's domicile.

(B) If a person whose domicile is in Kansas is absent from Kansas for more than six months of the tax year, that person shall not be presumed to have lost that domicile. If a person leaves this state to accept a job assignment in another jurisdiction, that person shall not be presumed to have lost that person's domicile in this state.

(C) A person who is temporarily employed within this state shall not be deemed to have acquired a domicile in this state if, during that period, the person maintains that person's domicile outside of the state of Kansas.

(3) A person shall be considered to have established that person's domicile in Kansas on the date that the person arrives in the state for other than temporary or transitory purposes. A person shall be considered to have abandoned that person's domicile on the date that the person leaves the state without any intention to return to Kansas.

(4) Any citizen of a foreign country may acquire a domicile for Kansas tax purposes without surrendering that person's rights as a citizen of that country.

(5) Except for a person who is covered by the provisions of the soldiers' and sailors' civil relief act of 1940, 50 U.S.C. app. § 574, as amended by the servicemembers civil relief act, public law 108-189, there shall be a presumption that the place where a person's family is domiciled is that person's domicile. The domicile of a person who is married shall be the same as the person's spouse unless there is affirmative evidence to the contrary, 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 indefinitely and the person neither lives at the home in which the person's family lives nor intends to do so, then that person shall be deemed to have established a domicile separate from that person's family.

(6) If a minor child is not emancipated, the domicile of the child's parents shall be the domicile of the child. The domicile of the parent who has legal custody of the child shall be the domicile of the child.

(7) The following factors may be considered in determining whether or not a person's domicile is in this state for the tax years in question, although none of these factors shall, by itself, be a determinant of a person's domicile:

(A) The percentage of time that the person is physically present within the state of Kansas and the percentage of time that the person is physically present in each jurisdiction other than the state of Kansas;

(B) the location of the person's domicile for prior years;

(C) the location at which the person votes or is registered to vote, except that casting an illegal vote shall not establish a domicile for income tax purposes;

(D) the person's status as a student;

(E) the location of services performed by the person in the course of employment;

- (F) the classification of the person's employment as temporary or permanent;
 - (G) the change in the person's living quarters;
 - (H) the person's ownership of other real property;
 - (I) the jurisdiction in which the person has been issued a valid driver's license;
 - (J) the jurisdiction from which any motor vehicle registration was issued to the person and the actual physical location of the person's vehicle or vehicles;
 - (K) the purchase of any resident fishing or hunting licenses by the person;
 - (L) the filing by the person of a Kansas tax return, report, or application as a Kansas resident or a nonresident individual;
 - (M) the fulfillment or failure to fulfill by the person of the tax obligations required of a Kansas resident;
 - (N) the address where personal mail is received by that person and not subsequently forwarded;
 - (O) the location of the jurisdiction from which any unemployment compensation benefits are received by the person;
 - (P) the location of any school that the person or the person's spouse attends and whether resident or nonresident tuition was charged, as well as the location of the school attended by any of the person's children who are in grades K-12;
 - (Q) the representations made to any insurance company concerning the person's residence and on which any insurance policies are issued;
 - (R) the location where the person, the person's spouse, or the person's minor children regularly participate in sporting events, group activities, or public performances; and
 - (S) any other fact relevant to the determination of that person's domicile.
- (8) The following factors shall not be considered in determining whether or not a person is domiciled in Kansas:
- (A) The location of any organization to which the person makes charitable contributions; and
 - (B) the location of any charitable organization for which the person serves as a board member, committee member, or other volunteer.

(c) This subsection shall apply in determining whether a natural person is a "resident individual," as the term is defined in K.S.A. 79-32,109 and amendments thereto, based on the presumption that a natural person who spends, in the aggregate, more than six months of the taxable year within the state of Kansas is a resident individual in the absence of proof to the contrary.

(1) In counting the number of days spent in Kansas, the person shall be treated as present in Kansas on each day that the person is physically present in Kansas at any time during that day.

(2) The length of time that a person spends in Kansas during a taxable year shall not be used to determine whether the person is a resident individual if that person is deemed not to be a resident of Kansas under the soldiers' and sailors' relief act of 1940, 50 U.S.C. app. § 574, as amended by the servicemembers civil relief act, public law 108-189.

(3) The presumption that a person who spends, in the aggregate, more than six months of the taxable year within the state of Kansas is a resident individual in the absence of proof to the contrary shall be deemed to be rebutted if the person is temporarily employed within this state but maintains that person's domicile outside of the state of Kansas.

(d) Each natural person who is deemed not to be a resident of Kansas using criteria established under other statutes, regulations, or policies regarding residency shall nonetheless be deemed a resident individual if the person meets the conditions and requirements established by this regulation.

(e)(1) Each Kansas resident who moves at any time during the tax year to another jurisdiction without any intention to return to Kansas shall be considered a part-year Kansas resident for that tax year.

(2) Each person whose domicile is outside of Kansas, but who moves that person's domicile to Kansas at any time during the tax year, shall be deemed to be a part-year Kansas resident.

(Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 79-3236; implementing K.S.A. 79-32,109; effective March 24, 2006.)

***** Authenticated Kansas Administrative Regulation *****