

DRAFT Amendment to ARM 42.15.109
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42.15.109 RESIDENCY (1) As provided in 15-30-2101, MCA, an individual may be a resident for Montana individual income tax purposes if the individual is domiciled in the state or maintains a permanent place of abode in the state. Section 1-1-215, MCA, sets forth rules for determining residency, and "domiciled" is defined in ARM 42.2.304. Whether an individual is a Montana resident for Montana income tax purposes is determined in light of all facts and circumstances for the tax year in question. Residency in one state is not abandoned until it can be demonstrated by the union of act and intent that it has been established in another state. An individual's intent is determined by analyzing objective factors regarding the individual's conduct and declarations. In determining residency, more weight is given to an individual's actions than is given to the individual's subjective declaration of intent.

(2) Some, but not all, of the factors that may be considered when determining residency for Montana income tax purposes are provided below. No one factor will automatically determine residency and the order of appearance in the list below does not indicate a level of importance. Residency does not depend upon any one fact or combination of circumstances, but upon the whole, taken together, and the weight to be given to the various facts and circumstances indicative or presumptive of residency depends upon the unique evidence in each case. Factors that may be considered to determine a residency include, but are not limited to:

- (a) an individual's residency status for tax purposes in prior years;
- (b) where an individual votes or is registered to vote (although casting an illegal vote does not establish residency for income tax purposes);
- (c) where an individual holds a valid driver's license;
- (d) an individual's residency status evidenced by hunting or fishing licenses;
- (e) whether a homestead declaration has been filed on a residential dwelling owned by the taxpayer;
- (f) residency status of the individual's spouse and minor children;
- (g) whether an individual claimed residency when applying for admission or financial aid at an educational institution;
- (h) where important and valuable possessions and documents are kept;
- (i) primary address used for important mail;
- (j) jurisdiction from which any professional licenses were issued;
- (k) location of the place of worship where an individual is a member;
- (l) location of any social, fraternal, athletic organizations, clubs, or lodges in which the individual is a member;
- (m) location of the individual bank accounts or any other transactions the individual conducts with financial institutions;
- (n) location where the individual obtains professional services including, but not limited to, lawyers, accountants, dentists, primary care physicians, or other doctors;
- (o) oral or written declarations of residency evidenced by documents including, but not limited to:
 - (i) tax returns;

(ii) wills;

(iii) automotive insurance;

(iv) deeds;

(v) other insurance policies;

(vi) mortgages;

(vii) leases; and

(viii) contracts;

(p) location where an individual primarily exercises the individual's civil and political rights;

(g) location of an individual's business(es), profession(s), or occupation(s); and

(r) any additional fact or circumstances applicable to the specific situation.

(3) In order to make a determination regarding an individual's residency, the department may request information by asking the individual to respond to a residency questionnaire or similar written inquiry. Where appropriate, an individual is expected to be prepared to support the responses with contemporaneously kept records. An item with an unsupported, vague, or non-response will not be considered as supporting the individual's position regarding the individual's state of residence. Failure to respond to the department's inquiries may constitute evidence of residency in Montana.

(2) and (3) remain the same, but are renumbered (4) and (5).

(6) An individual who leaves Montana and spends any amount of time in another country does not lose the individual's status as a Montana resident until the individual can demonstrate through actions the intention of establishing citizenship (or similar status) in that country.

(7) The burden of proving that residency has been established outside of Montana generally falls on the individual. The burden of proving that residency has been established in Montana generally falls on the department.

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IMP: [15-30-2101](tel:15-30-2101), MCA

REASONABLE NECESSITY: The department proposes amending ARM [42.15.109](#) to incorporate additional information about the various aspects of residency and domicile status as they apply to individual income taxes. The proposed amendments will include a list of some of the factors that may be considered when determining an individual's state of domicile or residency status for income tax purposes. The proposed list of factors in new (2) is intended to be informative and not comprehensive. Additional factors may be considered if the situation warrants. The proposed list is not intended as a checklist or scorecard.

The amendments further outline some of the principles that are applied when making residency determinations. The principles are derived from prior rulings in cases involving residency and domicile.