

## **103 KAR 17:010. Residence.**

RELATES TO: KRS 141.010, 141.020

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue to promulgate administrative regulations to prescribe tax return filing requirements for residents, part-year residents, and nonresidents. This administrative regulation provides guidelines for determining whether an individual qualifies as a resident, part-year resident, or nonresident for Kentucky income tax purposes.

Section 1. Definitions. (1) "Domicile" means the place where an individual has established permanent residency.

(2) "Nonresident" is defined by KRS 141.010(18).

(3) "Nonresident citizen" means an individual residing in a foreign country who may file federal income tax returns as a nonresident citizen.

(4) "Part-year resident" is defined by KRS 141.010(20).

(5) "Resident" is defined by KRS 141.010(24).

Section 2. Nonresident Requirements. If any individual who has moved out of Kentucky returns to Kentucky within six (6) months from the time he had moved, it shall be construed that the removal from Kentucky was not intended to be permanent and the individual shall be considered a resident, or part-year resident during the time in which his abode may have been elsewhere. Any individual changing his domicile during a taxable year may also be required to furnish evidence of compliance with requirements of the other state with respect to taxation and qualifications as a resident citizen.

Section 3. Domicile. A domicile once obtained continues until a new domicile is acquired. Domicile is not changed by removal for a definite period or for incidental purposes. To constitute a change, there shall be intent to change, actual removal, and a new abode.

Section 4. Nonresident Citizens. An individual residing in a foreign country who may file federal income tax returns as a nonresident citizen, and who immediately prior to residing in a foreign country was domiciled in Kentucky, is presumed to be a Kentucky resident. An individual may, however, overcome this presumption by presenting sufficient evidence that the Kentucky domicile has been abandoned.

Section 5. Federal Employees. Federal employees working outside of Kentucky, but having a domicile in Kentucky are taxable as residents. Individuals, once domiciled in Kentucky, are considered Kentucky residents if a domicile has not been established outside of Kentucky. If the individual's domicile is claimed to be outside Kentucky, the requirements of Section 3 of this administrative regulation shall be met.

Section 6. Military Personnel. Under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, a member of the Armed Forces retains the domicile which he had when he entered military service. Individuals domiciled in Kentucky at the time of induction will continue to be liable for the payment of Kentucky income taxes on all income regardless of where their military services are performed. However, military personnel (usually career personnel) may change their domicile from Kentucky to another state as any other individual. Conclusive evidence shall be submitted showing that their Kentucky domicile has been aban-

done and a new domicile established outside of Kentucky.

Section 7. Reciprocity States. (1) Kentucky has reciprocal tax agreements with the states of Indiana, Illinois, Michigan, Ohio, Virginia, West Virginia, and Wisconsin. These agreements provide that salaries and wages earned in Kentucky by residents of those states are exempt from Kentucky income tax. Kentucky residents are exempt from income tax, imposed by these states, on salaries and wages earned there. The Virginia Agreement, however, applies only to taxpayers who commute daily to their employment in the nonresident state.

(2) A Kentucky resident, working in one (1) of the states listed in subsection (1) of this section shall file the required certificate of nonresidence with his employer if they wish for tax to not be withheld by that employer. That certificate is the employer's authority to exempt the employee's income from withholding. A resident of a state listed in subsection (1) of this section shall file Form K-4, Kentucky Withholding Certificate, Revenue Form 42A804, with his Kentucky employer to exempt his income from Kentucky withholding. All Kentucky residents are subject to Kentucky income tax requirements as set forth in KRS 141.020. (II-1-1; 1 Ky.R. 328; eff. 2-5-1975; 10 Ky.R. 43; eff. 8-3-1983; 45 Ky.R. 1066, 1516; eff. 1-4-2019.)