

Chapter 807: RESIDENCY

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**SUMMARY:** This rule addresses the determination and effect of an individual’s residency status with respect to Maine individual income tax.

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**.01 Definitions**

- A. 1. Nonresident.** “Nonresident” means, for individual income tax purposes, a natural person who is not a Maine “resident individual” as that term is defined by 36 M.R.S.A. §5102(5).
- B. 2. Part-year resident.** “Part-year resident” means, for individual income tax purposes, a natural person who is domiciled in Maine for less than a full taxable year and who is not a statutory resident in that year.
- C. 3. Permanent place of abode.** “Permanent place of abode” means a house, apartment, residential care facility, dwelling place, or other residence that an individual maintains as a household, whether or not that individual owns it. The term does not include a seasonal camp or cottage that is used only for vacations or a dormitory room used by a student during the school year. A place of abode is not considered “permanent” if it is maintained only during a temporary stay in Maine for the accomplishment of a particular purpose.
- D. 4. Resident.** “Resident” means, for individual income tax purposes, a natural person who is a Maine “resident individual” as that term is defined by 36 M.R.S.A. § 5102(5).

- E. 5. Safe harbor resident.** “Safe harbor resident” means a natural person who is domiciled in Maine, but who is not treated as a resident individual of Maine for income tax purposes.
- F. 6. Statutory resident.** “Statutory resident” means a natural person who spent more than 183 days in Maine during the tax year and who maintained a permanent place of abode in Maine for the entire tax year.

## **.02 General information**

- A. 1. Maine resident.** A Maine resident must pay Maine income tax on all taxable income regardless of its source. If a Maine resident is subject to income tax by another state or similar jurisdiction in another country on the same income, the taxpayer may be allowed a credit against Maine income tax for all or some of the tax paid to the other state or jurisdiction.
- B. 2. Nonresident or safe harbor resident.** A nonresident or a “safe harbor” resident of Maine must pay Maine income tax on all income from work performed in Maine. The nonresident or “safe harbor” resident must also pay Maine income tax on all other income derived from Maine sources, including income derived from business activity in Maine carried out by sole proprietorships, partnerships and S corporations, and capital gains from real or tangible property sold in Maine and income from rental of Maine property. ~~Except for certain sales of a partnership interest on or after July 1, 2005,~~ a A nonresident generally does not have to pay Maine tax on interest, dividends, alimony, pensions or other income from intangible sources, except on certain sales of a partnership interest, unless such income is from property employed in a business carried on in Maine.
- C. 3. Part-year resident.** A part-year resident of Maine must pay tax on all income for the part of the year during which the individual was domiciled in Maine. A part-year resident must also pay tax on any income derived from Maine sources during the entire year.

## **.03 Domicile status**

The word “domicile” is a common-law (i.e., judge-made law) term that the Maine courts, not the Legislature or Maine Revenue Services, have defined. Under the Maine common law, “domicile” means the place (A) where a person resides, and (B) where that person intends to remain and, whenever absent, intends to return. Thus, according to the Maine courts, domicile has two components: residence and the intent to remain or return, if absent. The intent to move in the future is not sufficient to establish domicile. Once an individual’s domicile is established in Maine, it continues here until domicile is established elsewhere. An individual alleging a change in domicile has the burden to show that domicile was established in another state or country.

Maine Revenue Services considers all of an individual’s relevant facts and circumstances allowed by Maine law when it determines where that individual is domiciled. Although the individual’s intent to remain or return is a critical factor in determining domicile, an

individual's statement as to his or her intent is not necessarily determinative. Evidence of the individual's intent may be found in many decisions made by the individual. An individual may retain the ability to make certain decisions and determine his or her domicile even though that individual is considered incapable of making, or chooses not to make, other decisions, such as health care choices or financial determinations. Actions by a person responsible for an incapacitated individual's affairs may be considered when determining the incapacitated individual's intent to remain. When a guardian has been appointed and chooses the incapacitated individual's place of abode pursuant to authority as a guardian, the intent of the guardian for the individual to remain or return to a particular location becomes ~~an important~~ a factor in the determination of the incapacitated person's domicile. Evidence of the guardian's intent may be found in relevant statements and actions.

#### **.04 Factors used in determining an individual's domicile**

All relevant facts and circumstances allowed by Maine law are considered in determining where an individual is domiciled. The following factors while not exclusive or of equal weight, may be used as evidence of domicile.

##### **A. 1. Property ownership and residence.**

- 1. ~~A.~~** Location of the individual's principal residence under the Internal Revenue Code;
- 2. ~~B.~~** Location of the individual's mailing address;
- 3. ~~C.~~** Where the individual spent the most amount of time; and
- 4. ~~D.~~** Whether the individual applied for a residential property tax exemption or related benefit ~~Homestead or Veterans property tax exemption~~ in Maine or a comparable benefit in another state.

##### **B. 2. Family and dependents.**

- 1. ~~A.~~** Whether the individual can be claimed as a dependent on another person's federal income tax return and where that other person is domiciled;
- 2. ~~B.~~** Where the individual's spouse or dependents reside;
- 3. ~~C.~~** Where the individual's dependents attend elementary and secondary school; and
- 4. ~~D.~~** Where the individual or the individual's dependents qualify for in-state college tuition.

##### **C. 3. Licenses and registrations.**

- 1. ~~A.~~** Where the individual is registered to vote;

- ~~2. B.~~ Which state issued the individual's driver's license;
- ~~3. C.~~ Where the individual's vehicles are registered;
- ~~4. D.~~ Where the individual maintains professional licenses; and
- ~~5. E.~~ Where the individual declares residency for hunting and fishing licenses.

**D. 4. Financial data.**

- ~~1. A.~~ Where the individual's active bank accounts and loans are located;
- ~~2. B.~~ Where the individual qualifies for unemployment insurance;
- ~~3. C.~~ Where the individual earns wages;
- ~~4. D.~~ Where the individual filed previous years' income tax returns;
- ~~5. E.~~ The address recorded for the individual's insurance policies, deeds, mortgages, or other legal documents; and
- ~~6. F.~~ Where the individual's safety deposit boxes are maintained.

**E. 5. Affiliations.**

- ~~1. A.~~ Where the individual's fraternal, social or athletic memberships are located;
- ~~2. B.~~ Where the individual's union memberships are maintained; and
- ~~3. C.~~ The location of a church or other house of worship of which the individual is a member.

**F. 6. Other factors.**

- ~~1. A.~~ Where the individual's personal property is located;
- ~~2. B.~~ Where the individual conducts business;
- ~~3. C.~~ The address listed for the individual in a telephone directory; and
- ~~4. D.~~ Where the individual's pets are located.

**G. 7. Exceptions.** Maine Revenue Services does not consider whether a donation was made to an organization located in or outside of Maine when making domicile determinations. Also, the geographic location of an individual's professional advisors (such as doctors, lawyers, accountants, financial advisors, and investment advisors) or the geographic location of a financial institution with an active account or loan of an individual is not considered. The geographic location of a political organization or candidate that an individual supports financially is not determinative of the individual's domicile.

**H. 8. Presumption.** If an individual is married, both that individual and the individual's spouse are presumed to have the same state of domicile, even though they may live apart for a portion of the year. This presumption can be overcome if the facts clearly show that the spouses are domiciled in different states.

**.05 Statutory residency**

Even if an individual is domiciled in another state, he or she may still be taxed as a Maine resident if that individual is a statutory resident. A statutory resident is an individual who spent more than 183 days in Maine during the tax year (any portion of a day is counted as a full day), and who maintained a permanent place of abode in Maine for the entire tax year. If an individual maintained a permanent place of abode in Maine for the entire year, but claims to have been domiciled elsewhere and not present in Maine for more than 183 days during the tax year, that individual must present adequate records to verify that more than half of the year was spent in another state. Records confirming whereabouts commonly include planners, calendars, plane tickets, canceled checks and credit card and other receipts.

**.06 Residency safe harbors**

**A. 1. Generally.** For tax years beginning on or after January 1, 2007, Maine law provides that certain individuals are not treated as resident individuals even though they are domiciled in Maine. In order to qualify for such a statutory "safe harbor," the individual must fall under either the General Safe Harbor or the Foreign Safe Harbor.

**B. 2. General safe harbor:** An individual domiciled in Maine will be treated as a nonresident if the individual:

- 1. A.** Did not maintain a permanent place of abode in Maine for the entire taxable year;
- 2. B.** Maintained a permanent place of abode outside Maine for the entire taxable year; and
- 3. C.** Spent no more than 30 days in the aggregate in Maine during the taxable year (any portion of a day is counted as a full day).

**C. 3. Foreign safe harbor:** An individual domiciled in Maine will be treated as a nonresident if:

- 1. A.** Within any period of 548 consecutive days (the "548-day period") beginning on or after January 1, 2007, the individual was present in a foreign country (or countries) for at least 450 days;
- 2. B.** During the 548-day period, the individual is not present in Maine for more than 90 days and does not maintain a permanent place of abode in Maine at which the individual's spouse (unless the spouse is legally separated) or minor children are present for more than 90 days; and

- 3. C.** During the nonresident portion of the taxable year with which or within which the 548-day period begins and during the nonresident portion of the taxable year with which or within which the 548-day period ends, the individual is present in Maine for a number of days that does not exceed an amount that bears the same ratio to 90 as the number of days contained in the nonresident portion of the taxable year bears to 548.

**.07 Resident and nonresident aliens**

Certain Maine-source income of a nonresident alien, (i.e., an individual who is not a citizen of the United States and who resides outside the United States) may be subject to Maine income tax. An individual who is a resident alien (i.e., an individual who is not a citizen of the United States but who resides in the United States) for federal income tax purposes and a Maine resident for state income tax purposes must pay Maine income tax on all income.

**.08 Military personnel**

- A. 1.** **Servicemember.** A military servicemember's legal residence does not change solely because of a change in duty assignment. The legal residence designated at the time of entry into the service remains the same until the member establishes a new legal residence. A completed DD Form 2058, "State of Legal Residence Certificate" is evidence of a change in domicile. The military income of a nonresident stationed in Maine will not be taxed by Maine, nor will income from intangible sources, such as interest and dividends. However, additional wages earned performing services at a non-military job in Maine or income from operating a business in Maine are all subject to Maine income tax.

An individual domiciled in Maine who is a member of the Armed Forces of the United States, the National Guard, or Reservists who received federal orders for active duty continues to be domiciled in Maine for income tax purposes for the period of time stationed outside of Maine. The residency safe harbors in section 5 may apply to a servicemember or spouse if eligibility requirements are met.

- B. 2.** **Spouse of a servicemember.** For tax years beginning on or after January 1, 2009, the spouse of a servicemember does not lose or acquire residency or domicile for income tax purposes when the spouse is in a state solely to be with the servicemember in compliance with the servicemember's orders. The nonresident spouse of a nonresident servicemember will not be considered a Maine resident individual if the spouse is in Maine solely to be with a servicemember who is in Maine in compliance with that servicemember's orders. Income earned from services performed in Maine by a nonresident spouse of a servicemember is not Maine-source income subject to Maine income tax if the spouse is a nonresident in Maine solely to be with a servicemember who is in Maine in compliance with that servicemember's orders.

**.09 Students**

Students generally remain residents of the state in which they were domiciled prior to attending college, even if they attend college full-time in another state. Thus, a Maine resident who attends school in another state remains a Maine resident and must pay Maine income tax on all taxable income from all sources until that individual establishes a domicile in a different state.

**.10 Application date**

This Rule applies to tax years beginning on or after January 1, 2011.

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STATUTORY AUTHORITY: 36 M.R.S.A. §112

EFFECTIVE DATE:

December 5, 2010 – filing 2010-610