



**A GUIDE TO DETERMINING A
TAXPAYER’S DOMICILE FOR
INCOME TAX PURPOSES**

SOUTH CAROLINA DEPARTMENT OF REVENUE

POLICY DIVISION

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PURPOSE

The purpose of this guide is to provide a general overview of the domicile rules for South Carolina individual income tax purposes. Since other states may have rules different from South Carolina, this guide is intended to assist taxpayers and tax professionals determine whether an individual is a South Carolina “resident” or “nonresident” and whether the individual’s income is subject to tax in South Carolina.

To accomplish this purpose, this guide:

- reviews the meaning of “domicile” as provided primarily through South Carolina case law;
- provides factors the Department considers when determining if an individual is a “South Carolina resident” or a “South Carolina nonresident” for individual income tax purposes;
- provides key principles of domicile for South Carolina income tax purposes; and
- reviews the federal provisions and special rules for domicile afforded to military servicemember’s and the servicemember’s spouse.

CAVEAT: This guide is intended to be a general overview. It does not include a discussion of all income tax domicile issues, such as income tax domicile issues for a person present in South Carolina on an immigrant or non-immigrant visa (e.g. student or work visa).

In addition, this guide does not address domicile rules and requirements for other taxes, such as the property tax domicile rules in Code Section 12-43-220(c) allowing a 4% assessment ratio for a legal residence.

DISCLAIMER

This guide is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This guide does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up to date original sources of authority. Nothing in this guide supersedes, alters, or otherwise changes provisions of South Carolina code, regulations, or Department advisory opinions.

The Department would appreciate any comments or notification of any errors. Such comments should be sent to:

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I. OVERVIEW OF SOUTH CAROLINA INCOME TAX PRINCIPLES

Questions often arise about whether an individual is a resident or a nonresident for South Carolina income tax purposes, especially if the individual has lived in another state or country during the tax year or for some years. With changes in work environment as a result of the COVID-19 pandemic, many individuals now have the ability to work from home or from a location other than the employer's place of business. This new dynamic has increased relocations to South Carolina, and away from South Carolina, on both a temporary and permanent basis. Whether an individual is a South Carolina "resident" for income tax purposes is a factual determination based largely on a person's intent to make South Carolina his home where he will remain, or return when away, as demonstrated by his own actions.¹

A South Carolina resident moving to another state or country for a temporary or indefinite time without intent of making the new place his or her home to which he or she will return when away does not change his or her domicile from South Carolina to another state or country. In such instances, the individual (although not physically present in South Carolina) remains domiciled in South Carolina and a South Carolina "resident" for individual income tax purposes and is subject to the filing requirements for South Carolina resident individuals. Likewise, a nonresident working in South Carolina or spending winter months in South Carolina does not automatically become a South Carolina resident for income tax purposes.

Note: Unlike some states that tax a person as a resident who lives in the state for a specific period of time, such as 183 days, South Carolina does not have a minimum time that must be spent in the state to be presumed a South Carolina resident for individual income tax purposes.

The determination of whether an individual is a resident or nonresident affects what income is sourced to and subject to tax in South Carolina and eligibility for certain income tax credits. South Carolina has an unusual method to compute the income of residents. Unlike most states, South Carolina does not tax residents on their worldwide income. Instead, South Carolina residents are taxed on all their personal service income, no matter where earned, but are not taxed on their worldwide (non-personal service) business income.² In contrast, nonresident individuals are only taxed on their share of personal service income earned in South Carolina, and their allocated and apportioned share of business income derived from South Carolina.³ A proportion of the applicable itemized deductions or standard deduction is allowed in computing a nonresident's South Carolina taxable income.⁴

¹ Commission Decision #89-99 (July 28, 1989) concluded that a taxpayer's actions suggested he was a resident of South Carolina and not a resident of Saudi Arabia where he intended to work for 10 years so he could qualify for the Saudi retirement plan.

² Code Section 12-6-2220(4) and (6). See also *Seward v. South Carolina Tax Commission*, 236 S.E.2d 198 (1977) and *Ellis v. South Carolina Tax Commission*, 280 S.C. 65, 309 S.E.2d 761 (1983).

³ Code Sections 12-6-1720(1) and 12-6-2220(6).

⁴ Code Section 12-6-1720(2).

In addition, to alleviate the double taxation of personal service income by more than one state, South Carolina allows resident individuals an income tax credit for taxes paid to another state on their personal service income.⁵

Note: Special domicile and taxation rules exist for a military servicemember and servicemember's spouse. (See Section VI below.)

II. STATUTORY DEFINITIONS

South Carolina Title 12, Chapter 6, "South Carolina Income Tax Act" defines the terms "resident individual," "nonresident individual," and "part-year resident." A resident individual is "an individual domiciled in this State."⁶ A nonresident individual is "an individual other than a resident individual or a part-year resident."⁷ A part-year resident is "an individual who is a resident individual for only a portion of the tax year."⁸ The term "domicile," however, is not defined in South Carolina Title 12, Chapter 6, or in other chapters of Title 12, "Taxation."

The terms "residence," "legal residence," "domicile," and "nonresident" appear in Title 12 and throughout South Carolina law, such as in the property tax, probate, divorce, and driver and hunting licenses statutes. These terms are contained in Chapters of Title 12 other than Chapter 6 (income taxes) or in other titles of the South Carolina Code, but the meaning may vary depending on the purpose and legislative intent of the section to which the term refers.⁹

Since "domicile" is not defined legislatively in our income tax statutes, case law has been primarily used to provide its meaning.

III. CASE LAW DEFINITION OF TAXPAYER'S "RESIDENCE" AND "DOMICILE"

The rules of domicile have evolved primarily from South Carolina case law.¹⁰ The term "residence" has been construed by the courts in many contexts (e.g., taxation, divorce, political office qualification, college tuition rates) and its meaning for one purpose may not be the same as that for another purpose.

⁵ Code Section 12-6-3400.

⁶ Code Section 12-6-30(2).

⁷ Code Section 12-6-30(2).

⁸ Code Section 12-6-30(3).

⁹ Code Section 7-1-25(A) defines the term "domicile" for purposes of voter identification as "a person's fixed home where he has an intention of returning when absent. A person has only one domicile." Subsection (B) provides that "[f]or voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place." Subsection (D) contains factors to consider in determining a person's intention regarding his domicile for voting purposes. This definition of domicile for voting purposes and factors regarding a person's intent reflect the general domicile principles applicable for South Carolina income tax purposes.

¹⁰Case law is sometimes referred to as common law. It refers to law developed through court decisions, rather than through statutes. *Phillips v. South Carolina Tax Commission*, 195 S.C. 472, 12 S.E.2d 13 (1940); *Gasque v. Gasque*, 246 S.C. 423, 143 S.E.2d 811 (1965).

The significance and meaning of the word “domicile” for South Carolina income tax purposes is demonstrated in three leading South Carolina Supreme Court decisions: *Phillips v. South Carolina Tax Commission*,¹¹ *Gasque v. Gasque*,¹² and *Ravenel v. Dekle*.¹³

Phillips dealt with the state of domicile of an individual living part-time in South Carolina who claimed to be a resident of Virginia. The Court determined the meaning of “domicile” for South Carolina individual income tax purposes. *Gasque* is a divorce case concerning whether a spouse had “resided” in South Carolina for at least one year prior to the commencement of the divorce action. The Court found that for purposes of the divorce statute the term “reside” is equivalent in substance to “domicile.” *Ravenel* reviewed the constitutional requirements for an individual to be a “citizen and resident” of South Carolina to be eligible for the office of South Carolina Governor. The Court discussed how domicile is determined or changed and the types of evidence used to establish a new domicile.

While *Gasque* and *Ravenel* are not income tax cases, each relies on *Phillips* and provides insight into the meaning of “domicile.” Each of these cases is discussed in detail below.

a. *Phillips v. South Carolina Tax Commission*

Mr. Phillips, the taxpayer, claimed to be a resident of, and domiciled in, Virginia. He owned a furnished apartment and farm in Virginia, paid Virginia poll tax and income tax exclusive of income earned and reported in South Carolina, and voted in Virginia. He spent about six months each year in South Carolina with his family in connection with a non-continuous lumber business in Jasper County, South Carolina. Mr. Phillips filed his South Carolina income tax returns annually and reported only income earned by him in South Carolina.

During the years at issue, South Carolina law imposed an income tax “upon every individual residing in the State of South Carolina.”¹⁴ The statute provided that this tax shall be levied, collected, and paid annually with respect to the entire net income of the taxpayer. The Department asserted that the taxpayer was “residing” in South Carolina and that South Carolina taxes were due on his entire net income, including interest and dividends, regardless of their source. Mr. Phillips argued that he was not subject to the South Carolina income tax imposed on every individual “residing” in South Carolina since he was a resident of, and domiciled in, Virginia.

The issue before the South Carolina Supreme Court was whether the taxpayer was a “resident” of South Carolina. The Court held that the word “residing” as used in the income tax acts refers to legal residence which is equivalent to domicile. The Court concluded that the legal residence or domicile of Mr. Phillips was Virginia. The Court reasoned that the lumber business is essentially transient in character (depending on the supply of available timber which is cut in the course of a few years) and Mr. Phillips’ stay in South Carolina from time to time in connection with this business, while extending over a considerable period, has been of a temporary nature,

¹¹ 195 S.C. 472, 12 S.E.2d 13 (1940).

¹² 246 S.C. 423, 143 S.E.2d 811 (1965).

¹³ 265 S.C. 364, 218 S.E.2d 521 (1974).

¹⁴ SC Code of 1932, Section 2437.

and was never coupled with any intention of making South Carolina his home or to abandon his domicile in Virginia, where he continued to live a portion of each year.¹⁵

In reaching its conclusion, the Court discussed the term “legal residence” and “domicile” and found:

The phrase “legal residence” is sometimes used as the equivalent of domicile”; and it seems to me that in connection with the matter of the assessment of an income tax no sound distinction can be drawn between “legal residence” and “domicile.”

The term “domicile” means the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning. The true basis and foundation of domicile is the intention, the *quo animo*, of residence. (Citations omitted.)

* * * *

The question of a person’s place of residence is to be determined by his own intention, accompanied by his own voluntary act. (Citations omitted)

Note: Although *Phillips* is a 1940 decision, the general principles announced in *Phillips* continue to be cited by courts, the South Carolina Attorney General’s Office, and the Department as general principles of domicile.

b. *Gasque v. Gasque*

Mr. Gasque, a native of South Carolina, was employed by the United States Government in Washington, D.C. for about 14 years, and for most of this time lived with his family in and around Washington, D.C. He was born, raised, educated, and married in South Carolina. He was admitted to the South Carolina Bar and to practice before the United States Supreme Court, both upon affidavits that he was a “legal resident” of South Carolina. Mr. Gasque contended that his absence from South Carolina was solely because of his employment and that he never had any intention of abandoning his domicile in South Carolina.

The issue before the Court was whether a spouse had “resided” in South Carolina for at least one year prior to the commencement of the divorce action. Based on the evidence, the Court concluded that South Carolina was the domicile of Mr. Gasque and that he never intended to abandon it living outside of the State in connection with his employment.

¹⁵ The Court concluded that it was of no special significance that Mrs. Phillips had been a member of the Board of Trustees of a school district in Jasper County (she was not legally qualified to hold the position since she was not a qualified elector) or that their son graduated from high school in South Carolina and was registered as a resident receiving in-state tuition at the Citadel.

In reaching its conclusion, the Court reasoned that:

1. The term “reside” as used in the statute was equivalent in substance to “domicile.” Citing the definition of “domicile” used in *Phillips*, the Court held that the question of domicile is largely one of intent to be determined under the facts and circumstances of each case.
2. A temporary absence from one’s domiciliary state solely because of government work or employment does not effect a change of domicile within the meaning of divorce laws, in the absence of clear proof of an intent to abandon the old domicile and acquire a new one.

c. *Ravenel v. Dekle*

Mr. Ravenel intended to run for governor of South Carolina believing that he met the South Carolina constitutional eligibility requirements of a candidate. Mr. Ravenel claimed to be a citizen and resident of South Carolina since birth. He maintained that his recent 15½ year absence from South Carolina was of a temporary nature and for the purpose of attending school and receiving professional training outside of South Carolina. He never planned to maintain a permanent presence in New York and he intended to return to South Carolina.

The Constitution of South Carolina reads in part: No person shall be eligible to the office of Governor who...shall not have been... “a citizen and resident” of this State for five years next preceding the day of the election. Mr. Ravenel contended that the terms “resident” and “citizen” are synonymous and that the word resident in the Constitution requires only that he have been domiciled in South Carolina.

The Court ruled that “citizen” and “resident” were not the same, but that the term “citizen” was based on domicile. “‘Resident,’ in the domiciliary sense is embodied within the term ‘citizen’. It follows therefore that if the words ‘and resident’ be construed as meaning anything other than a requirement of actual physical residence such language would be surplusage.” The Court concluded both that Mr. Ravenel had not been a resident (i.e., he had not met the Constitutional requirement of actual physical residence in South Carolina to be eligible to be elected to the office of the Governor) for the requisite amount of time and that he had not been domiciled in South Carolina during his absence.¹⁶

The Court reviewed Mr. Ravenel’s dwelling places, voting record, income tax returns filed, club memberships, car registration, and addresses on documents and determined the overwhelming weight of evidence showed that he was an actual resident of, domiciled in, and a citizen of New York.

¹⁶ The definition of “resident” differs for purposes of eligibility to run for office of South Carolina Governor and for state income tax purposes. An individual can be considered a South Carolina “resident” for income tax purposes without being physically present in South Carolina during the tax year. The case is relevant for tax purposes because of its principles used in establishing “domicile.”

In reaching its conclusion, the Court set forth the following principles to be used in establishing “domicile” and stated:

1. In *Gasque* our Court had occasion to define the word domicile as follows:

And (t)he term ‘domicile’ means the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning. Such is a generally accepted definition of the term.

2. It is generally recognized, as we did in *Gasque*, that intent is the most important element in determining the domicile of any individual.
3. It is also elementary, however, that any expressed intent on the part of a person must be evaluated in the light of his conduct which is either consistent or inconsistent with such expressed intent.
4. Other elementary propositions which require no citation of authority are that a person can have only one domicile at a time; one maintains his prior domicile until he establishes or acquires a new one.
5. A person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment.

IV. DEPARTMENT INTERPRETATIONS AND ADMINISTRATIVE LAW COURT DECISIONS

Based on case law, it has been the Department’s longstanding position that the term “domicile” for South Carolina income tax purposes means that place where a person has his true, fixed, and permanent or indefinite home and principal establishment and to which, whenever he is absent therefrom, he has the intention of returning.¹⁷

Thus, the Department considers an individual to be domiciled in South Carolina (even if he or she lives outside of South Carolina) and subject to the “resident” income tax laws of South Carolina where he or she has:

- a. the intention to maintain South Carolina his or her permanent or indefinite home and
- b. the intention to return to South Carolina when away.

Generally, once an individual has established domicile in South Carolina, his or her domicile remains in South Carolina until the individual establishes a new domicile in another state or country. Further, once an individual’s domicile is established in a state, it can be difficult to change to another domicile. A change in domicile to another state is not made simply by

¹⁷ See Commission Decision I-D-359 citing the definition of domicile given in *Phillips v. South Carolina Tax Commission* 195 S.C. 472, 12 S.E.2d 13 (1940).

establishing a person has moved out of South Carolina. A resident individual who moves outside of South Carolina who does not intend to return to South Carolina must establish a new domicile in another state or country to be considered a “nonresident.” If a new place of domicile is not established, then South Carolina remains the individual’s state of domicile and will continue to be even after many years of living outside of South Carolina. For example, a person who moves to a foreign country for work is still considered to be domiciled in South Carolina unless he becomes a permanent resident of the foreign country.¹⁸ Likewise, a long-haul truck driver who left South Carolina and lived in his or her tractor trailer without establishing a fixed, permanent residence is still considered to be domiciled in South Carolina.

Similarly, the Department considers that an individual has established a new domicile outside of South Carolina and is no longer subject to the income tax laws of South Carolina as a “resident” where it can be shown that he or she has:

- a. abandoned his or her old domicile in South Carolina (i.e., left South Carolina with no intent to return),
- b. actually established a new permanent and fixed place of abode in another state or country,
- c. severed connections with South Carolina, and
- d. actually moved to another state or country with the intention of residing in that state or country for a permanent or indefinite time and will return to that place when temporarily away.

Whether an individual is domiciled in South Carolina or not is a factual determination based largely on a person’s intent. Evidence of a person’s intent includes his or her express statements, as well as his or her conduct. When a person’s intent and conduct are inconsistent, the person’s actions may be more telling as to his true intent.¹⁹ Nevertheless, a person’s actions may be less meaningful when the circumstances suggest the actions are easily reversible and were carried on deliberately to influence future decisions about domicile.

¹⁸ See Commission Decision I-D-359. Regulation 117-620.1, addressing when a South Carolina resident changes domicile to a foreign country, states: “Where it can be shown that an individual has become domiciled in a foreign country and, therefore, no longer a resident of this state and has severed all connections with this state and has clearly shown his or her intention to reside abroad permanently with no intention of returning to South Carolina, such individual is not subject to the income tax laws of this state.”

¹⁹ Commission Decision #89-99 (July 28, 1989) concluded that a taxpayer’s actions suggested he was a resident of South Carolina and not a resident of Saudi Arabia where he intended to work for 10 years so he could qualify for the Saudi retirement plan.

Some of the factors the Department considers when determining if an individual is a “South Carolina resident” or a “South Carolina nonresident” for individual income tax purposes are listed below. This list is not intended to be all inclusive.

1. Property:

- Address listed on legal documents, such as deeds, wills, and contracts
- Location of residences
- Location of owned or rented real property, businesses, motor vehicles, and boats²⁰
- Qualification for the reduced 4% property tax assessment ratio on a primary residence²¹

2. Employment and Financial Information:

- Location of employment (state or country where wages are earned)
- Whether income taxes or other taxes dependent on domicile have been paid in the state the person claims domicile
- Address listed on federal, state, or local tax returns
- Address listed on bank statements, bills, tax notices
- Location of bank accounts

3. Licenses and Registrations:

- Place registered to vote
- Address on car registration
- Address on driver’s license
- Location of professional or trade licenses

4. Family:

- Where spouse and other family members reside
- Location claimed to be the domicile in prior years
- If claimed by another as a dependent, the state where that person resides

5. Affiliations:

- Location of civic ties
- Place of worship
- Location of social memberships
- Maintaining a public library card or other privileges that require residency
- Business connections and relationships
- Location of professional services used (lawyer, doctor, etc.)

²⁰ S.C. Op. Atty. Gen. (June 12, 2009). This opinion concerned whether a taxpayer’s legal residence was South Carolina for purposes of the special 4% property tax assessment ratio and the homestead exemption. The taxpayer lived in South Carolina, was registered to vote in South Carolina, and had two vehicles registered in South Carolina. The taxpayer also had a Winnebago and a car registered in Florida that remained in Florida for use on vacations. The opinion concluded that vehicle registrations in Florida can be a factor to consider in determining domicile for purposes of the homestead exemption available for a taxpayer 65 and older, but this fact is not conclusive. All factors indicating the intent of the taxpayer must be considered in determining domicile. Because the determination of domicile is factual, the Attorney General opined that it could not make a definitive determination. Such a determination must be made by a court.

²¹ Code Section 12-43-220(c).

While there is no single factor that determines a person's domicile, the Department considers certain factors upon review of the facts and circumstances of each situation. The determination is based on a comparison of the amount of time spent in the states, types of activities engaged in by the taxpayer in the two states, and on the connections the taxpayer retains with the original state of domicile.

As stated earlier, the list of factors is not exhaustive and the factors alone do not necessarily indicate the domicile of an individual. The true test of domicile is the intent of the individual. Although the existence of certain documents, property, information, and affiliations can provide some indication of a person's domiciliary intentions, the absence of certain elements does not necessarily indicate a lack of domiciliary intent. Several South Carolina Administrative Law Court cases involving residency and domicile are discussed below to illustrate the factors and principles used to determine domicile. While some of these cases are property tax cases and are not the subject of this guide, these principles apply equally to South Carolina income tax.

a. *F. Abbott Brown v. Charleston County Assessor*²²

Mr. and Mrs. Brown purchased coastal property in South Carolina in 1997 while residents of, and domiciled in, Ohio. Mr. Brown retired in 1998 and separated from his wife in 1999 and moved out of the couple's Ohio home to the South Carolina home with intent of making it his permanent residence. He joined a local social club, established a local bank account, and made South Carolina the center of his business and social activities. Because of vehicle ownership and insurance matters entangled in the divorce proceedings, he did not register a vehicle, obtain a driver's license, or register to vote in South Carolina during 2000. He filed a South Carolina income tax return for 2000 that listed an Ohio mailing address. While the return included a nonresident schedule because of his wife's residency in Ohio, that schedule clearly listed Mr. Brown as a full year South Carolina resident.

The sole issue before the South Carolina Administrative Law Court was whether the taxpayer was domiciled in South Carolina during the year in question (2000) and therefore entitled to receive a lower property tax assessment on his home (4% of the fair market value of the property instead of 6%). For purposes of the assessment ratio allowed pursuant to Code Section 12-43-220(c), a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

The Assessor denied the application based on his conclusion that the taxpayer failed to meet the burden of proof that he had established domicile in South Carolina because, among other things, he did not register a vehicle, register to vote, or obtain a driver's license in South Carolina in 2000 and because his 2000 South Carolina income tax return contained a nonresident schedule,

²² 03-ALC-17-0515 (June 16, 2004).

listed an Ohio mailing address, and was prepared by an Ohio accountant. The Court disagreed and stated:

In denying Taxpayer's refund request, the Assessor relied too heavily upon Taxpayer's lack of certain documents. While Section 12-43-220(c)(2)(iv) sets forth a list of factors to be considered by the Assessor as proof of eligibility for the 4% assessment ratio, including the applicant's South Carolina income tax returns and South Carolina motor vehicle registrations, this list is not exhaustive and these factors are not necessarily dispositive of the question of domicile. As noted above, the true test of domicile is the intent of the putative domiciliary, not any particular set of documents. And, while the existence of certain documents can provide some indication of the domiciliary intentions of an individual, the lack of those documents need not necessarily indicate a lack of domiciliary intent. A life-long South Carolina resident who chooses not to drive or vote might not obtain a driver's license or voter registration, but would still certainly be considered a domiciliary of South Carolina. Similarly, even though Taxpayer's separation and divorce proceedings limited his ability to secure certain documentation indicating residence in South Carolina until 2001, Taxpayer established his domicile in South Carolina in 1999 by moving to his Kiawah home with the intent to make it his permanent residence.

b. *D. Bradlee Hodson v. Charleston County Assessor*²³

Mr. Hodson, the taxpayer, claimed to be a resident of, and domiciled in, South Carolina during 2000 when he filed an application with the county assessor to receive a lower property tax assessment on his home (4% instead of 6%). He owned a South Carolina home on the coast since 1993 and rented it out until 1999. In 1997, he surrendered his university professorship and CPA practice in Maine. In 2000, he considered South Carolina his domicile, became president of the condominium regime, volunteered at a local hospital, and filed a South Carolina income tax return. In 2001, he obtained a South Carolina driver's license, registered his vehicle in South Carolina and registered to vote.

The issue before the South Carolina Administrative Law Court was whether the taxpayer was a legal resident of South Carolina during 2000 and therefore entitled to receive a lower property tax assessment on his home (4% instead of 6%). The statute²⁴ provides that the owner-applicant must provide proof of his domicile to the assessor. Such proof includes, *but is not limited to*:

- (A) A copy of the owner-occupant's most recently filed South Carolina individual income tax return;
- (B) Copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;
- (C) Other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

²³ 01-ALJ-17-0286 (October 30, 2001).

²⁴ Code Section 12-43-220(c)(2)(iv).

The county assessor's office requires that an application be accompanied by proof of residency in one of four forms: voter registration, vehicle registration, a South Carolina driver's license, or a filed South Carolina tax return. Because the taxpayer provided a copy of his electronically filed return that was unsigned and undated, the assessor concluded the taxpayer was not a legal resident and domiciliary of South Carolina in 2000. It denied the application. The Court disagreed and determined the taxpayer was a legal resident and domiciliary of South Carolina during the year in question and entitled to receive the 4% legal residence classification for 2000.

In reaching its conclusion, the Court stated:

I cannot find that the redacted copy of Taxpayer's 2000 South Carolina Income Tax Return is somehow insufficient to satisfy the proof of residency requirement of Section 12-43-220(c)(2)(iv). Taxpayer prepared his own 2000 Return and filed it electronically. Therefore, a signed original from which to make a copy does not exist. Further, Taxpayer testified that, as a CPA licensed in this State, he would never claim to have filed a South Carolina Return when in fact he had not. Finally, given Taxpayer's community involvement in the year 2000, from holding office in his regime association to volunteering at a local hospital, I find that Taxpayer's intent to make the Property his domicile is reflected in his actions, despite his tardiness in properly registering his vehicle or obtaining a South Carolina Driver's License.

Additional Decisions: Several recent Administrative Law Court decisions involving property taxes demonstrate that intent of the taxpayer is paramount in determining whether the taxpayer is domiciled in South Carolina and that the presence or absence of certain factors is not determinative as to a taxpayer's intent. See, *Richland County Assessor v. Herrera*, 18-ALJ-17-0006-CC (October 9, 2018); *Godhwrawala v. Barnwell County Assessor*, 18-ALJ-17-0395-CC (February 25, 2019); and *Begum v. Florence County Assessor*, 18-ALJ-17-0198-CC (October 2, 2019) appeal docketed No. 2019-001800 (S.C. Ct. App. October 25, 2019).

c. *Floyd v. South Carolina Department of Revenue*²⁵

Ms. Floyd, the taxpayer and a native of South Carolina, claimed to be domiciled in Wyoming in 2008. Following graduation from the University of Mississippi in December 2007, Ms. Floyd moved to Wyoming to start a career in event planning and to be with friends. While searching for an event planning job, Ms. Floyd worked hospitality jobs during the winter and summer seasons in Wyoming and had earned income in Wyoming in 2008 and a portion of 2009. Ms. Floyd did not file a South Carolina income tax return for 2008 or 2009. She did not get a Wyoming driver's license because she was not aware that she was required to since her South Carolina license was not up for renewal and her vehicle was registered in her father's name. She never registered to vote in South Carolina or Wyoming, and while she did not own property in Wyoming, she did pay rent, earned wages, and had a bank account. Ms. Floyd contended that she intended on starting a life and career in Wyoming, but because of an economic recession, she was forced to

²⁵ 15-ALJ-17-0458-CC (February 11, 2016) *aff'd per curiam* 2019 WL 141503 (S.C. Ct. App. January 9, 2019).

look for work elsewhere. In May 2009, Ms. Floyd moved from Wyoming to Charleston, South Carolina to work for an event planning business and continues to live in Charleston.

During the 2008 tax year at issue, the Department asserted that some of her 2008 federal tax forms showed both South Carolina and Wyoming addresses. The address on her 2008 federal return is her father's address in Spartanburg, South Carolina. The Department requested a copy of Ms. Floyd's Wyoming driver's license, Wyoming voter registration card or vehicle registration as proof she was a permanent resident of Wyoming in 2008.

The issue before the South Carolina Administrative Law Court was whether Ms. Floyd was a resident of South Carolina during the 2008 tax year, and required to file a 2008 South Carolina tax return, and pay taxes on her Wyoming earnings. The Court concluded that Ms. Floyd had no intention to return to South Carolina after college and intended her move to Wyoming to be permanent. Although she filed South Carolina tax returns for years prior to 2008 and for subsequent years after moving back to South Carolina, the Court found that the evidence presented by the Department did not dispute Ms. Floyd's testimony of her intent.

In reaching its conclusion, the Administrative Law Court noted that the South Carolina Income Tax Act does not define "domicile" and quoted language from *Ravenel v. Dekle*, quoting *Gasque v. Gasque*). In *Ravenel*, the Court stated:

[I]ntent is a most important element in determining the domicile of any individual. It is also elementary, however, that any expressed intent on the part of a person must be evaluated in the light of his *conduct* which is either consistent or inconsistent with such expressed intent. Other elementary propositions which require no citation of authority are that a person can have only one domicile at a time; one maintains his prior domicile until he establishes or acquires a new one. A person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment. (Citations omitted)

Additional Decisions: For other recent Administrative Law Court decisions where the Court considered some of the factors listed above in determining whether taxpayers were domiciled in South Carolina for South Carolina income tax purposes, see *Gamble v. South Carolina Department of Revenue*, 14-ALJ-17-0273-CC (March 30, 2015) and *Stacklehouse v. South Carolina Department of Revenue*, 20-ALJ-17-0318-CC (April 14, 2020).

V. RESIDENCY AND DOMICILE KEY PRINCIPLES – SUMMARY

Some key principles of domicile for South Carolina income tax purposes are summarized below.

- One Domicile. A person can have only one domicile at a time; one maintains his or her prior domicile until he or she establishes or acquires a new one. A person's domicile is not always the state where he or she is presently living.

- Residence. A person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same time.²⁶ A person's state of residence is often the same as the person's state of domicile. The type of residence does not matter; the residence can be a rental home, a room, or a friend's home. No specified length of time is required to establish a place of residence in a new place; the act and intent and not the duration of residence are determinative.²⁷
- Intent. Intent is usually the most important element in determining the domicile of any individual. One of the essential elements to make a particular place as one's domicile is an intention to make the place a home in fact and to remain permanently, or for an indefinite time, in such place.
- Conduct. Any expressed intent on the part of a person must be evaluated in the light of his or her conduct which is either consistent or inconsistent with such expressed intent. When conduct and expressed intent are inconsistent, the person's actions are often more telling as to his or her true intent. Nevertheless, a person's actions may be less meaningful when the circumstances suggest the actions are easily reversible and were carried on deliberately to influence future decisions about domicile.
- Change of Domicile. Once a domicile is established, domicile remains in that state until the person establishes a new domicile in another state (or country). Thus, an individual's mere presence in another location will not change his or her domicile, even if he or she has disposed of his or her home in the first location. To lose domicile in South Carolina an individual must acquire a legal domicile elsewhere. A new domicile is acquired by choosing a new domicile and actually residing there with the intent that it is the individual's principal and permanent residence. The intent to change domicile must be unqualified and not conditioned on a future event, such as finding a permanent job or acceptable housing. The intention to return at some indefinite, future time to a former domicile, commonly referred to as a "floating intention," does not destroy the new place of domicile. If a person has actually moved to a new abode, with the intention of remaining there for an indefinite time and establishing it as a place of fixed present domicile, that place is deemed to be the person's domicile, notwithstanding he may have a floating intention to return to his or her former domicile at some future time.
- Absence. A domicile (e.g., South Carolina), once established, is not lost by an absence from it for months or even years, for purposes of business or pleasure or the like, if during the absence there exists an intent to be absent from South Carolina merely temporarily or an intent to resume residence in South Carolina following the completion of the purpose of the absence.
- Spousal Presumption. Generally, one spouse is presumed to have the same state of domicile as the other spouse. However, a spouse can establish his or her own domicile separate from the other spouse (e.g., by evidence of legal separation or by other evidence adequate to show

²⁶ Further, it is possible for more than one state to assert that a person is domiciled in their state for income tax purposes.

²⁷ *Nagy v. Nagy-Horvath*, 273 S.C. 583, 257 S.E.2d 757 (1979).

that the other spouse actually resides in another place and intends for that place to be a home to which he or she would return when away).

- **Burden of Proof.** Generally, the burden of showing a change of domicile is on the party asserting the change.

VI. MILITARY SERVICEMEMBER AND SERVICEMEMBER’S SPOUSE – SPECIAL DOMICILE RULES

The domicile rules for both a military servicemember and the servicemember’s spouse differ somewhat from the general principles discussed in the above sections.

A servicemember has a “state of domicile” for purposes of state income tax and withholding tax when he or she enters military service, a military “home of record”²⁸ to indicate the state a person was living in when he or she joined or re-enlisted in the military, and a permanent duty station (the location where the military has assigned the servicemember). The question of domicile for income tax purposes is simplified for a servicemember under the Servicemembers Civil Relief Act, a federal law that provides a range of benefits and protections to military servicemembers. Special domicile rules also exist for a servicemember’s spouse in accordance with the Servicemembers Civil Relief Act. Like a civilian, a servicemember can change his or her state of domicile as circumstances warrant, based largely on his or her intentions. However, simply changing a military form does not change a servicemember’s domicile. The discussion below summarizes the domicile rules applicable to a military servicemember and a servicemember’s spouse.

a. Federal Servicemembers Civil Relief Act, Military Spouses Residency Relief Act, and Veterans Benefits and Transition Act

The Servicemembers Civil Relief Act, 50 U.S.C. Section 4001 reads, in part:

(a) Residence or domicile²⁹

(1) A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) Spouses –

(A) In general

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any

²⁸ The term “home of record” does not have any tax implications.

²⁹ The Federal Act uses the terms “domicile” and “resident” or “residency” interchangeably.

tax jurisdiction of the United States solely to be with the servicemember in compliance with servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.³⁰

(B) Election

For any taxable year of the marriage, the spouse of a servicemember may elect to use the same residence for purposes of taxation as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.³¹

b. Military Servicemember's Domicile – Regulatory Definition

South Carolina Regulation 117-640.2, "Legal Residence When Military Personnel is Domiciled in a Foreign Country,"³² reads:

The [Servicemembers Civil Relief Act] protects the rights of U.S. Armed Forces personnel, restricting the servicemember's liability for state income tax to his or her state of domicile. Domicile is defined legally as "that place where [an individual] has [his or her] true, fixed, and permanent home and principal establishment and to which, whenever [he or she] is absent therefrom, [he or she] has the intention of returning". A residence, on the other hand, generally is defined as a "factual place of abode" at a particular time.

A member of the armed forces who entered military service while domiciled in this state will be presumed to be a resident of South Carolina, for tax purposes, unless the servicemember submits evidence that he or she has established legal residence in another state and abandoned domicile in this state.

Based on the above regulation, an individual who entered military service while domiciled in South Carolina is presumed to be a South Carolina "resident" taxpayer for income tax purposes unless such individual submits evidence that a new domicile has been established in another state and that the individual's domicile in South Carolina has been abandoned. Likewise, an individual who entered military service while domiciled in a state other than South Carolina is presumed to be a South Carolina "nonresident" taxpayer for income tax purposes unless such individual has established domicile in South Carolina and has abandoned his or her former domicile. This is true even if the nonresident servicemember is domiciled in a state that does not impose an individual income tax, such as Texas or Florida.

³⁰ This provision was added by the Military Spouses Residency Relief Act in 2009.

³¹ This provision was added by the Veterans Benefits and Transition Act in 2018.

³² The title to this regulation, "Legal Residence When Military Personnel is Domiciled in a Foreign Country," is incomplete. It is the Department's opinion that the regulation also applies to military personnel domiciled outside of South Carolina.

c. Servicemember's Establishment of a New Domicile

South Carolina Regulation 117-640.1, "Military Pay, Non-Service Income, and Income Earned by Military Spouses," provides guidance to determine if a servicemember has established a new domicile. The regulation reads, in part:

3. Establishment of New Domicile: There is nothing in the [Servicemembers Civil Relief Act] or in the South Carolina statutes which would prevent a servicemember from changing his or her legal residence. To effect a change of legal residence, however, there must not only be an intention of making the new location the domicile of the servicemember, but also there must be the factual establishment of a domicile in the new location.

The establishment of a permanent residence (or domicile) in a new state ordinarily requires physical presence of the person in the state long enough to establish evidence of having taken up residence in the state. Some of the tests or factors to consider in determining such permanent residence (or domicile) include the following:

- (a) Place of birth.
- (b) Permanent residence of parents.
- (c) Family connections, close friends.
- (d) Address given for military purposes.
- (e) Payment of state bonus (in most cases when a state pays a bonus to a servicemember, the servicemember must be a permanent resident to be eligible).
- (f) Civic ties, church membership, club or lodge membership.
- (g) Bank account or business connections.
- (h) Payment of state income taxes.
- (i) Continuous car registration and driver's license.
- (j) Listing of "legal" or "permanent" address on Federal tax returns.
- (k) Voting by absentee ballot.
- (l) Occasional visits or spending one's leave "at home."
- (m) Ownership of a home.
- (n) Execution of approved certificates or other statements indicating permanent residence.
- (o) Expression of intention.

Our administrative policy is in accord with the military services and the courts, including Federal courts, which, when arbitrating disputes over residency, have consistently held that a legal residence (or domicile) is not abandoned until a definite residence is established elsewhere.

d. Servicemember's Spouse Domicile – Special Rules under the Federal Act

The rules for determining a military servicemember's spouse's domicile under the Servicemembers Civil Relief Act differ from the rules for determining a servicemember's domicile. The general domicile principles for a servicemember's spouse are provided below.

In 2009, the Military Spouses Residency Relief Act³³ was enacted and amended the Servicemembers Civil Relief Act to allow a spouse to retain a domicile other than the state in which the spouse is living, if the spouse is living in the state solely to be with the servicemember serving in compliance with military orders and the servicemember and the spouse have the same domicile. In 2018, the Veterans Benefits and Transition Act³⁴ was enacted and further amended the Servicemembers Civil Relief Act to allow the spouse to elect to use the same domicile as the servicemember, regardless of the date of the marriage.³⁵ If the election is made, the spouse's domicile is deemed to be the same as the servicemembers.

For additional information and examples regarding the Department's interpretations of the Servicemembers Civil Relief Act regarding a servicemember's spouse's domicile for income tax purposes as it applies in South Carolina, see SC Revenue Ruling #21-10, "Military Servicemember Spouse – Domicile and Taxation."

³³ P.L. 111-97 (November 11, 2009).

³⁴ P.L. 115-407 (December 31, 2018).

³⁵ The election is effective for tax years beginning on or after January 1, 2018. Upon marriage, the spouse may elect the servicemember's domicile for the entire tax year.