

2000 RESIDENCY LAWS, TERMS, AND RESIDENCY CONCEPTS

RSTM 2100	Definition of Resident
RSTM 2200	Definition of Temporary or Transitory
RSTM 2300	Seasonal Visitors, Tourists, and Guests
RSTM 2400	Presumption of Residency
RSTM 2500	Definition of Domicile
RSTM 2600	Domicile v. Residency
RSTM 2700	Definition of Nonresident
RSTM 2800	Definition of Part-Year Resident
RSTM 2900	Military Personnel

2100 DEFINITION OF RESIDENT

R&TC Section 17014(a) defines "resident" as:

- Every individual who is in this state for other than a temporary or transitory purpose; and
- Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

Under this definition, an individual may be a resident of California although not domiciled in California, and, conversely, may be domiciled in California without being a resident of California. Residency determines what income is taxable by California (CCR Section 17014).

The theory behind California residency law is to define the class of individuals who should contribute to the support of this state (CCR Section 17014).

R&TC Section 17014(b) provides a special rule for certain United States Government officials and their spouses. If those individuals have a California domicile, we will consider their absences from this state as temporary or transitory. They remain California residents. This rule applies to the following persons:

- Any elected U.S. official.
- Anyone on the staff of a member of the U.S. Congress.
- Any presidential appointee, subject to Senate confirmation, other than military and Foreign Service career appointees.

R&TC Section 17014(c) provides that any individual who is a resident of California remains a resident even though temporarily absent.

2200 TEMPORARY OR TRANSITORY PURPOSE

CCR Section 17014(b) provides a detailed discussion of the meaning of "temporary or transitory purpose." According to this regulation, the determination of whether or not an individual is in this state for temporary or transitory purposes depends to a large extent upon the facts and circumstances of each particular case.

Generally, we consider an individual to be in California for a temporary or transitory purpose, and therefore a nonresident of California, if he or she is:

- Simply passing through this state.
- Here for a brief rest.
- Here for a vacation.
- Here for a short period to complete a particular transaction, perform a particular contract, or perform a particular engagement.

Example 1

James and Janice are domiciled in Minnesota where they have maintained their family home for seven years. James works for a state agency in Minnesota. In October 2005, James took a six-month leave of absence to become a temporary consultant for a California company. James and Janice moved to Los Angeles, CA in October 2005, where they rented an apartment and opened a checking account. Their home in Minnesota was left vacant and they retained their Minnesota bank accounts. They stayed in California from October 2005, to April 2006, and returned to Minnesota in April 2006.

Determination:

James and Janice were in California for a short period in order for James to complete a particular engagement as a temporary consultant. James and Janice are nonresidents of California because they were in California for a temporary or transitory purpose.

An individual will be considered to be in California for other than temporary or transitory purposes, and therefore a California resident, if he or she is in this state:

- To recuperate from injury or illness for a relatively long or indefinite period.
- For a business purpose which will require a long or indefinite period to accomplish.
- For employment in a position that may last permanently or indefinitely.
- For retirement with no definite intention of leaving shortly.

Example 2

Bob is domiciled in Ohio and has lived there for 50 years. Two years ago Bob developed a serious medical condition. His doctor told him to live in California until he recovers. The illness may last for several years. Bob took his doctor's advice and moved to California two years ago.

CALIFORNIA FRANCHISE TAX BOARD

Determination:

Bob is in California for an indefinite period in order to recuperate from an illness. He is a California resident because his stay in California is not for a temporary or transitory purpose.

CCR Section 17014(b) provides that the state with which a person has the closest connections during the taxable year is the person's state of residence. In the Appeal of Richard L. and Kathleen K. Hardman, 1975-SBE-052, August 19, 1975, the Board of Equalization held that the connections which a taxpayer maintains in this and other states are important objective indications of whether presence in or absence from California is for a temporary or transitory purpose.

In the Appeal of Stephen D. Bragg 2003-SBE-002, May 28, 2003, the Board of Equalization included the following list of factors which, while not exhaustive, inform taxpayers of the type and nature of connections the Board of Equalization and the Franchise Tax Board find informative when determining residency:

- The location of all of the taxpayer's residential real property, and the approximate sizes and values of each of the residences.
- The state wherein the taxpayer's spouse and children reside.
- The state wherein the taxpayer's children attend school.
- The state wherein the taxpayer claims the homeowner's property tax exemption on a residence.
- The taxpayer's telephone records (i.e., the origination point of taxpayer's telephone calls).
- The number of days the taxpayer spends in California versus the number of days the taxpayer spends in other states, and the general purpose of such days (i.e., vacation, business, etc.).
- The location where the taxpayer files his tax returns, both federal and state, and the state of residence claimed by the taxpayer on such returns.
- The location of the taxpayer's bank and savings accounts.
- The origination point of the taxpayer's checking account transactions and credit card transactions.
- The state wherein the taxpayer maintains memberships in social, religious, and professional organizations.
- The state wherein the taxpayer registers his automobiles.
- The state wherein the taxpayer maintains a driver's license.
- The state wherein the taxpayer maintains voter registration and the taxpayer's voting participation history.
- The state wherein the taxpayer obtains professional services, such as doctors, dentists, accountants, and attorneys.
- The state wherein the taxpayer is employed.
- The state wherein the taxpayer maintains or owns business interests.
- The state wherein the taxpayer holds a professional license or licenses.

- The state wherein the taxpayer owns investment real property.
- The indications in affidavits from various individuals discussing the taxpayer's residency.

It is particularly relevant to determine whether the taxpayer substantially severed his or her California connections upon departure and took steps to establish significant connections with the new place of abode. It is also necessary to determine whether the connections in California were maintained in readiness for his or her return. See the Appeal of Richard L. and Kathleen K. Hardman, *supra*.

Whether a person was in California for other than a temporary or transitory purpose must be determined by examining all of the facts. Mere formalisms such as changing voting registration to another state or statements to the effect that the taxpayer intended to be a resident of another state are not controlling. See the Appeal of Tyrus R. Cobb, 1959-SBE-014, March 26, 1959.

Note that retention of some contacts such as bank accounts and a driver's license may only be a reflection of the taxpayer's past and may not be inconsistent with an absence for other than temporary or transitory purposes. See the Appeal of Richard L. and Kathleen K. Hardman, *supra*.

2300 SEASONAL VISITORS, TOURISTS, AND GUESTS

CCR Section 17014(b) provides that an individual whose presence in California does not exceed an aggregate of six months within a taxable year and who is domiciled without the state and maintains a permanent abode at the place of his domicile will be considered as being in this state for temporary or transitory purposes. However, he or she must not engage in any activity or conduct within this state other than that of a seasonal visitor, tourist, or guest.

The following connections with California will not, by themselves, cause a seasonal visitor, tourist, or guest to lose his or her status as such:

- Owning or maintaining a home.
- Opening a bank account for paying personal expenses.
- Having membership in local social clubs.

Example 1

Bill and Sue lived and worked in North Dakota for 20 years until their retirement in the summer of 2005. Beginning the winter of 2005, Bill and Sue spend four months each year in California. They spend the remaining eight months in North Dakota. While in North Dakota, they live in a home they have owned since 1995. They hold valid North Dakota driver's licenses, are registered to vote in North Dakota, and maintain North Dakota bank accounts. Bill and Sue also own a California home, which they use while in California. They also opened a California checking account for their personal expenses and are members of a California country club. While in California, they do not engage in any California business activities.

Determination:

Bill and Sue are considered to be seasonal visitors, in California for temporary or transitory purposes. Therefore, they are nonresidents of California.

2400 PRESUMPTION OF RESIDENCE

R&TC Section 17016 states: "Every individual who spends in the aggregate more than nine months of the taxable year within this state shall be presumed to be a resident. The presumption may be overcome by satisfactory evidence that the individual is in the state for a temporary or transitory purpose."

Note that R&TC Section 17016 merely provides a presumption of residence. The presumption can be overcome. For example, in the Appeal of Edgar Montillion Woolley, 1951-SBE-005, July 19, 1951, the Board of Equalization ruled that the taxpayer was in California for a temporary or transitory purpose even though he was in California for more than nine months during the year. The decision was based on the fact that during his stay in California, Mr. Woolley lived in a hotel on a weekly basis and his departure was delayed because of illness and a studio strike.

CCR Section 17016 provides that presence within California for less than nine months does not constitute a presumption of nonresidency. On the contrary, a person may be a California resident even though not in this state during any portion of the year.

2500 DEFINITION OF DOMICILE

Domicile is an integral part of the definition of resident. An individual domiciled in California and absent from the state for a temporary or transitory purpose is considered to be a California resident. An individual's domicile also determines whether income received by a husband or wife is community or separate income.

CCR Regulations Section 17014(c) defines the term "domicile" as the place where an individual has his or her true, fixed, permanent home and principal establishment. It is the place to which, whenever absent, he or she has the intention of returning. It is the place in which a person has voluntarily fixed his or her habitation and the habitation of his or her family. It is the place where a person has the present intention of making a permanent home, until some unexpected event shall occur to induce him or her to adopt another. It is not a place where a person is living for a mere special or limited purpose.

As stated by the California Court of Appeal, "domicile" is the one location with which, for legal purposes, a person is considered to have the most settled and permanent connection. It is the place where they intend to remain and to which, whenever they are absent, they have the intention of returning. See *Whittell v. Franchise Tax Board*, 231 Cal.App.2d 278 (1964).

An individual can have only one domicile at a time. If an individual has acquired a domicile at one place, the individual retains that domicile until another is acquired elsewhere.

A California domiciliary leaving the state retains his or her California domicile as long as he or she has the definite intention of returning here. This is true regardless of the length or reason of the absence. An individual domiciled in California who leaves the state loses his or

CALIFORNIA FRANCHISE TAX BOARD

her California domicile at the moment he or she abandons any intention of returning to California and locates elsewhere with the intention of remaining there indefinitely.

The concept of domicile involves not only physical presence in a particular place, but also the intention to make that place one's home. See the Appeal of Anthony J. and Ann S. D'Eustachio, 1985-SBE-040, May 8, 1985.

In order to change one's domicile, a person must actually move to a new residence and intend to remain there permanently or indefinitely. See *Noble v. Franchise Tax Board* 118 Cal.App. 4th 560 (2004).

The burden of proving the acquisition of a new domicile is on the person asserting that domicile has been changed. See the Appeal of Frank J. Milos, 1984-SBE-042, February 28, 1984.

Example 1

Adam, who is domiciled in Illinois, comes to California on business, but intends to return to Illinois as soon as his business in California is completed. He maintains a California home while in California and stays in California for 11 months.

Determination:

Adam retains his Illinois domicile. His stay in California is for a limited purpose.

Example 2

Mark moved from Alaska to California in October 2000, to begin a permanent job. He sold his home in Alaska and purchased a home in California. He moved all his personal belongings to California, opened a California bank account, and obtained a California driver's license. He has no intention of returning to Alaska.

Determination:

Mark became a California domiciliary in October 2000, when he moved to California. He came to California with the intention to remain here indefinitely with no fixed intention of returning to Alaska.

Example 3

Allen and his wife Ellen were both born and raised in California. Upon graduation from a California college, Allen obtained employment in Los Angeles, CA. In 1999, Allen was sent to France for a one-year assignment. Ellen remained at their home in California with their two children. While in France, Allen rented an apartment and joined a local soccer league. He returned to California in 2000.

Determination:

Allen remained a California domiciliary during his absence. He did not sever his ties with California and the ties established with France did not show that he intended to remain there permanently.

2600 DOMICILE V RESIDENCY

Domicile and residency are not synonymous. California distinguishes them as two separate concepts. For income tax purposes, residency determines what income is taxable to California. Domicile is an important component of residency and determines whether income is split between spouses.

Domicile is the place where an individual has his or her true, fixed, permanent home and principal establishment (CCR Regulations Section 17014(c)). Domicile requires both physical presence in a particular locality and the intent to make this locality one's permanent abode. Residence is any factual place of abode of some permanency that is more than a mere temporary sojourn. See *Whittell v. Franchise Tax Board*, 231 Cal.App.2d 278 (1964).

An individual can have only one domicile at any given time, but can have several residences. See *Whittell v. Franchise Tax Board*, supra.

The key distinction between domicile and residency is intent. A new domicile is acquired by the actual change of residence in a new place of abode, coupled with the intention to remain there either permanently or indefinitely without any fixed or certain purpose to return to the former place of abode. (*Appeal of Robert J. and Kyung Y. Olsen*, 1908-SBE-134, October 28, 1980.) A determination of residence cannot be based solely upon the declared intention of the parties, but must have its basis in objective facts. (*Appeal of Nathan H. and Julia M. Juran*, 1968-SBE-004, January 8, 1968.) In determining residency, voluntary physical presence is a factor of greater significance than the mental intent or outward formalities of ties to another state. See *Whittell v. Franchise Tax Board*, supra.

Frequently, a person's domicile and residence are the same physical location. See *Whittell v. Franchise Tax Board* supra. However, a person's domicile and residence may not be the same. See the *Appeal of Warren L. and Marlys Christianson*, 1972-SBE-022, July 31, 1972. An individual may be a resident although not domiciled in this state and, conversely, may be domiciled in this state without being a resident. (CCR Section 17014 and the *Appeal of Terance and Brenda Harrison*, 1985-SBE-059, June 25, 1985.)

2700 DEFINITION OF NONRESIDENT

R&TC Section 17015 defines "nonresident" as:

- Every individual other than a resident.

Therefore, if an individual is not a resident, he or she is a nonresident.

If the spouse and children of a California nonresident are in this state for other than a temporary or transitory purpose, they are residents of California.

For taxable years beginning on or after January 1, 1994:

R&TC Section 17014(d) states that an individual who is domiciled in this state but is absent from this state for an uninterrupted period of at least 546 consecutive days (18 months) under an employment-related contract shall be considered outside the state for other than a temporary or transitory purpose and is a nonresident of California. A taxpayer's return to California for up to 45 days during the tax year will be disregarded in determining the 546 consecutive days. This definition applies to a spouse accompanying the taxpayer.

This definition does not apply if:

- The individual or spouse has income from intangibles in excess of \$200,000 in any taxable year the employment related contract is in effect.
- The principal purpose of the individual's absence is to avoid taxes.

If the provisions of R&TC Section 17014(d) are not met:

When a California domiciliary works outside the State, his or her absence will be considered as being for other than a temporary or transitory purpose if the work is expected to last a long, permanent, or indefinite period of substantial duration. See the [Appeal of Anthony V. and Beverly Zupanovich](#), 1976-SBE-002, January 6, 1976. The fact that a foreign assignment ends sooner than expected does not require a conclusion that the assignment was for a temporary or transitory purpose. See the [Appeal of Jeffrey L. and Donna S. Egeberg](#), 1985-SBE-075, July 30, 1985 and the [Appeal of William G. and Susan G. Crozier](#), 1992-SBE-005, April 23, 1992. Permanent departure is not required. The taxpayer only needs to be absent for other than a temporary or transitory purpose. See the [Appeal of Basil K. and Floy C. Fox](#), 1986-SBE-071, April 9, 1986.

2800 DEFINITION OF PART-YEAR RESIDENT

R&TC Section 17015.5 (applicable for taxable years beginning on or after January 1, 2002) defines "part-year resident" as a taxpayer who meets both of the following conditions during the same taxable year:

- Is a resident of California during a portion of the taxable year.
- Is a nonresident of California during a portion of the taxable year.

2900 MILITARY PERSONNEL

R&TC Section 17022 defines "military or naval forces of the United States" and "armed forces of the United States" to include all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. Members of the Marine Corp are included as Navy personnel. The terms also include the Coast Guard. Members of such forces include commissioned officers and personnel below the grade of commissioned officer.

Pursuant to the Servicemembers Civil Relief Act (50 U.S.C. Appen. Section 571), R&TC Section 17140.5(c) provides:

- Nonresident service members who come to California under military orders do not become a resident solely because of such orders.

A service member is usually domiciled in the state from which he or she entered the service. Military personnel who are California residents and assigned a homeport in California remain residents while at sea. See FTB Pub 1032 – *Tax Information For Military Personnel*.

If a service member establishes a California domicile while stationed in California, the military compensation is taxable. If a service member files a declaration with the military

CALIFORNIA FRANCHISE TAX BOARD

showing California as the legal residence, we treat the declaration as presumptive evidence of California residence. A change of "home of record" does not necessarily change a service member's state of residence.

According to R&TC Section 18521 (formerly Section 18402), a married couple may file jointly or separately when either spouse is an active member of the armed forces of the United States.

These special rules apply to military personnel only. They do not apply to civilian employees of the military.