

Or. Admin. Code § 150-316-0025 - Definition: "Resident"

(1) For purposes of ORS 316.027(1):

(a) "Domicile" means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile at a given time. It continues as the domicile until the person demonstrates an intent to abandon it, to acquire a new domicile, and actually resides in the new domicile.

Factors that contribute to determining domicile include family, business activities and social connections.

Example 1: Ron maintains a home in Oregon and works in Oregon. He purchased a summer home in Nevada and each year thereafter spent about three or four months in that state. He continued to spend six or seven months of each year in Oregon. He continued to maintain his home and his social, club and business connections in Oregon, but established his bank accounts in Nevada. The months not spent in Nevada or Oregon he spent traveling in other states or countries. Ron is domiciled in Oregon and is taxed as a resident of Oregon because he has not demonstrated intent to abandon his Oregon domicile nor has he shown an intent to make Nevada his permanent home.

(b) "Permanent place of abode" means a dwelling place permanently maintained by the taxpayer, whether or not

owned by the taxpayer, and generally includes a dwelling place owned or leased by the taxpayer's spouse. To constitute a permanent place of abode, the taxpayer must maintain a fixed place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. It is distinguishable from "domicile" in that an individual may have several residences (or abodes), but only one domicile, at any given time.

(A)Rented or leased premises. A person is deemed to have a permanent place of abode even in rented premises, which he or she is free to leave at will, but from which the person has no present intent or desire to change. Factors that contribute to permanence include the amount of time spent in the locality, the nature of the place of abode, activities in the locality and the taxpayer's intentions with regard to the length and nature of the stay.

(B)Other residential property. Generally, residential property, such as a house, condominium, or apartment, is not considered a permanent place of abode if the individual never uses the property as a dwelling. For example, if the taxpayer acquires residential property for investment or rental purposes, as the result of an estate settlement, or as part of a settlement in a divorce proceeding, and the property is never used by the taxpayer or the taxpayer's family, the property is not considered a permanent place of abode for the taxpayer. For purposes of this rule, family includes the taxpayer, the taxpayer's spouse, and lineal ascendants and descendants of the taxpayer. If the property is used during the tax year by the taxpayer, even if for just a day, and also used by the taxpayer's family for a sufficient period of time to create a well-settled physical connection, then it is generally deemed to be a

permanent place of abode for the taxpayer. However, use of the residential property by a family member will generally not be attributed to the taxpayer if the residential property is rented to the relative for fair rental value in an arm's-length transaction or if the taxpayer never uses the property as a dwelling during the tax year at issue.

(C)*Vacation home.* A camp or cottage that is suitable for and used only for vacations is not a permanent place of abode. A dwelling that does not contain facilities ordinarily found in a dwelling, such as facilities for cooking and bathing, is generally not considered a permanent place of abode. A second home that contains all the amenities found in a primary residence does not constitute a camp or cottage even if it is located in a vacation area. Therefore, a second home that contains cooking and bathing facilities and is suitable for year-round living may constitute a permanent place of abode even though used primarily for vacations or on weekends.

(D)*Temporary stay.* A place of abode, whether in Oregon or elsewhere, is not deemed permanent if it is maintained only during a temporary stay of short duration for the accomplishment of a particular purpose.

Example 2: Wayne is a long-haul truck driver for an Oregon company. His work requires that he travel throughout the United States. He is domiciled in Oregon but does not maintain a permanent place of abode in Oregon. Wayne spends less than 31 days in Oregon during the year. Wayne's only residence is in his truck, which has a sleeper unit, closet and refrigerator. Except for two weeks vacation each year, Wayne stays in any given locale only temporarily and only for the purpose of delivering or picking up a load. Because Wayne does not

maintain a permanent place of abode elsewhere, he is taxable as a resident of Oregon.

Example 3: Douglas has lived and worked in Oregon all his life. On January 1, he retired, sold his personal residence, and began traveling throughout the United States. He has not established a new domicile outside of Oregon nor does he intend to give up his Oregon domicile. Because Douglas does not maintain a fixed place of abode over a sufficient period of time to create a well-settled physical connection with a given locality, he is considered not to have a permanent place of abode elsewhere. Thus, Douglas is taxed as an Oregon resident.

Example 4: James is domiciled in Oregon. After retiring, James sold his Oregon home and purchased a recreational vehicle (RV). James rents space year-round at an RV park in Arizona where he spends 7 to 9 months each year. James spends the remainder of his time traveling in the United States, including Oregon, but he does not remain in any particular locality more than thirty days. James is considered to have a permanent place of abode in Arizona, as his stay at the Arizona RV park constitutes the maintenance of a fixed place of abode over a sufficient period of time to create a well-settled physical connection with that locality. James is taxed as a nonresident as long as he does not establish a permanent place of abode in Oregon and he spends less than 31 days in this state.

(E)*Military personnel*. For purposes of this rule, an individual serving in the military is considered to have a permanent place of abode elsewhere during the time the individual resides outside of Oregon.

(2) For purposes of ORS 316.027(1)(a)(B), "temporary or transitory" means that a person's stay in Oregon is not permanent and is not expected to last indefinitely.

Generally, an individual who is domiciled elsewhere and who is simply passing through this state on the way to another state or country, is here for a brief rest or vacation, or to complete a particular transaction that requires presence in this state only for a short period, is treated as being in this state for temporary or transitory purposes, and is not considered a resident by virtue of physical presence here. Whether a person's stay is temporary or transitory depends to a large extent upon the facts and circumstances of each particular case.

Example 5: Mark and Kim are domiciled in Minnesota. They maintain their family home there. Each October they come to the Oregon coast and stay through April, spending more than 200 days here during the year. Originally they rented an apartment or house for the duration of their stay. Three years ago they purchased a house in Oregon. The house is either rented or put in the charge of a caretaker from May to October. Mark has retired from active control of a Minnesota business but still keeps office space and nominal authority in it. Mark and Kim belong to clubs in Minnesota, but none in Oregon. Mark and Kim have no business interest in Oregon. Mark and Kim are not taxed as Oregon residents because their presence here is temporary or transitory.

Example 6: Juan is domiciled in Illinois. Following graduation from high school, he moved to Oregon to attend college. Juan works in Oregon during the summer and returns to Illinois to visit family several times each year. Juan is taxed as a nonresident as his stay in Oregon is for a temporary or transitory purpose.

(a) *Temporary employment in Oregon.* An individual domiciled in another state may be assigned to work in Oregon for a fixed and limited period, after which the person is to return to the permanent location. If the

person takes an apartment or other housing in Oregon during this period, the individual is not deemed a resident, even though the individual spends more than 200 days of the taxable year in Oregon, because the person's stay in Oregon is temporary or transitory. The individual will be taxable as a nonresident on income from Oregon sources.

Example 7: Don, a computer consultant, is domiciled in New York where he owns a home in which his family lives and where he keeps the bulk of his personal belongings. He votes in New York, maintains bank accounts there and returns to his home whenever possible. He accepts a position in Oregon with a large corporation with the expectation that the work will take one and one-half years. He spends virtually the entire time in Oregon, living in a house built by the employer, where his wife and family join him in the summer. He intends to return to New York when the job is completed. During this period he will be taxed as a nonresident, even though he is in the state more than 200 days during the year, because he is in the state for a temporary or transitory purpose.

(b) Indefinite employment in Oregon. If a work assignment in Oregon is not for a fixed and limited period, the person is not considered to be present in Oregon for a temporary or transitory purpose. If a permanent place of abode is maintained in Oregon, and the person is in this state for more than 200 days during the tax year, then the person is taxed as a resident of Oregon.

Example 8: Fran is domiciled in California. In January, she accepts a transfer to her employer's Medford, Oregon office and rents an apartment there. The length of her assignment is indefinite, although Fran believes she may

be able to obtain a promotion and transfer back to California within three years. Fran's husband and children remain at the California residence and Fran returns there on weekends and holidays. Fran is taxable as a resident of Oregon because she maintains a permanent place of abode in Oregon, spends more than 200 days here, and her presence is not temporary or transitory.

Example 9: Li is domiciled in Idaho and works as a sales person for a manufacturing company. She spends her workweek traveling in a motor home in Oregon meeting with existing and potential customers. She returns to her Idaho home when it is convenient, but may be in Oregon for 2 or 3 months at a time. Li's assignment is indefinite and thus she is not in Oregon for a temporary or transitory purpose. However, she does not maintain a permanent place of abode in Oregon, as she does not remain in any place for a sufficient period of time to create a well-settled physical connection with a given locality. Li is taxed as a nonresident.

Notes

Or. Admin. Code § 150-316-0025

1-69; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-316.027; Renumbered from 150-316.027(1), REV 60-2016, f. 8-15-16, cert. ef. 9/1/2016

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