



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

(501) 371-2007

OPINION NO. 86-45

February 27, 1986

The Honorable Wayne Dowd
State Senator
P.O. Box 2631
Texarkana, Arkansas 75501

Dear Senator Dowd:

This is in response to your opinion request wherein you posed the following inquiry:

If an individual resides within the City of Texarkana, Arkansas, for more than six months of the taxable year, and then becomes a non-resident, can he avail himself of the "Border City" exemption for the payment of State Income Tax for the entire year?

The "Border City" exemption to which you refer is found in Ark. Stat. Ann. §84-1946 et seq (Repl. 1980). The exemption extends to residents of cities such as Texarkana, Arkansas and Texarkana, Texas. As you state in your letter, however, the Border City Income Tax Exemption Act does not provide a definition of resident and therefore you directed this office's attention to Ark. Stat. Ann §84-2002(9) (Repl. 1980) which provides as follows:

The word "resident" means natural person and includes for the purpose of determining liability to the tax imposed by this Act upon or with reference to the income of any taxable year, any person domiciled in the State of Arkansas and any other person who maintains a permanent place of abode within the State and spends in the aggregate more than six (6) months of the taxable year within the State. (emphasis supplied)

In attempting to respond to your inquiry, this Office has contacted attorneys with the Income Tax Section of the Revenue Division of the Department of Finance Administration. No written policy or opinion of that office specifically addresses the question which you have raised.

Senator Wayne Dowd
February 13, 1986
Page 2

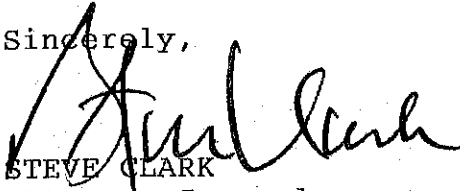
The income tax definitions and in particular, the term "resident" were at issue in Shinn v. Heath, 259 Ark. 577, 535 S.W.2d 57 (1976). In a lengthy discussion of the term, the Supreme Court cited with approval various cases indicating that definition of residence depends on the context of the statute and must be determined on a case by case basis. However, fundamentally, they stated domicile is an encompassing term inclusive of residence and indicating not only a physical presence, but an intent to remain in one location.

Of course, §84-2002(9) defines a resident as a person "domiciled" in the State of Arkansas and also any person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of the taxable year within the state.

The Court in Shinn, supra, read the statute in a manner designed to carry out its purpose and determined that "place of abode" implies a degree of permanence, citing Cravens v. Cook, 212 Ark. 71, 204 S.W.2d 909 (1947).

As a matter of law, exemptions from taxation are to be narrowly construed. However, a person who has met the definitional requirement of §84-2002(9) (Repl. 1980) is entitled to claim the exemption. Therefore, if a person has (1) maintained a permanent place of abode in Texarkana and (2) has spent in the aggregate more than six months of the taxable year in Texarkana, he may claim the Border City exemption.

Sincerely,


STEVE CLARK
Attorney General

JSC:ldc

cc: Tim Leathers
Revenue Legal Counsel
Ledbetter Building
Room 209
Little Rock, AR 72203