

February 17, 1950

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Willsow  
K. D. Lockwood, Director  
Income Tax Division  
Arizona State Tax Commission  
Phoenix, Arizona

Dear Mr. Lockwood:

You have orally requested that we clarify our opinion of February 10, 1950, advising you that the Income Tax Act of 1933 applied to a civilian employed by the United States Government performing his services for and earning his wages from said Government upon a federal military reservation at Whipple, Arizona. The factual situation concerned a doctor residing upon said reservation, maintaining his home there. We had no occasion in the opinion to discuss the application of the Act to non-residents.

We quoted Section 73-1502 ACA 1939, it providing:

"Every person residing within the state, or in case of death his personal representative, shall pay a tax on net income, and every non-resident shall pay a tax on such net income as is derived from property located or business transacted within the state. Said tax shall be assessed levied and collected as hereinafter provided."

and quoted also the definition of "residing within the state" in Section 73-1504 ACA 1939, to-wit:

" \* \* \* 'residing within the state' shall mean or refer to a natural person domiciled within the state. A person living within the state, or who spends a period aggregating not less than nine (9) months of the income year, within the state, shall prima facie be deemed to be domiciled within the state. \* \* \* "

This definition cannot, of course, be construed so as to limit the application of the Income Tax Act only to those persons who spend a period aggregating not less than nine months of the income year within the State. The statutory test is "residing within the state", meaning a domicile within the state. Living within the state (for any period) or spending an aggregate period of nine months within the state is by the definition made merely initial evidence of such domicile.

K. D. Lockwood, Director  
Income Tax Division

Page two  
January 17, 1950

Section 73-1517 ACA 1939 concerns computation of taxes and insofar as pertinent provides:

"(c) Liability to taxation for income which follows the residence of a recipient shall, in the case of persons other than corporations who move into or out of the state within the year, be determined for such year by the ratio of time which the residence of the taxpayer within the state bears to the entire calendar or fiscal year.

(d) Deductions for personal exemptions, as provided in section 14 (§ 73-1514), shall be prorated on the basis of the time of residence within and without the state. The net income of the taxpayer assignable to the state for such year shall be used in determining the income subject to assessment."

Thus, the tax is computed as to the taxable income of persons who move into or out of the state within the taxable year in accordance with the ratio of time which the residence of the taxpayer within the state (for whatever the length of time) bears to the entire taxable year and deductions are prorated on the basis of time of residence within and without the state.

We hope this will remove any possibility that our opinion of February 10, 1950 will be misinterpreted.

Very truly yours,

FRED O. WILSON  
Attorney General

RICHARD C. BRINEY  
Assistant Attorney General

RCB:lh