

Qualifications For The Rural Opportunity Zone (ROZ) Credit

(Updated 2015)

In accordance with Kansas law, 77 counties in Kansas have been designated as Rural Opportunity Zones (ROZ). Certain out-of-state taxpayers who relocate to these counties and meet certain criteria are provided an income tax credit which is available until tax year 2021. (See K.S.A. 2012 Supp. 79-32,267, which effectively grants an income tax exemption for certain qualifying years.) For additional information, see Notice 11-03, Notice 13-13, Notice 14-07, Notice 15-09, and our publication Questions and Answers Regarding Rural Opportunity Zones.

Resident individual taxpayers will receive as a credit against their tax liability an amount equal to their income tax liability when the resident individual:

1. Establishes domicile in a rural opportunity zone prior to January 1, 2021, and was domiciled outside Kansas for five or more years immediately prior to establishing their domicile in a rural opportunity zone in Kansas;
2. Had Kansas source income (as defined by K.S.A. 79-32,109(h)) of less than \$10,000 in any one year for five or more years immediately prior to establishing their domicile in a rural opportunity zone in Kansas; and
3. Was domiciled in a rural opportunity zone during the entire taxable year for which such credit is claimed.

For many individuals it should be possible to determine whether you qualify for the ROZ credit by answering four simple questions. These questions are set forth, below, along with an explanation of the meaning of your answers.

If you have trouble answering these questions, or if your answers don't clearly determine whether you qualify for the ROZ credit, you will likely need a better understanding of the concept of "domicile" or the definition of "Kansas source income". A brief explanation of the concept of "domicile" and the definition of "Kansas source income" is provided below, and by understanding these you should be able to determine how to answer the questions and whether you will qualify for the ROZ credit.

Please note this publication is only intended to provide you with a guideline for determining whether you qualify for the ROZ credit. The final decision as to whether you qualify for the ROZ credit will be made by the Department of Revenue after reviewing the facts of your particular situation.

QUESTIONS

1. Did you establish your domicile (the place you call home) in a rural opportunity zone county prior to January 1, 2021? Yes No
2. Was your domicile (the place your called home) outside of Kansas for five or more years immediately prior to establishing your domicile in a rural opportunity zone in Kansas? Yes No
3. Did you have Kansas source income (as defined by K.S.A. 79-32,109(h)) during the five years immediately prior to establishing your domicile in a rural opportunity zone in Kansas?? Yes No
4. Did you live in the state of Kansas during the entire calendar year for which you are claiming the credit? Yes No

If you answered Question 1 “Yes”, Question 2 “Yes”, Question 3 “No”, and Question 4 “Yes”, you meet the requirements for the Rural Opportunity Zone credit.

If you answered Question 1, Question 2, or Question 4 “No”, you **do not** qualify for the Rural Opportunity Zone credit.

If you answered Question 3 “Yes” you may meet the requirements for the Rural Opportunity Zone credit, but there are additional considerations. For additional information regarding Question 3, see Definition of Kansas Source Income, below.

DETERMINING DOMICILE IN KANSAS

In order to qualify for the Rural Opportunity Zone (ROZ) credit, a person must establish their domicile in a rural opportunity zone prior to January 1, 2021, and must have been domiciled outside Kansas for five or more years immediately prior to establishing their domicile in a rural opportunity zone in Kansas. In addition, they must be domiciled in a rural opportunity zone during the entire year for which the credit is claimed. Because of these requirements, it is important to understand what “domicile” means.

Domicile Defined

For Kansas income tax purposes, the term “domicile” is explained in Kansas Administrative Regulation (K.A.R.) 92-12-4a. As stated in the regulation, “domicile” means “that place in which a person’s habitation is fixed, without any present intention of removal, and to which, whenever absent, that person intends to return.” Simply stated, a person’s domicile is the place they call home.

Basic Rules of Domicile

When discussing domicile, certain basic rules apply. These rules, which are set forth in K.A.R. 92-12-4a, include the following:

One Domicile at a Time

Each person shall have only one domicile at any particular time. Once shown to exist, a person's domicile shall be presumed to continue until the contrary is shown. The absence of any intention to abandon an existing domicile shall be considered to be equivalent to the intention to retain the domicile.

A person who leaves their domicile to go into another jurisdiction for temporary purposes shall not be considered to have lost the domicile. The mere intention to acquire a new domicile, without the fact of physical removal, shall not change a person's domicile, and the fact of physical removal from a person's domicile, without the intention to remain absent, shall not change that person's domicile.

If a person whose domicile is in Kansas is absent from Kansas for more than six months of the tax year, that person shall not be presumed to have lost that domicile. If a person leaves this state to accept a job assignment in another jurisdiction, that person shall not be presumed to have lost that person's domicile in this state.

A person who is temporarily employed in Kansas shall not be deemed to have acquired a domicile Kansas if, during that period, the person maintains their domicile outside of the state of Kansas.

Establishing or Abandoning a Domicile in Kansas

A person shall be considered to have established their domicile in Kansas on the date they arrive in Kansas for other than temporary or transitory purposes. A person shall be considered to have abandoned their Kansas domicile on the date they leave Kansas without any intention to return to Kansas.

Citizens of Foreign Countries

Any citizen of a foreign country may acquire a domicile for Kansas tax purposes without surrendering that person's rights as a citizen of that country.

Soldiers and Sailors

Except for a person who is covered by the provisions of the soldiers' and sailors' civil relief act of 1940, 50 U.S.C. app. § 574, as amended by the servicemembers civil relief act, public law 108-189, there shall be a presumption that the place where a person's family is domiciled is that person's domicile.

Married People

The domicile of a person who is married shall be the same as their spouse unless there is affirmative evidence to the contrary, the husband and wife are legally separated, or the marriage has been dissolved.

Domicile Away From Family

When a person has made a home at any place with the intention of remaining there indefinitely and they neither live at the home in which their family lives nor intends to do so, then that person shall be deemed to have established a domicile separate from their family.

Minor Children

If a minor child is not emancipated, the domicile of the child's parents shall be the domicile of the child. The domicile of the parent who has legal custody of the child shall be the domicile of the child.

Manifestations of Intent

A person's domicile - the place they call home - is a matter of intent. Because a person's intentions can't be determined directly, they are determined indirectly by looking at how those intentions are manifested. The following factors may be considered in determining whether or not a person's domicile is in Kansas, although none of these factors shall, by itself, be a determinant of a person's domicile:

- A) The percentage of time that the person is physically present within the state of Kansas and the percentage of time that the person is physically present in each jurisdiction other than the state of Kansas;
- (B) the location of the person's domicile for prior years;
- (C) the location at which the person votes or is registered to vote, except that casting an illegal vote shall not establish a domicile for income tax purposes;
- (D) the person's status as a student;
- (E) the location of services performed by the person in the course of employment;
- (F) the classification of the person's employment as temporary or permanent;
- (G) the change in the person's living quarters;
- (H) the person's ownership of other real property;
- (I) the jurisdiction in which the person has been issued a valid driver's license;
- (J) the jurisdiction from which any motor vehicle registration was issued to the person and the actual physical location of the person's vehicle or vehicles;
- (K) the purchase of any resident fishing or hunting licenses by the person;
- (L) the filing by the person of a Kansas tax return, report, or application as a Kansas resident or a nonresident individual;
- (M) the fulfillment or failure to fulfill by the person of the tax obligations required of a Kansas resident;

(N) the address where personal mail is received by that person and not subsequently forwarded;

(O) the location of the jurisdiction from which any unemployment compensation benefits are received by the person;

(P) the location of any school that the person or the person's spouse attends and whether resident or nonresident tuition was charged, as well as the location of the school attended by any of the person's children who are in grades K-12;

(Q) the representations made to any insurance company concerning the person's residence and on which any insurance policies are issued;

(R) the location where the person, the person's spouse, or the person's minor children regularly participate in sporting events, group activities, or public performances; and

(S) any other fact relevant to the determination of that person's domicile.

DEFINITION OF KANSAS SOURCE INCOME

The term "Kansas source income" is defined by Kansas law, specifically in K.S.A. 79-32,109. The statute provides:

(h) "Modified Kansas source income" means that part of a nonresident individual's Kansas adjusted gross income as set forth in K.S.A. 79-32,117, and amendments thereto, derived from sources in Kansas. Items of income including unemployment compensation, gain, loss or deduction reflected in Kansas adjusted gross income shall be considered derived from sources in Kansas to the extent that they are attributable to: (1) The ownership of any interest in real or tangible personal property in this state; (2) a business, trade, profession or occupation carried on in this state; (3) a business, trade, profession or occupation carried on partly within and partly without this state as determined by the uniform division of income for tax purposes act as set forth in K.S.A. 79-3271 through K.S.A. 79-3293, and amendments thereto; (4) the distributive share of partnership income, gain, loss and deduction determined under this section as if the partnership were a nonresident individual; (5) the share of estate or trust income, gain, loss and deduction determined under K.S.A. 79-32,137, and amendments thereto; (6) prizes won from lottery games conducted by the Kansas lottery; (7) any winnings from pari-mutuel wagering derived from the conduct of pari-mutuel activities within this state; or (8) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a trade, business, profession or occupation carried on in Kansas. A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of such dealer's trade or business, shall not be deemed to carry on a business, trade, profession or occupation in Kansas solely by reason of the purchase and sale of property for such nonresident's own account.

"Modified Kansas source income" shall not include: (1) Compensation paid by the United States for service in the armed forces of the United States, performed during an induction period by an individual not domiciled in this state; or (2) such individual's share of distributed or undistributed taxable income or net operating loss

of a corporation which is an electing small business corporation unless an agreement is filed as provided in K.S.A. 79-32,139, and amendments thereto, in which event, the “modified Kansas source income” of such nonresident individual shall include such individual’s share of such corporation’s distributed and undistributed taxable income or net operating loss as such share is determined under the internal revenue code only to the extent, however, that such income, gain or loss is at the corporate level, derived from sources within Kansas.

In order to qualify for the ROZ credit, an individual must have Kansas source income of less than \$10,000 in any one year for five or more years immediately prior to establishing their domicile in a rural opportunity zone in Kansas. If you have any Kansas source income during these five years, show the year and list the amount on the line(s) below.

20	_____
20	_____
20	_____
20	_____
20	_____

If the amount of Kansas source income listed for any one of the years shown above exceeds \$10,000, you do not qualify for the ROZ credit.

FOR MORE INFORMATION

If you have a question about the Department’s policies regarding the Rural Opportunity Zone program you can contact the Office of Policy and Research for more information. Submit your question to:

Office of Policy and Research
Kansas Department of Revenue
2nd Floor
Docking State Office Building
915 SW Harrison
Topeka, KS 66612
785-296-3081