DEPARTMENT OF FINANCE & ADMINISTRATION

REVENUE DIVISION

Comprehensive

INDIVIDUAL

INCOME TAX

REGULATIONS

Regulation 1997-4

2.26-51-102(4) Partnership

Partnership Return -- AR1050
Extension of Time -- AR1055

A "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through, or by means of which, any business, financial operation or venture is carried on if it is not, within the meaning of the IRC, a corporation, trust or estate. IRC Sec. 761(a). A partnership exists when two or more persons join in carrying on a trade or business, with each person contributing either money, property, labor or skill. The partnership agreement doesn't have to be written, it can be oral. IRC Sec. 761(c); Reg. 1.761-1(c). A joint undertaking merely to share expenses isn't a partnership. IRC Reg. 1.761-1(a). Partnerships are treated as a conduit or "pass-through entity" and are, therefore, not subject to taxation. The various items of partnership income, gains and losses, etc. flow through to the individual partners and are reported on their individual income tax returns. Moreover, every domestic or foreign partnership doing business within Arkansas or which has received income from sources within Arkansas (regardless of the amount), shall file an Arkansas partnership return.

3.26-51-102(4) Publicly Traded Partnership (PTP)

A publicly traded partnership (PTP) is taxable as a corporation. IRC Sec. 7704(a). A partnership is a publicly traded partnership if interests in the partnership either: (1) are traded on an established securities market, or (2) are readily tradable on a secondary market or its substantial equivalent. IRC Sec. 7704(b). However, a publicly traded partnership won't be treated as a corporation if, for each tax year beginning after 1987, at least 90% of its gross income is specified passive-type income, and certain other requirements are met. IRC Sec. 7704(c). Certain existing partnerships that were publicly traded partnerships on December 17, 1987, won't be treated as corporations until tax years beginning after 1997.

1.26-51-102(9) Resident

Any natural person domiciled in the State of Arkansas **or** any other person who maintains a permanent place of abode within Arkansas and spends in the aggregate more than six (6) months of the tax year within Arkansas.

2.26-51-102(9) Residency Determination

A three pronged test, as set forth below, is used to determine whether or not a person is a resident of Arkansas. Satisfaction of any one prong is sufficient to establish residency.

a) <u>any person **domiciled** in the state of Arkansas</u>. Domicile is comprised of an act coupled with an intent. A domicile is acquired by (1) physical presence at a place coinciding with (2) the state of mind (that is, intent) of regarding the place as a permanent home. A domicile arises instantaneously when these two facts occur. Every person must have one domicile but can have no more than one domicile, regardless of how many residences a person may have at any given time. A domicile, once established, continues until a new domicile of choice is legally established. An established domicile does not end by lack of physical presence alone nor by mental intent alone. The old domicile must be abandoned with the intention not to return to it. If one moves to a new location but intends to stay there only for a limited period of time (no matter how long), the domicile does not become the new location but rather remains unchanged.

b) any person who maintains a permanent **place of abode** within Arkansas **and** spends in the aggregate more than six (6) months of the year within Arkansas. Place of abode means a place where a person has established a permanent home, even though such person may be absent therefrom[sic] for a long period of time. A temporary home or residence would not be considered a place of abode, as there must be at least some degree of permanence. In addition, a person must actually spend **more** than six months of the tax year in Arkansas to fall within the scope of this provision. A person who has spent either less than six months or exactly six months in Arkansas would not fall within the scope of this provision.

Place of abode and residence are considered to mean roughly the same thing. However, domicile and residence are not considered to be synonymous. Residence denotes only an act (the act of residing), while domicile denotes an act (the act of residing) coupled with the intent that the residence be a permanent home. The distinction between domicile and place of abode is that although a person can have several homes (or places of abode) at one time, only one of those homes can be the person's domicile. The home that the person **intends** or **considers** to be their permanent home (as in home base) would be the domicile.

c) In situations where it is not clear if the requirements of either domicile (a) or place of abode (b) have been met, a residency determination can only be made after thoroughly reviewing the facts on a case by case basis. When reviewing the facts, the Supreme Court of Arkansas has held that we are not bound to accept a taxpayer's claims of intent when the circumstances point to a contrary conclusion. Furthermore, when acts are inconsistent with a taxpayer's declarations, the acts will control, and our conclusions regarding residency should be based on the facts and circumstances proved. The following factors should be reviewed in making a residency determination:

* Address used on federal income tax returns;
* Address used on telephone, utility and commercial documents;
* Address used on voter registration;
* Address used on driver's license, hunting and fishing license;
* Address used on motor vehicle, boat and trailer registration;
* Address used on real and personal property tax documents;
* Address used on county and other tax assessments;
* Address on governmental documents, such as military records. With respect to military records, the Leave and Earning Statement is a very important document;
* If the Taxpayer has a spouse, the spouse's address on such things as drivers license, voter registration, vehicle registration, etc. should be checked out;
* Employer and withholding information, nature of Taxpayer's employment (traveling salesperson, etc);
* Location of Taxpayer. How often and for how long is Taxpayer present at the locations at issue;
* Location of immediate family, such as spouse and children;

* Length of time in Arkansas of Taxpayer and immediate family;
* Community affiliations, such as club memberships, church, bank accounts, etc.;
* Absence of factors in other states.

7.26-51-102 Revocable Trust

A trust in which the settlor (that is, grantor or creator of the trust) reserves the right to revoke the trust. The settlor would be considered to be the "owner" of such a trust. Therefore, revocable trusts may be treated as grantor trusts under certain circumstances. IRC Sec. 671 et seq.; Reg. 1.676(a).

8.26-51-102 Trust

Any arrangement whereby property is transferred with the intention that it be administered by a trustee for anothers benefit. A trust can be created for any purpose which is not illegal and which is not against public policy. The essential elements of a trust are a designated beneficiary and trustee, a fund or other property sufficiently identified to enable title to pass to the trustee, and actual delivery to the trustee with the intention of passing title to the trustee. A fiduciary relationship exists between the trustee and beneficiary.

9.26-51-102 Trust Taxability

Fiduciary Return -- AR1002
Extension of Time -- AR1055

Trust income is normally taxed to the trust **itself** if retained by the trust, or to the beneficiary, if distributed. Thus, if the fiduciary (that is, trustee) passes on income to the beneficiary, the trust deducts the distributed income which then becomes taxable to the beneficiary. What would be gross income in the hands of an individual is gross income when received by a trust -- dividends, interest, rents, royalties, capital gains, ordinary gains, etc. IRC Reg. 1.641(a)-2. Gross income includes income accumulated or held for future distribution under the terms of a trust, income that is currently distributable, and income that, in the fiduciary's discretion, may be either accumulated or distributed. IRC Sec. 641(a). A "trust" is taxed as a corporation if it has been created or used during the tax period to carry on a business and it has corporate characteristics such as centralized management, continuity of existence, limited liability, etc. IRC Reg. 301.7701-4(b). Deductions and credits allowed to trusts are basically those allowed to individuals. When a trust terminates, it ends as a separate tax entity and no longer reports gross income or claims deductions, credits, etc. IRC Reg. 1.641(b)-3(d). Though the duration of a trust may depend on the occurrence of a particular event under the trust instrument, e.g., the life beneficiary reaching a specified age, for tax purposes the trust will nevertheless continue for a reasonable period beyond this time to allow for the orderly completion of administration. IRC Reg. 1.641(b)-3(b).

4.26-51-102(8) Trustee

Person who holds legal title to property in trust for the benefit of another person or people (that is, the beneficiaries). A trustee is one who is appointed, or required by law, to execute a trust.