

305 state ~~§~~ ~~→~~ ~~[shall]~~ ~~may not~~ ~~←~~ ~~§~~ be determined in accordance with Subsection ~~§~~ ~~→~~ ~~(3)~~ ~~(1)(a)~~ ~~←~~ ~~§~~ if  
305a the individual:

306 (i) is the noncustodial parent of a dependent:

307 (A) with respect to whom the individual claims a personal exemption on the

308 individual's federal individual income tax return; and

309 (B) who is enrolled in a public kindergarten, public elementary school, or public  
310 secondary school in this state; and

311 (ii) is divorced from the custodial parent of the dependent described in Subsection  
312 (1)(b)(i).

313 (2) There is a rebuttable presumption that an individual is considered to have domicile  
314 in this state if:

315 (a) the individual or the individual's spouse claims a residential exemption in  
316 accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's  
317 primary residence;

318 (b) the individual or the individual's spouse is registered to vote in this state in  
319 accordance with Title 20A, Chapter 2, Voter Registration; or

320 (c) the individual or the individual's spouse asserts residency in this state for purposes  
321 of filing an individual income tax return under this chapter, including asserting that the  
322 individual or the individual's spouse is a part-year resident of this state for the portion of the  
323 taxable year for which the individual or the individual's spouse is a resident of this state.

324 (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not  
325 met for an individual to be considered to have domicile in this state, the individual is  
326 considered to have domicile in this state if:

327 (i) the individual or the individual's spouse has a permanent home in this state to which  
328 the individual or the individual's spouse intends to return after being absent; and

329 (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the  
330 individual's spouse's habitation in this state, not for a special or temporary purpose, but with the  
331 intent of making a permanent home.

332 (b) The determination of whether an individual is considered to have domicile in this  
333 state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into  
334 consideration the totality of the following facts and circumstances:

335 (i) whether the individual or the individual's spouse has a driver license in this state;

367 spouse are absent from the state for at least ~~§~~ [730] 761 ~~←§~~ consecutive days; and  
368 (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor  
369 the individual's spouse:  
370 (A) return to this state for more than 30 days in a calendar year;  
371 (B) claim a personal exemption on the individual's or individual's spouse's federal  
372 individual income tax return with respect to a dependent who is enrolled in a public  
373 kindergarten, public elementary school, or public secondary school in this state, unless the  
374 individual is an individual described in Subsection (1)(b);  
375 (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an  
376 institution of higher education described in Section 53B-2-101 in this state;  
377 (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for  
378 that individual's or individual's spouse's primary residence; or  
379 (E) assert that this state is the individual's or the individual's spouse's tax home for  
380 federal individual income tax purposes.  
381 (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of  
382 Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered  
383 to have domicile in this state by filing an individual income tax return in this state as a resident  
384 individual.  
385 (c) For purposes of Subsection (4)(a), an absence from the state:  
386 (i) begins on the later of the date:  
387 (A) the individual leaves this state; or  
388 (B) the individual's spouse leaves this state; and  
389 (ii) ends on the date the individual or the individual's spouse returns to this state if the  
390 individual or the individual's spouse remains in this state for more than 30 days in a calendar  
391 year.  
392 (d) An individual shall file an individual income tax return or amended individual  
393 income tax return under this chapter and pay any applicable interest imposed under Section  
394 59-1-402 if:  
395 (i) the individual did not file an individual income tax return or amended individual  
396 income tax return under this chapter based on the individual's belief that the individual has met  
397 the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and