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DETERMINING RESIDENCY FOR PA PERSONAL INCOME TAX PURPOSES



How do I determine residency for PA income tax purposes?

Individuals who have domiciles or statutory residences in PA are subject to PA personal income tax on income, regardless of where income was earned. They may qualify for credits against tax paid to other states or countries on income earned outside of PA.

Individuals who do not maintain domiciles or statutory residences in PA are taxed only on income from sources within PA and cannot qualify for PA credits against taxes paid to other states or countries.

What is a domicile?

A domicile is the place where a person maintains permanent abode and intends to return when absent. A person may only have one domicile at a time. However, for an individual who lives in more than one permanent place, two factors determine domicile: (1) Which is the one place where the individual has had the greatest connections for the taxable year; and (2) Which place does the individual intend to be the domicile.

For example, a locality with the greatest connections is where a person:

- spends the greatest amount of time
- supports a spouse and children
- purchases the necessities of life
- has doctors, lawyers and accountants
- houses pets
- has active banking accounts
- worships regularly
- participates in social, fraternal or athletic organizations
- has works of art, furniture, family portraits or heirlooms
- fulfills local tax obligations
- is employed
- owns real estate fit for year-round living
- maintains a driver's license and vehicle registration
- maintains professional licenses
- maintains union membership
- declares residency for hunting or fishing licenses, income tax returns or school tuition
- conducts business
- receives mail
- receives unemployment compensation
- records his or her address for insurance policies, deeds, mortgages, leases, passport, federal and local tax returns, etc.
- was domiciled at birth
- maintains safe deposit boxes
- owns a cemetery plot

- is listed in the telephone directory
- obtains homestead exemption
- gathers for family and social events
- maintains TV and Internet connections
- registers to vote

What is a statutory residence?

A statutory residence is the place where an individual spends the most time during the year. More specialized definitions, however, apply when the person does not maintain a permanent place of residence in PA or has frequent or prolonged absences from his/her place of residence. A person is considered a statutory resident of PA unless:

- the person spends more than 181 days (midnight to midnight) of the tax year outside PA; or
- the person has no permanent abode in PA for any part of the tax year.

What is a permanent abode?

A permanent abode is a house, apartment, dwelling place or other residence maintained as a household for an indefinite period, whether the occupants own it or not. An abode is not permanent if it is occupied only during a fixed or limited period of time for a particular purpose.

Barracks, bachelor officer's quarters, quarters on ships and other living accommodations provided by an employer for a definite period do not qualify as permanent abodes. Further, college dormitories, fraternity houses, sorority houses and off-campus rentals by students enrolled in college or universities do not qualify as permanent abodes.

How do I establish a new domicile?

A person can have only one domicile at a time, and it does not change until they move to another state or country with the intention of making a new permanent home there, abandoning the previous domicile.

If a person moves to another state or country, but intends to stay there only for a fixed or limited time (no matter how long), domicile does not change. Domicile is not dependent upon continuous physical presence. It is not abandoned by absence there or by presence in a former domicile, so long as there is not firm, sincere, unconditional intention of remaining in the other jurisdiction for an indefinite and uncertain period.

For example, PA domicile does not change when a person is temporarily absent – to return to a former domicile for business, health, pleasure or education – with intention to return to the PA domicile.

To establish a new domicile, a taxpayer must:

1. Show evidence of definite intention to discontinue making the former domicile the primary base of operations;

- 2. Show evidence of definite intention to make the new domicile the primary base of operations; and
- 3. Show evidence of physical presence and abode (transient, temporary or permanent) in the new location.

If all three requirements are met, the date of the change is the first day of physical presence in the new location. If a person left the domicile to seek new employment, intending to remain in the other location only if they find employment, there is no change in domicile.

I am retired with a permanent summer home outside PA and a permanent winter home in PA. How do I determine domicile?

A person may have only one state of domicile at any given time, and state of domicile does not change until someone moves to another state or country with the intention of making a new permanent home there, abandoning the previous domicile.

To determine which location is your domicile, review the bulleted list of activities previously identified in this brochure to determine the location with the greatest connection. Then determine if you have taken the necessary steps to establish a new domicile outside PA, considering the three requirements identified in the previous question.

How does being in the military or foreign service affect my domicile and my family's domicile?

Unless there is an intention to change domicile, a person generally does not acquire a new domicile or lose the domicile maintained before entering the armed forces. This is also true of the service member's spouse. A person in the military or his or her spouse is not precluded, however, from establishing a new domicile where family is stationed. A person in the military or foreign service, or someone living in a foreign country for something other than a temporary or transitory purpose is treated as a domiciliary of that country if the person:

- Is not an employee of the U.S., its agencies or instrumentalities (including the armed forces and U.S. foreign service); and
- Does not hold an appointive office in the executive branch of the U.S. government.

However, special rules may apply if the employee or officer maintains a permanent place of abode in the other country. An individual who has a domicile in PA is considered a nonresident if the person meets all three of the following requirements:

- 1. The individual is absent from PA for more than 335 complete calendar days of the tax year;
- 2. The individual maintains a permanent place of abode elsewhere during the entire tax year; and

- 3. The individual maintains no permanent place of abode in PA at any time during the tax year.

The Military Spouses Residency Relief Act (MSRRA), which was signed into federal law on Nov. 11, 2009, permits a service member's nonmilitary spouse to retain status as an out-of-state resident and source any nonmilitary compensation to the state of residence under the following circumstances:

- 1. The service member must be in PA in compliance with military orders;
- 2. The service member's spouse must be in PA solely to be with his/her spouse; and
- 3. The service member's spouse must have the same domicile (legal residence) as the service member.

For detailed information on how MSRRA impacts state taxation of income earned by a service member's nonmilitary spouse, review the comprehensive personal income tax Tax Bulletin 2010-01 on the department's website, www.revenue.state.pa.us.

For more information of taxation of military pay, review brochure REV-612, Military Pay for PA Personal Income Tax Purposes.

How do dependents determine domicile?

Generally, children have the same domiciles as their parents or legal custodians. If the parents are separated, the child's domicile is the domicile in which the child lives or that of child's legal custodian. Becoming an adult does not by itself separate a child from a parent's or legal custodian's domicile. The child merely acquires the power to establish a separate or new domicile.

College dormitories, fraternity houses, sorority houses and off-campus rentals by students enrolled in college or universities do not qualify as permanent abodes.

How does PA tax nonresidents?

PA taxes nonresidents on the following income from PA sources:

- **Compensation** for services performed in PA, unless the nonresident is a resident of Indiana, Maryland, New Jersey, Ohio, Virginia or West Virginia. If you are a resident of one of these states, your PA employer should withhold and remit tax to that state.
- **Net income (loss) from the operation of a business, profession or farm** in PA. If you derive income from sources inside and outside PA, you should maintain separate accounts and records that clearly reflect your PA business activity. Otherwise, you must file a PA Schedule NRH to apportion your income.
- **Net income (loss) from the sale, exchange or disposition of property** in PA. If you sell property in your

former state before moving into PA, you are not subject to PA income tax on the gain. However, if you moved from PA to another state and then sell tangible property in PA, you must report the gain. You may qualify for an exclusion from paying tax on the gain on the sale of your principal residence in PA.

- **Net income (loss) from rents, royalties, patents and copyrights** in PA or used in PA.
- **Estate or trust income**, only to the extent the beneficiary's PA-source income is taxable to nonresidents.
- **Gambling and lottery winnings** from PA sources except prizes from the PA Lottery.

PA does not tax nonresidents on ordinary interest and dividend income, even from financial institutions and corporations located in PA. PA does not tax nonresidents on the gain (or loss) realized from the sale, exchange or disposition of intangible property.

When is a person considered a part-year resident?

A person who moves into or out of PA with the intention of acquiring a new domicile is considered a part-year resident for the part of the tax year the individual maintains a permanent place of abode in PA.

There are two exceptions to this general rule:

- 1. An individual is considered a nonresident rather than a part-year resident if that person spent less than 31 days of the year in PA, maintained a permanent place of abode outside PA during the entire tax year and maintained no permanent place of abode in PA at any time during the tax year.
- 2. An individual is considered a resident rather than a part-year resident if that person was physically present in PA for at least 184 days (or parts of 184 days) and maintained a permanent place of abode in PA at any time during the tax year.

What kinds of income should part-year residents report on PA personal income tax returns?

Part-year residents are subject to PA tax on all income earned, received or credited for the part of the year they were a residents of PA, as well as on all income earned, received or credited from PA sources for the part of the year they were nonresidents.

Part-year residents of PA must file PA personal income tax returns, filling in the oval for a part-year return and recording the time they were residents. Part-year residents are not subject to PA tax on ordinary interest, dividends and gains on intangible property while nonresidents.

What are reciprocal tax agreements?

PA has reciprocal tax agreements with Indiana, Maryland, New Jersey, Ohio, Virginia and West Virginia. Under these

agreements, one state will not tax a resident of the other state on compensation subject to employer withholding. These agreements apply to most W-2 compensation earned while a taxpayer is a resident of one of these states. Such agreements do not apply to miscellaneous and non-employee compensation; compensation earned while a PA resident and received while a resident of the reciprocal compensation agreement state; or compensation paid to Ohio-resident shareholder-employees who worked or performed services in PA and have 20 percent or greater interest in a PA S corporation.

What if I am a PA resident working in a reciprocal agreement state?

For PA residents who work in reciprocal agreement states, PA taxes compensation, not the reciprocal state. It is the taxpayer's responsibility to notify the employer of PA residency, and the employer should withhold PA tax from pay, not income tax of the reciprocal state.

If an out-of-state employer does not withhold PA tax, the taxpayer must report compensation as taxable income to PA and pay the tax. The taxpayer must make PA estimated payments if compensation not subject to withholding by a PA employer is more than \$8,000. The taxpayer may also file a return and apply for a refund from the other state.

What if I have dual residency?

PA residents who are also residents of reciprocal states for income tax purposes are subject to special rules. A PA resident credit may be claimed only if each of the following applies:

- 1. The income on which the reciprocal state's tax is imposed is not only subject to tax in the same taxable year by PA, but also taxable under the reciprocal state's laws regardless of residence or domicile; and
- 2. The taxpayer is not entitled to claim any credit for PA tax against the reciprocal state's tax.

To claim the PA resident credit, a taxpayer must file PA Schedules G-S or G-L and G-R and include a copy of the tax return filed with the other state. The copy of the other state's return shows the other state taxed the person as a resident, and no credit was claimed for the PA tax paid to that state.

A special administrative procedure applies if PA and Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island or Vermont made an initial determination that the individual is a domiciliary of the non-PA state. The taxpayer may apply for a closing agreement with PA and the applicable state from the PA Department of Revenue Taxpayers' Rights Advocate. The procedure applies before the formal appeals process is utilized (e.g., filing a petition for reassessment or refund).