



Stephen Estelle

Final Analysis
Legislative Service Commission

Sub. H.B. 73

126th General Assembly
(As Passed by the General Assembly)

Reps. Trakas, Kilbane, Latta, Gibbs, Blessing, Collier, Schaffer, Blasdel, Hagan, Brinkman, Gilb, Ujvagi, Taylor, Chandler, Combs, Domenick, C. Evans, D. Evans, Hartnett, Koziura, Oelslager, T. Patton, Peterson, Redfern, Reidelbach, Setzer, G. Smith

Sens. Fingerhut, Goodman, Schuler, Austria, Amstutz, Spada, Dann, Cates, Clancy, Coughlin, Grendell, Hottinger, Jacobson, Jordan, Mumper, Niehaus, Prentiss, Spada, Stivers, Harris, Armbruster, Kearney, Schuring

Effective date: *

ACT SUMMARY

- Increases the amount of time an individual may spend in Ohio before being presumed to be an Ohio resident for income tax purposes.
- Requires taxpayers to file a statement of nonresidency with the Tax Commissioner for the presumption to be irrebutable.
- Exempts active-duty military pay and allowances from the state income tax regardless of whether the serviceperson is serving in a declared combat zone.
- Forbids taxpayers from applying the exemption to pay and allowances received for active duty service while stationed in Ohio.
- Permits taxpayers to apply the exemption to school district income taxes using the same tax base as the state income tax.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

CONTENT AND OPERATION

Prior residency tests

Significance of residency

Determining an individual's residency is important when the individual earns income that is taxable under both Ohio law and the law of another state; the individual's residency affects the calculation of the individual's Ohio income tax. Specifically, residency determines which of certain credits are available to the individual. Under continuing law, if an individual is an Ohio resident, the individual may claim a credit for taxes paid to another state (up to the amount of the Ohio tax on the same income). If the individual is a nonresident, the individual may claim a credit for the amount of Ohio income tax on the portion of the nonresident's Ohio adjusted gross income that is not allocable to Ohio.

"Bright line" residency test

(R.C. 5747.01(G) and (H)(1), 5747.24, and 5747.25 (repealed))

For income tax purposes, a "resident" is an individual who is domiciled in Ohio. Domicile is a common-law concept. Its essence is captured in the following legal definition: **A person's true, fixed, and permanent home and principal establishment, to which that person intends to return and remain even though he or she may for a time reside elsewhere.** Black's Law Dictionary, 523-524 (8th ed.). Under continuing law, whether an individual is presumed to be domiciled in Ohio depends in part upon the number of "contact periods" the individual has in Ohio during the taxable year. An individual has one contact period in Ohio if the individual spends at least some portion, however minimal, of each of two consecutive days in Ohio while away overnight from an abode located outside Ohio.

Under prior law, the number of contact periods was divided into three levels: 0 - 120; 121 - 182; and 183 or more. If the individual had 120 or fewer contact periods in Ohio during the taxable year and had at least one abode outside Ohio during the entire taxable year, the individual was presumed to be *not* domiciled in Ohio during the taxable year. This presumption was conclusive unless the Tax Commissioner requested a statement from the individual verifying the number of contact periods and the non-Ohio abode and the individual failed to furnish the statement. If the individual did not furnish the statement, the individual was presumed to have been domiciled in Ohio for the entire taxable year. The individual could rebut the presumption, however, by presenting sufficient evidence the individual was domiciled elsewhere. The evidentiary standard was a preponderance of evidence.



If the individual had between 121 and 182 contact periods in Ohio during the taxable year, the individual was presumed to be domiciled in Ohio. This presumption also applied if the individual had fewer than 121 contact periods but did not have an abode outside Ohio throughout the year. The individual could rebut the presumption of Ohio domicile for any portion of the taxable year by presenting evidence the individual was domiciled elsewhere. The evidentiary standard was preponderance of the evidence. If the individual overcame the presumption for a portion of the taxable year, but not the entire year, the individual was presumed to be *not* domiciled in Ohio only for that portion.

If the individual had 183 contact periods or more, the individual was presumed to be domiciled in Ohio. To overcome this presumption, the individual had to present evidence to the contrary satisfying the clear and convincing evidence standard. Again, if the individual overcame the presumption for a portion of the taxable year, but not the entire year, the individual was presumed to be *not* domiciled in Ohio only for that portion.¹

Exempted contacts

(R.C. 5747.24(A)(2))

Prior law allowed an individual to have up to 30 contact periods in Ohio per year without the periods counting toward the residency test, but only if some part of the contact period was spent to attend to a medical hardship involving the individual or a member of the individual's family, to attend a funeral for a member of the individual's family, or to provide uncompensated service to, or to raise funds for, a charitable, educational, religious, scientific, or other kind of organization exempted from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

Nonresident election

(R.C. 5747.25)

Under prior law, an individual who was presumed to be a resident of Ohio under the residency tests could elect to be treated as a nonresident in return for a reduction in the amount of the nonresident credit. An individual who made the election for any taxable year was considered to be a nonresident for the entire taxable year.

¹ *An administrative rule sets forth criteria for determining whether an individual has rebutted the presumption of domicile in Ohio with a preponderance of the evidence or with clear and convincing evidence. (Ohio Admin. Code 5703-7-16.)*

When an individual made the election, the number of contact periods the individual had in excess of 120 was used to calculate the amount of Ohio adjusted gross income allocable to Ohio for purposes of calculating the nonresident credit. The more contact periods an individual had in excess of 120, the larger the portion of income allocable to Ohio and, accordingly, the smaller the amount of the nonresident credit the individual could claim.

Changes to residency test

Basic test

The act increases the number of contact periods an individual may have before being presumed to be domiciled in Ohio from 120 to 182. In effect, the middle level of contact periods under prior law (121 - 182) has been eliminated, and the first level (0 - 120) has been expanded to 0 - 182. The act, however, requires the individual to file a statement with the Tax Commissioner, without request by the Commissioner, verifying that during the entire taxable year the individual was not domiciled in Ohio and had at least one abode outside Ohio. The individual must specify in the statement the location of each abode located outside Ohio. The statement must be filed by April 15 or, if the individual's taxable year does not coincide with the calendar year, by the 15th day of the fourth month after the end of the taxable year. If the individual satisfies each of these criteria--i.e., the individual has 182 contact periods or fewer, has an abode outside Ohio, and has timely filed the statement--the individual is conclusively presumed to be *not* domiciled in Ohio. This presumption does not apply to an individual changing domicile from or to Ohio during the taxable year. Such an individual is domiciled in Ohio for that portion of the taxable year before or after the change, as applicable. (R.C. 5747.24(B).)

An individual who has fewer than 183 contact periods in Ohio during the taxable year, but who either does not timely file the statement or does not have an abode outside Ohio, is presumed to be a resident unless the individual rebuts the presumption with a preponderance of the evidence to the contrary. An individual who has 183 or more contact periods is presumed to be a resident unless the individual rebuts the presumption with clear and convincing evidence to the contrary. (R.C. 5747.24(C) and (D).)

The act retains the provision authorizing the Tax Commissioner to challenge an individual's number of contact periods and requiring the individual to prove the number of contact periods by a preponderance of the evidence. (R.C. 5747.24(E).)

Exempted contacts eliminated

The act eliminates the 30-contact period exemption for time spent in Ohio to attend to a medical hardship, to attend a funeral, or to provide service to, or raise funds for, a section 501(c)(3) organization. (R.C. 5747.24(A)(2).)

Nonresident election eliminated

The act eliminates the law allowing an individual who is presumed to be a resident to elect nonresidency status in return for a reduction in the otherwise allowable nonresident credit. (R.C. 5747.25.)

Expansion of income tax exemption of military pay

(R.C. 5747.01(A)(22), 5747.011 (repealed), and 5748.01)

Under prior law, the pay and allowances of persons serving in a branch of the military, including the reserves and National Guard, were subject to state and school district income taxes, unless the pay and allowances were earned for service in a declared combat zone. The combat zone exclusion applies to the entire pay and allowances of enlisted personnel, noncommissioned officers, and warrant officers and to the highest enlisted-pay equivalent of other commissioned officers. Continuing law exempts deceased military servicepersons completely from state and school district income taxes (for the year of their death) if they died as a result of injuries or disease incurred in a combat zone or in a military or terroristic event in a foreign country. (R.C. 5747.023 and 5747.024.) All military pay and allowances currently are exempted from municipal income taxes. (R.C. 718.01(F)(1).)

The act expands the military pay and allowance exemption to include pay and allowances received by any person serving on active duty in the Army, Air Force, Navy, Marines, or Coast Guard, reserve components of those branches, or the National Guard, regardless of whether the service is performed in a declared combat zone. The exemption does not apply to pay and allowances for active duty service while the individual is stationed in Ohio. In addition to expanding the exemption to include all non-Ohio active duty pay and allowances, the expansion also permits commissioned officers, whose current exclusion is capped at the highest enlisted pay level (plus hostile fire and imminent danger pay supplements), to exclude pay and allowances in excess of the cap.

The expanded exemption applies as well to school district income taxes that are computed on the same basis as the state income tax base. Recent legislation, H.B. 530, authorized school districts to allow individuals to deduct from taxable

income military pay and allowances received while stationed outside Ohio. The act repeals that section so that the act's new exemption applies instead.

Effective date

(Section 3)

The act's changes to the residency test, its elimination of the exemption for certain contacts and of the nonresident election, and its exemption of active-duty military pay from the income tax apply to taxable years beginning on or after January 1, 2007.

HISTORY

ACTION	DATE
Introduced	02-22-05
Reported, H. Ways & Means	02-14-06
Re-referred to H. Ways & Means	02-16-06
Re-reported, H. Ways & Means	02-28-06
Passed House (80-15)	03-21-06
Reported, S. Ways & Means & Economic Development	12-12-06
Passed Senate (32-0)	12-13-06
House concurred in Senate amendments (95-0)	12-14-06

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