

PENNSYLVANIA PERSONAL INCOME TAX GUIDE

CHAPTER 4: FILING REQUIREMENTS FOR PENNSYLVANIA PERSONAL INCOME TAX RETURNS

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CHAPTER 4: FILING REQUIREMENTS FOR PENNSYLVANIA PERSONAL INCOME TAX RETURNS

I. WHO MUST FILE

The following taxpayers must file a Pennsylvania personal income tax return-

- A. Every resident, part-year resident or nonresident individual earning, receiving and realizing more than \$33 in gross Pennsylvania-taxable income for their taxable year beginning on or after Jan. 1, 2004 (\$35 for taxable years beginning on or after Jan. 1, 1993 and ending Dec. 31, 2003), even if no tax is due (*e.g.*, when an employee receives compensation where tax is withheld). Refer to Pennsylvania Personal Income Tax (PA PIT) Guide, Chapter 7, Gross Compensation.

Note: Pennsylvania income tax law cannot be amended to provide a standard deduction or personal exemption and eliminate the return-filing requirement for taxpayers with small incomes. The Uniformity Clause of the Pennsylvania Constitution and cases decided under it preclude such an amendment. *Kelly v. Kalodner*, 320 Pa. 180, 181 A. 598 (1935). Likewise, a taxpayer is required to file a return, even if he or she ultimately qualifies for special tax forgiveness (SP). A filed, signed tax return encourages compliance with the statute and enables the Department to verify whether a claimant meets SP eligibility standards. Refer to PA-40 Schedule SP and PA PIT Guide, Chapter 20 Tax Forgiveness.

- B. Every resident, part-year resident or nonresident individual earning, receiving and realizing a gain, profit, income (loss) in any of the following classes of Pennsylvania-taxable income during the taxable year: business, profession or farm; sale, exchange or disposition of property; or rents, royalties, copyrights or patents.

Refer to PA PIT Guide, Chapter 11, Net Income (Loss) from the Operation of a Business, Profession or Farm; Chapter 12, Net Gains (Losses) from the Sale, Exchange or Disposition of Property; and Chapter 13, Net Income (Loss) from Rents, Royalties, Copyrights and Patents.

- C. Every resident partner, shareholder, and beneficiary earning and realizing income (loss) from a partnership, PA S corporation, and estate or trust.

Refer to PA PIT, Guide Chapter 14, Estates, Trusts and Decedents and Chapter 16, Pass Through Entities.

- D. Every nonresident partner, shareholder and beneficiary earning and realizing Pennsylvania-taxable source income (loss) from a partnership, PA S corporation, and estate or trust.

Refer to PA PIT Guide, Chapter 14, Estates, Trusts and Decedents and Chapter 16, Pass Through Entities.

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- E. Every part-year resident shareholder earning and realizing income (loss) from a partnership and PA S corporation for that part of the taxable year the member is a resident and from Pennsylvania-taxable source income (loss) for that part of the taxable year the member is a nonresident.

Refer to PA PIT Guide, Chapter 16 Pass Through Entities.

Note: Partnerships and PA S corporations may file consolidated or "group returns" on behalf of their nonresident individual partners and nonresident individual shareholders by using the PA-40 Nonresident Consolidated (NRC) Income Tax return as long as all requirements for filing the consolidated return are met.

- F. A person who is charged with the care of the property of a decedent who died during the tax year, of a minor child, or a disabled or incompetent individual who cannot prepare his or her own return, must file a return on behalf of that individual if that individual meets the above requirements.
- G. Every resident, part-year resident or nonresident professional athlete or entertainer earning, receiving and realizing Pennsylvania-taxable income during the taxable year.

Refer to PA PIT Guide Chapter 7, Gross Compensation and Chapter 11, Net Income (Loss) from the Operation of a Business, Profession or Farm.

- H. Every resident, part-year resident or nonresident earning or receiving fees from Pennsylvania-taxable source income as an executor or fiduciary.

Refer to PA PIT Guide, Chapter 7, Gross Compensation.

- I. Every nonresident receiving deferred compensation distributions, which are related to Pennsylvania-taxable source income earned while a Pennsylvania resident.

Refer to PA PIT Guide, Chapter 7, Gross Compensation and Chapter 30, PA Department of Revenue Personal Income Tax Policy Guidance and Related Personal Income Tax Bulletins.

- J. Every nonresident earning, receiving and realizing other miscellaneous compensation from Pennsylvania sources (*e.g.*, covenant not to compete), which constitutes Pennsylvania-taxable income during the taxable year.

Refer to PA PIT Guide, Chapter 7, Gross Compensation.

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II. RESIDENCY STATUS

A. Resident and Nonresident Defined

One's domicile and permanent abode must be identified to determine residency for Pennsylvania personal income tax purposes. An individual may have to pay income tax as a Pennsylvania resident even if he or she is not considered a Pennsylvania resident for other purposes. For income tax purposes, one must consider both where he or she is domiciled and where he or she maintained a permanent place of abode during the taxable year.

With the different lifestyles that have developed, the questions: "Where do I live?" may not be as simple as it used to be. Individuals who have their domicile or statutory residence in Pennsylvania are subject to the Pennsylvania personal income on their entire incomes. They may qualify for credits against tax paid to other states or countries on income earned outside of Pennsylvania.

Individuals who do not have either their domicile or statutory residence in Pennsylvania are taxed only on the income from sources within Pennsylvania and cannot qualify for credits against the taxes paid to other states or countries.

This chapter will help you understand what domicile and statutory residence mean and help you decide whether you are a resident or nonresident of Pennsylvania for income tax purposes. It also addresses the most common circumstances that may make it difficult to determine residence.

1. Domicile

For most individuals, the word domicile refers simply to the locality where a taxpayer maintains his or her permanent abode, and is the place where he or she intends to return whenever absent, even though he or she may live elsewhere. A person may only have one place of domicile at a time.

However, for individuals that have more than one locality where they maintain permanent abodes, two factors determine their domicile-

- Which place is the one where the individual has had the greatest connections for the taxable year; and
- Which place does the individual intend to be his or her domicile?

Some factors to consider in determining an individual's place of domicile are:

- Where does the taxpayer spend the greatest amount of time during the taxable year;
- Where does the taxpayer maintain a permanent abode for the longest amount of time during the taxable year;

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- Where does the taxpayer support his or her spouse and children;
- Where does the taxpayer purchase the necessities of life;
- Where does the taxpayer have doctors, lawyers, and accountants;
- Where does the taxpayer house his or her pets;
- Where does the taxpayer have active banking accounts;
- Where does the taxpayer worship regularly;
- Where does the taxpayer participate in social, fraternal, or athletic organizations, lodges, or country clubs;
- Where does the taxpayer have works of art, expensive furniture, family portraits, or heirlooms;
- Where does the taxpayer fulfill local tax obligations;
- Where is the taxpayer employed;
- Where does the taxpayer own real estate fit for year-round living;
- Where does the taxpayer maintain a driver's license and vehicle registration;
- Where does the taxpayer maintain professional licenses;
- Where does the taxpayer maintain union membership;
- Where does the taxpayer declare residency for fishing or hunting licenses, income tax returns, or school tuition;
- Where does the taxpayer conduct his business;
- Where does the taxpayer receive mail;
- Where does the taxpayer receive unemployment income;
- Where does the taxpayer record his or her address for insurance policies, deeds, mortgages, leases, passport, federal and local tax returns, etc;
- Where was the taxpayer domiciled at birth;
- Where does the taxpayer maintain safe deposit boxes;

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- Where does the taxpayer own a cemetery plot;
- Where is the taxpayer listed in the telephone directory;
- Where has the taxpayer obtained a homestead exemption;
- Where does the taxpayer gather for family and social events; and/or
- Where is the taxpayer registered to vote.

A person's state of domicile does not change until he or she moves to another state or country with the sincere intention of making his or her permanent home there and abandoning his or her previous domicile. If a person moves to another state or foreign country but intends to stay there only for a fixed or limited time (no matter how long), his or her domicile does not change.

2. **Statutory Residency**

For many individuals, the phrase statutory residence refers simply to the state where an individual spends the most time during the taxable year. More specialized definitions, however, apply when there are either frequent or prolonged absences from, or no permanent place of abode in Pennsylvania. A person is a statutory resident of Pennsylvania unless meeting these conditions-

- A person who spends a total of more than 183 days (midnight to midnight) of the taxable year outside of Pennsylvania is not a statutory resident of Pennsylvania.
- An individual who has no permanent abode within Pennsylvania for any part of the taxable year is not a statutory resident of Pennsylvania.

3. **Permanent Abode**

A permanent abode is a house, apartment, dwelling place, or other residence that is maintained as a household for an indefinite period, whether it is owned by the occupants 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 a permanent abode. College dormitories, fraternity houses, sorority houses, and off-campus rentals by students enrolled in college or universities do not qualify as a permanent abode.

B. Three Conditions Are Required To Establish a New Domicile

You can have only one domicile at any given time. Your domicile does not change until you move to another state or country with the sincere intention of making your "new" permanent home there and abandoning your previous domicile.

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If an individual moved to another state or country, but intended to stay there only for a fixed or limited time (no matter how long), the domicile does not change. Once established in a locality or state, your domicile continues there until you establish a new domicile. It is not dependent upon continuous physical presence. It is not abandoned by absence or even by presence in a former domicile, no matter how long continued, if, in leaving and during the absence, there is no firm, sincere, unconditional intention of remaining in the other jurisdiction for an indefinite and uncertain period.

For example, temporary absence from a new domicile with presence in a former domicile for the purpose of transacting business or for the sake of health, pleasure, or education, with a definite intention of returning to the new domicile does not affect a person's domiciliary status.

In order to establish a new domicile, the following three conditions must be met-

1. There must be evidence of a firm and definite present intention to discontinue making the former domicile your primary base of operations;
2. There must be evidence of a firm and definite present intention to make the new domicile your primary base of operations; and
3. There must be evidence of actual physical presence and actual abode (transient, temporary, or permanent) in the new location.

If a person left their domicile to seek new employment intending to remain in the other location only if they find employment, there is no change in domicile.

If all three requirements are met, the date of the change is the first day of actual physical presence in the new location.

A retired couple with a permanent summer home inside Pennsylvania and a permanent winter home outside of Pennsylvania can only have one state of domicile at any given time. For Pennsylvania personal income tax purposes, a taxpayer can only have one domicile. Therefore, Pennsylvania personal income tax does not recognize the domiciliary status, which is established by operation of another state's laws. The state of domicile does not change until there is a move to another state or country with the sincere intention of making a "new" permanent home there and abandoning the previous domicile.

Their determination as to the state of domicile should be made based on the factors provided in the definition of domicile above. The location of your domicile is where you have the greatest connection.

After you determine the location with the greatest connection, you should determine if you have taken the necessary steps to establish a new domicile outside of Pennsylvania. Have you moved your church membership, vehicle registration and

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driver's license, voter registration, bank accounts, etc.? No one item on the checklist determines your domicile. Instead, it is the weight of all your answers that determines in which state you are domiciled.

C. Pennsylvania Resident

Residency in Pennsylvania, for tax purposes, may be established in two ways-

1. Domicile in Pennsylvania

If an individual is domiciled in Pennsylvania, he or she is considered a resident unless he or she meets all three of the following conditions-

- a. He or she did not maintain a permanent abode in Pennsylvania for himself or herself or his or her family; and
- b. He or she did maintain a permanent abode outside Pennsylvania throughout the entire taxable year; and
- c. He or she did not spend in the aggregate more than 30 days of the taxable year in Pennsylvania.

2. Day Test

If taxpayer maintains a permanent abode in Pennsylvania and spends a total of 183 or more days of the taxable year in Pennsylvania, even though he or she is not domiciled in the Commonwealth, he or she is considered a resident.

D. Pennsylvania Nonresident

An individual is a nonresident for Pennsylvania tax purposes if he or she is not a resident as defined above.

E. Persons in the Military or Foreign Service

Unless there is an intention to change his or her domicile, a person generally does not acquire a new domicile by entering the armed forces, or lose the domicile that the person had upon entering. A person on military duty is not precluded, however, from acquiring a new domicile where his or her family is stationed. A person in the military and Foreign Service, or a person living in a foreign country for other than a temporary or transitory purpose while a lawful permanent resident or citizen of the country, is treated as a domiciliary of that country if the person-

1. Is not an employee of the U.S. government, its agencies or instrumentalities (including members of the armed forces and career appointees in the U.S. Foreign Service); and
2. Does not hold an appointive office in the executive branch of the government of the U. S.

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However, special rules may apply if the employee or officer maintains a permanent place or abode there. An individual who has a domicile in Pennsylvania is considered a nonresident if meeting all three of the requirements listed under [Pennsylvania Resident](#) above.

F. College Student

Generally, a child has the same domicile as his or her parents or legal custodian. Becoming a legal adult does not by itself separate a child from the parent 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 a permanent abode.

G. Minor Child

The domicile of a minor child is the same as the domicile of the child's parents. If the parents are separated, then the child's domicile is the domicile of the parent with whom the child lives or with that of the child's legal custodian.

H. Dual Residency

There are special rules for Pennsylvania residents working in Indiana, Maryland, New Jersey, Ohio, Virginia, or West Virginia-

If a taxpayer is a Pennsylvania resident and a tax resident for income tax purposes of a reciprocal compensation state, he or she may claim the Pennsylvania resident credit. The reciprocal compensation agreements with these states are not applicable, and a Pennsylvania resident must file in both Pennsylvania and the other state. The Pennsylvania resident must file a *PA-40 Schedule G-L, Credit for Taxes Paid by PA Resident Individuals, Estates or Trusts to other States or Countries* and submit a copy of the resident tax return filed with the other state to explain that the other state taxed them as a resident in that state and did not allow credit for Pennsylvania taxes owed. Example: Dan is a domiciliary of Pennsylvania for the entire taxable year. He leased an apartment in Maryland and worked 230 days in Maryland. Maryland considers Dan to be a Maryland resident for income tax purposes. He earned \$10,000 in compensation for working in Maryland. Dan must report his compensation as Pennsylvania-taxable income. Because he is a Pennsylvania domiciliary, Dan may claim the Pennsylvania resident credit on PA-40 Schedule G-L for the Maryland tax he paid so long as he does not claim credit on a Maryland return for Pennsylvania taxes. Refer to PA PIT Guide Chapter 17, Credits.

I. North Eastern States Tax Officials Association (NESTOA) Agreement – Reserved

J. Who is a Part-Year Resident

A part-year resident is an individual who moved to or from Pennsylvania with the *bona fide* intention of permanently changing residence. A person moving into Pennsylvania

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with the intent of residing here permanently becomes taxable as a resident on the first day he or she lives here regardless of reason or housing arrangement, such as employer-provided housing, living with relatives, etc.

III. TAXATION

A. How Residents are Taxed

A resident is taxed on all of his or her taxable income whether it is received from sources inside or outside Pennsylvania.

A taxpayer is allowed a resident credit for any tax imposed by and paid to other states or countries based upon income that is subject to Pennsylvania personal income tax. Such taxpayers should complete *PA-40 Schedule G-L, Credit for Taxes Paid by PA Resident Individuals, Estates or Trusts to other States or Countries*. PA-40 Schedule G-L must include a copy of the tax return filed with the other state or foreign country.

Refer to PA PIT Guide, Chapter 17, Credits.

B. How Nonresidents are Taxed

1. Types of Income

Nonresidents are taxed on the following types of income derived from sources within Pennsylvania-

a. Compensation

Pennsylvania taxes nonresidents on compensation for services performed in Pennsylvania unless the taxpayer is a resident of one of the reciprocal agreement states.

Refer to PA PIT Guide, Chapter 7, Gross Compensation and Chapter 30, PA Department of Revenue Personal Income Tax Policy Guidance, for related personal income tax bulletins.

b. Net Income (Loss) from the Operation of a Business, Profession, or Farm

Pennsylvania taxes nonresident owners on all allocated or apportioned income from the operation of a business entity in Pennsylvania. If an individual derives income from sources both inside and outside Pennsylvania, separate accounts and records that clearly reflect the Pennsylvania-business activity should be maintained. Otherwise, that individual must file a *PA-40 Schedule NRH, Apportioning Income by Nonresident Individuals* to apportion the income.

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c. Net Gains (Losses) from the Sale, Exchange or Disposition of Property

Pennsylvania taxes nonresidents on the gain from the sale of any real or tangible personal property located in Pennsylvania. Pennsylvania does not tax nonresidents on the gain from the disposition of intangible property nor allow the use of any loss from such a disposition to reduce other Pennsylvania-taxable gains. If a taxpayer that moves into Pennsylvania sells property in his or her former state before moving, no gain or loss on that sale is reportable to Pennsylvania. However, if the taxpayer moved from Pennsylvania to another state and then sold real property or any other tangible property located in Pennsylvania, then the gain must be reported.

Refer to PA PIT Guide Chapter 11, Net Income (Loss) From Business, Profession or Farm; Chapter 30, PA Department of Revenue Personal Income Tax Policy Guidance, for related Pennsylvania income tax bulletins; and Chapter 12, Net Gains (Losses) From the Sale, Exchange or Disposition of Property, for additional information regarding the reporting of property used in the operation of a business, profession or farm.

d. Net Income (Loss) from Rents, Royalties, Copyrights, and Patents

Pennsylvania taxes nonresidents on the net income from the use of property located in Pennsylvania or used in Pennsylvania.

Refer to PA PIT Guide, Chapter 13, Net Income or Loss From Rents, Royalties, Copyrights, and Patents.

e. Interest on Installment Sale

Pennsylvania taxes nonresidents on interest from installment sales as *PA Schedule D-I* income.

f. Interest on Business Accounts

Pennsylvania taxes nonresidents on interest on business accounts such as accounts receivable or a business checking account that is included in business income.

g. Mortgage or Security Interests

Pennsylvania taxes nonresidents on mortgage or security interests on installment sales that are being reported as such utilizing *PA Schedule D-I (REV-1689), Computation of Installment Sale Income*. If PA Schedule D-I is not used and the entire gain is reported in the year sold, interest on an installment sale is not subject to tax.

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h. Intangible Personal Property

Pennsylvania taxes nonresidents on intangible personal property employed in a trade, profession, occupation, or business carried on in Pennsylvania. The nonresident taxpayer does not report such a sale on a PA-40 Schedule D, Sale, Exchange or Disposition of Property, but includes the gain (loss) in determining net income or loss from the operation of a business, profession or farm.

Refer to PA PIT Guide, Chapter 11 and Chapter 30 for Personal Income Tax Bulletin 2005-02 Gain or Loss Derived from the Disposition of a Going Concern.

i. Estate or Trust Income

Pennsylvania taxes nonresident beneficiaries on income from an estate or trust only to the extent the Pennsylvania-source income to the beneficiaries is taxable to nonresidents.

Refer to PA PIT Guide, Chapter 14, Estates, Trusts and Decedents.

j. Gambling or Lottery Winnings

Pennsylvania taxes nonresidents on gambling and lottery winnings by reason of a wager placed in this Commonwealth, the conduct of a game of chance or other gambling activity located in this Commonwealth or the redemption of a lottery prize from a lottery conducted in this Commonwealth, other than prizes of the Pennsylvania State Lottery.

Nonresidents are not subject to Pennsylvania tax on gambling or lottery winnings, by reason of a wager placed outside this Commonwealth, the conduct of a game of chance or other gambling activity is located outside this Commonwealth or the redemption of a lottery prize from a lottery conducted outside this Commonwealth.

Nonresidents are not subject to Pennsylvania tax on ordinary interest and dividends from investments, or gains realized on the sale, exchange, or disposition of intangible property derived from sources within Pennsylvania. Losses on the sale of intangible property may not be used to offset any taxable gains.

Refer to PA PIT Guide, Chapters 8, 9, 12, and Chapter 30 or PIT Bulletin 2005-02 Gain or Loss Derived From the Disposition Of A Going Concern.

Nonresidents do include interest and dividends from investments, gains realized on the sale, exchange, or disposition of intangible property, or gambling or lottery winnings derived from sources within Pennsylvania when employed in the operation of a business, profession, or farm.

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Refer to PA PIT Guide, Chapter 11, Net Income or Loss from the Operation of a Business, Profession or Farm and Chapter 15, Gambling & Lottery Winnings.

2. **Apportioning Pennsylvania Taxable Income**

A nonresident employee who performs services both inside and outside Pennsylvania is subject to Pennsylvania personal income tax on the net compensation for services performed within Pennsylvania. Usually the employer will allocate and separately report on federal Form W-2, Wage and Tax Statement, the Pennsylvania nonresident-employee's gross Pennsylvania compensation.

If the employer did not report your Pennsylvania gross compensation on the federal Form W-2; or reported an incorrect amount as Pennsylvania gross compensation on the federal Form W-2; or the taxpayer incurred unreimbursed employee business expenses in earning or receiving Pennsylvania gross compensation, the *PA-40 Schedule NRH, Apportioning Income by Nonresident Individuals* must be completed.

A separate schedule must be completed for each employer for whom services both within and outside Pennsylvania were performed.

If a nonresident taxpayer has income from a business, profession, or farm derived from sources both within and outside Pennsylvania and has records and accounts that accurately reflect the income from Pennsylvania, he or she should report as Pennsylvania-taxable income those amounts based on these accounts and records. If the accounts and records do not clearly reflect the Pennsylvania-source income, *PA-40 Schedule NRH, Apportioning Income by Nonresident Individuals* must be completed.

3. **Apportionment Exception—Reciprocal Compensation Agreements**

Residents of Indiana, Maryland, New Jersey, Ohio*, Virginia, or West Virginia are not subject to tax on compensation for services performed inside Pennsylvania on which federal withholding is required, such as for wages and salaries. The agreement does not apply to income reported as compensation, such as executor fees on which there is no federal withholding requirement, nor does it apply to any other class of income.

Residents of these states must file a form *REV-420, Authorization to Withhold Other State's Income Tax* with his or her Pennsylvania employer in order that Pennsylvania income tax is not withheld. In this situation, the Pennsylvania employer should withhold and remit income tax to the state of residency.

If you are a resident of a reciprocal agreement state working or performing services in Pennsylvania and your employer withheld Pennsylvania income tax, you may request a refund of the Pennsylvania tax. You report zero taxable compensation on Line 1a and the Pennsylvania tax withheld on Line 13.

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Submit your Form W-2 or a photocopy and a copy of the resident income tax return that you filed/will file with your resident state and form *REV-420, Authorization to Withhold Other State's Income Tax*. Also, submit a statement explaining that you are a resident of a reciprocal agreement state.

***Ohio Reciprocal Compensation Agreement:** Commencing Jan. 1, 2004, remuneration paid to an Ohio resident shareholder-employee of a PA S corporation for performing services in Pennsylvania is not covered by the Pennsylvania/Ohio Reciprocal Compensation Agreement and will be subject to Pennsylvania personal income tax. This tax treatment applies to Ohio resident shareholder-employees with a 20 percent or greater interest in a PA S corporation who worked or performed services for the S corporation in Pennsylvania. In addition, a *PA-40 Schedule G-L, Credit for Taxes Paid by PA Resident Individuals, Estates or Trusts to other States or Countries* may be allowable only if the S corporation is both a PA S corporation and an Ohio S corporation.

Refer to PA PIT Guide, Chapter 7, Gross Compensation.

C. **How Part-Year Residents are Taxed**

A part-year resident is subject to the Pennsylvania personal income tax as a resident for the portion of the year the individual resided in Pennsylvania. The same taxpayer is subject to the Pennsylvania personal income tax as a nonresident for the remaining portion of the year if he or she continues to work in Pennsylvania unless he or she becomes a resident of a reciprocal state. If he or she receives income from sources within the Commonwealth, this income is taxed as shown under [How Nonresidents are Taxed](#).

Part-year residents are not subject to Pennsylvania tax on ordinary interest, dividends, gains from intangible property or gambling and lottery winnings from Pennsylvania sources while a nonresident.

D. **How Members of Partnerships and Pennsylvania S Corporations Report Income**

A member of a partnership or a shareholder in a PA S corporation must report his or her share of the income whether it was distributed or not. The income (loss) from the partnership or PA S corporation must be reported in the same class from which the partnership or PA S corporation received the income. A line is provided on PA-40 Schedule D, Sale, Exchange or Disposition of Property and PA-40 Schedule J, Income for Estates and Trusts specifically for partnership or PA S corporation income. Ordinary business income, farm income, dividends, interest, and rental income should be added to any similar class of income and included on the appropriate line of the PA-40 Individual Income Tax return. Composite returns can be filed on behalf of the nonresident shareholders/partners.

Sometimes an individual partner or shareholder pays an expense of a partnership or PA S corporation, such as interest expense. In this case, the individual may deduct the

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expense from his or her income only if the partnership agreement or articles of incorporation require that the member or shareholder pay the business or rental expenses out of his or her personal assets. These expenses must be noted on a separate attachment and do not relate to any existing schedule.

Do not add health care benefits to the Pennsylvania wages of shareholder-employees of PA S corporations as long as the plan is non-discriminatory, even though such benefits must be added to their federal wages.

Each partner in a business, profession or farm must attach to the PA-40 Individual Income Tax return a copy of the PA-20S/PA-65 Schedule RK-1 for residents and/or PA-20S/PA-65 Schedule NRK-1 for nonresidents. A separate PA-20S/PA-65 Schedule RK-1 and/or NRK-1 must be submitted for each partnership in which the taxpayer is a partner. If a partnership fails to provide PA-20S/PA-65 Schedule RK-1 and/or NRK-1, the taxpayer must attach a copy of federal Schedule K-1 and classify the income (loss) according to Pennsylvania instructions for that class. A Pennsylvania return must be filed even if the PA-20S/PA-65 RK-1 or PA-20S/PA-65 NRK-1 shows a loss.

Each shareholder in a PA S corporation must attach to the PA-40 Individual Income Tax return a copy of the PA-20S/PA-65 Schedule RK-1 for residents and/or PA-20S/PA-65 Schedule NRK-1 for nonresidents. A separate PA-20S/PA-65 RK-1 and/or NRK-1 must be submitted for each PA S corporation in which the taxpayer is a shareholder. If a S corporation fails to provide PA-20S/PA-65 Schedule RK-1 and/or NRK-1, the taxpayer must attach a copy of federal Schedule K-1 and classify the income (loss) according to PA instructions for that class. A Pennsylvania return must be filed even if the PA-20S/PA-65 RK-1 or PA-20S/PA-65 NRK-1 shows a loss.

Refer to PA PIT Guide, Chapter 16, Pass Through Entities.

E. Resident Members of the U.S. Armed Forces

Military pay, including housing allowances, earned or received by a Pennsylvania resident member of the U.S. Armed Forces (Army, Air Force, Navy, Marine Corps, and Coast Guard) while not on federal active duty or not on federal active duty training, is fully taxable regardless of where the military service is performed.

Also, military pay, including housing allowances, earned or received by a Pennsylvania resident for military service on federal active duty in Pennsylvania is subject to the Pennsylvania personal income tax, 72 P.S. § 7303(a)(1).

Full-time federal active duty military pay and federal active duty for training pay, including housing allowances, earned or received by a Pennsylvania resident member of the U.S. Armed Forces while serving outside the state is not taxable for Pennsylvania personal income tax purposes. However, a taxpayer must include such compensation when determining eligibility for tax forgiveness on *PA-40 Schedule SP*.

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While on federal active duty or federal active duty for training, any other income that the Pennsylvania resident earns, receives, or realizes remains taxable for Pennsylvania personal income tax purposes.

The taxpayer has the burden of establishing that income received for military service outside the Commonwealth was earned while on federal active duty. The Department of Revenue requires a copy of the military orders directing the taxpayer to federal active duty outside the Commonwealth. Residents must file a Pennsylvania personal income tax return and include their Form(s) W-2 and copies of their military orders as evidence of active duty military pay earned outside Pennsylvania.

Pennsylvania residents in the U.S. Foreign Service are not on active duty for Pennsylvania personal income tax purposes, and his or her compensation is subject to tax.

F. Nonresident Members of the U.S. Armed Forces

Nonresident military personnel who are serving in Pennsylvania are exempt from Pennsylvania personal income tax on their federal active duty military pay and housing allowances. They and their families are, however, subject to tax on any other income normally taxable to nonresidents. This includes duty pay that is not active duty pay, such as weekend drills. See J. Military Spouses Residency Relief Act (MSRRA) below.

G. Resident Members of the U. S. Armed Forces Reserves or National Guard

Pennsylvania resident Reservists and National Guardsmen ordered to active duty for training at a two-week summer encampment pursuant to Title 10 or Title 73 of the U.S. Code are presumed to be on federal active duty. For example, all income received for inactive duty while attending weekend drills is taxable.

Military pay, including housing allowances (this includes a reserve unit's two-week summer training) received for service performed while on federal active duty is excludable from taxable compensation provided the active duty training is performed outside the Commonwealth. In addition, scholarships or remuneration received by cadets and midshipmen at U.S. military academies are not taxable because none of these academies is within Pennsylvania and such individuals are on federal active duty.

Beginning with tax years after Dec. 31, 2006, compensation earned by National Guard members on active duty and responding to an emergency shall not be considered taxable income. Act 182 of 2006 amended the Tax Reform Code to expand the definition of active duty military income to include income from the U. S. government or the Commonwealth of Pennsylvania for active state duty for emergencies within or outside the Commonwealth. This addition includes duty ordered pursuant to 35 PA.C.S. Ch. 76 (relating to the Emergency Management Assistance Compact).

When a civilian employer voluntarily either makes up the difference in a National Guardsman's or U.S. Reservist's regular wages or continues at full pay for the

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Guardsman or Reservist during the term of their active duty, the differential or full pay continuation will be considered state taxable compensation subject to Pennsylvania personal income tax withholding. The term differential pay includes military continuation pay, active duty differential payments required by state statutes or payments made by certain states or commonwealths that pay a stipend or a set dollar amount to their employees called to military active duty. Unless otherwise excluded by a preceding section, military differential pay may be taxable non-employee compensation, whether it is subject to withholding or not. Employers should report military differential pay on *federal Form 1099-MISC*, Box 3 - Other Income.

A full-time Pennsylvania National Guardsman is taxed on all of the following components of military compensation -

1. Inactive State duty pay received for services both within and outside the Commonwealth
2. Inactive federal duty pay received for services as a member of the U. S. Armed Forces both within and outside the Commonwealth
3. Active federal duty pay received for services within the Commonwealth
4. Active State duty pay received for services both within and outside the Commonwealth.

H. Members of the Merchant Marine and Employees of U.S. Public Health Service
Pennsylvania residents serving in the Merchant Marines, U.S. Public Health Service, the National Oceanic and Atmospheric Administration, or the U.S. Foreign Service are subject to tax on compensation whether earned within or outside Pennsylvania. However, compensation earned by Pennsylvania residents serving in the Merchant Marines or U.S. Public Health Service called to active duty in a Combat Zone or hazardous duty zone is not subject to tax in Pennsylvania. Copies of executive orders that make the active duty military active duty are required to be included with the Pennsylvania personal income tax return.

I. Combat Zone and Hazardous Duty Service

1. Military Personnel

Combat zone pay and hazardous duty zone pay received by a member in the U.S. States Armed Forces is not taxable for Pennsylvania personal income tax purposes (Refer to Title 72 P.S. §7301(d)(vii)). Combat zone and hazardous duty zone pay received by a member of the U.S. Armed forces is not considered "*poverty income*" for purposes of tax forgiveness (Refer to Title 72 P.S. §7301(o.2)(vii)).

Combat zone for Pennsylvania personal income tax purposes means any area designated by the President of the U.S. by Executive Order as a combat

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zone for any time period designated by the President by Executive Order as the period of combatant activities. Hazardous duty zone is also designated by Executive Order.

United States reservists and Pennsylvania National Guardsmen are members of the U.S. Armed Forces while they are serving in a combat zone for purposes of this exclusion. The \$500 "combat zone" pay exclusion limit for military officers contained in the Internal Revenue Code is not in the state taxing statute.

2. **Civilians Working in Combat Zones**

The Internal Revenue Service has concluded that no civilian contractor, or other civilian employee, working in a combat zone is eligible for the combat zone exclusion provided by U.S. Code Section 112. Likewise, there exists no comparable exclusion or exemption provided by the Pennsylvania personal income tax statutes or regulations.

3. **Filing Deadlines for Combat Zones**

Pennsylvanians serving in combat zones or qualified hazardous duty areas designated by the President of the U.S. are given the same additional time to file and pay their Pennsylvania income tax returns and make payments as allowed for federal income tax purposes. The deadline is automatically extended to 180 days from the last day of service or the last day of continuous hospitalization for injury incurred in one of these areas. Print "*COMBAT ZONE*" at the top of your return. Mail your return and military orders to -

Regarding - COMBAT ZONE
PA DEPARTMENT OF REVENUE
BUREAU OF INDIVIDUAL TAXES
PO BOX 280600
HARRISBURG PA 17128-0600

4. **Electronic Filing for Combat Zones**

If you are filing your return electronically, you must still fax or mail copies of your orders. Print "*COMBAT ZONE*" at the top of your orders. Fax your orders to (717) 772-4193 or mail your orders to -

Regarding - COMBAT ZONE
PA DEPARTMENT OF REVENUE
ELECTRONIC FILING SECTION
PO BOX 280507
HARRISBURG PA 17128-0507

J. **Military Spouses Residency Relief Act**

The Military Spouses Residency Relief Act (MSRRA) affects the treatment of residency and income for spouses of military personnel for state tax purposes for tax years 2009 and after. If a Pennsylvania resident service member is serving outside Pennsylvania

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and their nonmilitary spouse earns income in that other state – and the spouse claims relief under the MSRRA – the spouse’s income is only taxable to Pennsylvania. If a Pennsylvania nonresident service member is serving in Pennsylvania and their nonmilitary spouse earns income in Pennsylvania, the spouse’s income is not taxable to Pennsylvania under MSRRA, when the service member and spouse are both residents or domiciliaries of the same other state, and if the spouse is in Pennsylvania solely to be with the service member. Pennsylvania source income, from a business, profession, farm, rental or royalty property, related to a business or property located in Pennsylvania remains taxable to Pennsylvania nonresident military personnel and their spouses and is not covered by the MSRRA. For detailed information on how MSRRA impacts state taxation of income earned by a service member’s nonmilitary spouse, please review Personal Income Tax Bulletin 2010-01 Military Spouses Residency Relief Act on the department’s website, www.revenue.state.pa.us.

IV. TYPE FILER/FILING STATUS

A. **Single - Filing Status "S"**

A taxpayer must file as "single" if unmarried on the last day of the tax year. This includes those who have been widowed or divorced during the tax year or earlier.

B. **Married, Filing Joint Return - Filing Status "J"**

A taxpayer and spouse, even though living apart, whether or not under a separate maintenance agreement, may file a joint return for convenience. A spouse is not required to file either a joint or separate return if he or she did not receive total Pennsylvania-taxable income in excess of \$33 and/or did not incur a loss during the taxable year. When filing a joint return, both spouses are fully liable for its accuracy and each is fully responsible for any liabilities.

To file jointly, taxpayers must meet all of the following conditions-

1. Both spouses’ taxable years end on the same date; and
2. Both spouses elect to have the same residency period (earliest starting date if you moved into Pennsylvania and latest ending date if you moved out of Pennsylvania) if you are part-year residents; and
3. Neither spouse is individually claiming one or more of the credits on *PA-40 Schedule OC, Other Credits* or the PA KOZ/KOEZ Credit; and
4. Both spouses are still living; and
5. Neither spouse is individually liable for the payment under a court order for support and maintenance of a child or of a child and the parent with whom the child is living if the same support order includes support for the child and the parent.

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If you and your spouse made your estimated payments jointly, you should file a joint tax return. However, if you and your spouse made estimated payments jointly and because of Pennsylvania guidelines you must file separate tax returns, you must allocate the payments by completing form *REV-459B, Consent to Transfer, Adjust or Correct PA Estimated Personal Income Tax Account*. The form must be completed in its entirety, showing the total number of payments made for the year and the amount of the payments to be transferred to the spouse. Both individuals must sign the form. This form can be sent to the address shown on the form prior to filing the return or a copy of the form can be submitted with both returns when filing. This avoids processing delays and correspondence from the department.

If you and your spouse jointly own income-producing property, you must each report your share of the income (loss). Income-producing property includes savings accounts, businesses, securities, and real estate. Spouses usually equally divide income from jointly owned property. The income and losses of a taxpayer and spouse must be determined separately. You may not off-set the income of the taxpayer with a loss from the spouse and vice versa.

C. Married, Filing Separate Returns - Filing Status "M"

A taxpayer and his or her spouse who is also a taxpayer may each file a separate return instead of a joint return.

Income derived from jointly owned assets must be split between the spouses. Where a definite ownership of the property is known, apply the income to the spouse who owns it. Where ownership is questionable, presume joint ownership unless the taxpayer states otherwise. Some interest and dividend statements show only one name on the account even if jointly owned.

Married taxpayers must file separate returns if-

- One spouse is a resident and the other a nonresident, unless both spouses elect to be taxed as resident taxpayers; or
- The taxpayer's spouse died on or before the last day of the tax year (surviving spouse files as "single" unless he or she remarries before the end of the taxable year). A return must be filed for the deceased as "Deceased"; or
- If one spouse's taxable year begins or ends on a different date; or
- If either spouse is liable for the payment of spousal and dependent support; or
- The taxpayer or spouse claims any restricted credit listed on PA Schedule OC, Other Credits, such as the: Employment Incentive Payments Tax Credit; Jobs Creation Tax Credit; Research and Development Tax Credit; Film Production

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Tax Credit; Resource Enhancement and Protection (REAP) Tax Credit; Keystone Innovation Zone (KIZ) Tax Credit; Organ and Bone Marrow Donor Tax Credit; Neighborhood Assistance Program (NAP) Tax Credit; Educational Improvement Tax Credit; Strategic Development Area Job Creation Tax Credit; or Volunteer Responder Retention & Recruitment Tax Credit. Refer to PA Schedule OC, Other Credits; or

- The taxpayer or spouse claims a Keystone Opportunity Zone (KOZ) or Keystone Opportunity Expansion Zone (KOEZ) Credit must also file separate returns. Refer to PA Schedule P-S KOZ.

D. Deceased - Filing Status "D"

The executor, administrator, or other person charged with caring for the decedent's property must file the tax return for an individual who died during the tax year. The responsible person files the return as "Deceased," and reports all income the decedent received from the beginning of the tax year to the date of death.

If the deceased was married at the time of death, the surviving spouse must file a separate PA-40 Individual Income Tax return as "single" unless he or she remarries before the end of the taxable year. Jointly owned income, such as interest, must be apportioned between the decedent and the survivor from the beginning of the tax year to date of death. After the date of death, all taxable income derived from jointly held property is attributable to the surviving owner.

Any return filed for a deceased individual must show the date of death on the appropriate line.

E. Final Return - Filing Status "F"

A person who lived in Pennsylvania during the tax year but permanently moved from Pennsylvania files a final return unless the individual will receive income from sources within Pennsylvania in succeeding years.

V. RESIDENT RETURNS/NONRESIDENT RETURNS FOR SHORT PERIODS

A. Decedent

Where a final return is required to be filed for a deceased taxpayer, the filing due date is generally the same as the filing date would have been had the person lived until the end of his or her tax year. A calendar year taxpayer is required to file a tax return for the taxable year no later than the following April 15th, unless that date falls on a Saturday or Sunday. In such cases, the tax return must be filed by the next business day after April 15th. For example, if a calendar year taxpayer dies on August 15, 2009, then his or her final return is for the period Jan. 1, 2009, through August 15, 2009, and is required to be filed no later than April 15, 2010. Further, his or her final return may be extended by the fiduciary of his or her estate; however, an extension to file the final return does not extend the due date for payment of any balance due on the final return. All taxes due must be paid no later than April 15, 2010.

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B. Change in Residency

When a resident of Pennsylvania establishes a new domicile and/or residency outside of Pennsylvania during the tax year or, conversely, when a nonresident establishes a new domicile and/or residency within Pennsylvania during the tax year, the taxpayer files a PA-40 Individual Income Tax return using the part-year resident filing status.

A taxpayer who changes his or her state of residence/domicile during the tax year is subject to tax-

1. On all income from the enumerated sources received during the time the taxpayer was a Pennsylvania resident, and
2. Only on income from Pennsylvania sources during the portion of the tax year, he or she was a nonresident.