



December 7, 2006
Pennsylvania Personal Income Tax
No. PIT-06-013
Residency

ISSUE

Whether Taxpayer is a “resident individual” under Article III of the Tax Reform Code of 1971 (“the personal income tax”)?

CONCLUSION

Assuming Taxpayer was domiciled in Pennsylvania prior to his reassignment to a foreign country, Taxpayer is a “resident individual” subject to Pennsylvania Personal Income Tax on all taxable income received from any source.

FACTS

Taxpayer is currently assigned as permanent staff for a Federal Agency. Taxpayer has been released from his duty post in Pennsylvania and has been reassigned out of the country. Taxpayer’s initial contract is for 24 months and can be extended up to a maximum of 5 years.

Taxpayer currently has no property in Pennsylvania. All of his personal effects are now in a foreign country. Taxpayer has a car registered in Pennsylvania, but intends to register it in the foreign country through the United States Embassy.

Taxpayer wishes to be exempt from Pennsylvania Personal Income Tax based on his belief that he is no longer a Pennsylvania resident. Taxpayer has filed as a Pennsylvania resident since at least the 2002 tax year.

DISCUSSION

To determine whether an individual is subject to Pennsylvania Personal Income Tax, it must be established whether the individual is a resident or a nonresident of Pennsylvania. If the individual is a Pennsylvania resident, he or she is taxed on all taxable income received from any source. 72 P.S. § 7302(a). Nonresidents are taxed only on Pennsylvania source income. 72 P.S. § 7302 (b). Any individual who has gross taxable income in excess of \$35.00 that would result in a tax liability of at least \$1.00 (absent a loss) must file a Pennsylvania Personal Income Tax Return. 72 P.S. § 7330.

To determine residency for Pennsylvania Personal Income Tax purposes, one’s domicile must first be identified. 72 P.S. § 7301(p). The following link to the REV-611(06-04) publication “Determining Residency for Pennsylvania Personal Income Tax Purposes” will provide guidance regarding domicile:
<http://www.revenue.state.pa.us/revenue/lib/revenue/rev-611.pdf>.

Domicile refers to the place where a taxpayer maintains his or her permanent abode, and is the place where he or she intends to return whenever absent. A person may have only one

domicile at one time. A taxpayer's domicile does not change until the taxpayer abandons his/her old domicile and moves to another state or country with the sincere intention of making a "new" permanent home in the new state or country.^[1] If a taxpayer moves to another state or country, but intends to stay there only for a fixed or limited time (no matter how long), his or her domicile does not change. Finally, an employee of the United States, its agencies or instrumentalities living in a foreign country is not considered a domiciliary of that country.

For tax purposes, residency in Pennsylvania may be established in two ways:

1. If you are domiciled in Pennsylvania, you are considered a resident unless you meet all three of the following conditions:

You did not maintain a permanent abode in Pennsylvania for yourself or your family; and

You did maintain a permanent abode outside Pennsylvania throughout the entire taxable year; and

You did not spend in the aggregate more than 30 days of the taxable year in Pennsylvania.

2. If you are not domiciled in Pennsylvania, you are considered a resident if you maintain a permanent abode in Pennsylvania and spend a total of more than 183 days of the taxable year in Pennsylvania.

A "permanent abode" is a house, apartment, dwelling place, or other residence that is 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.

Based on the information provided, Taxpayer has not established a new domicile in a foreign country. As stated in the facts, Taxpayer's contract has a maximum term of five years. If a taxpayer moves to another country, but intends to stay there only for a fixed or limited time (no matter how long), his or her domicile does not change. Taxpayer has not indicated that he has any intention of remaining in the foreign country after his contract runs out. Moreover, Taxpayer, as an employee of an agency of the United States living in a foreign country, is not considered a domiciliary of the foreign country.

As a result, Taxpayer's domicile has not changed. Assuming that Taxpayer was domiciled in Pennsylvania prior to his reassignment to a foreign country, he remains a domiciliary of Pennsylvania and the focus turns to whether Taxpayer has met the three conditions which would allow an individual domiciled in Pennsylvania to be considered a nonresident.

Taxpayer does not meet the conditions necessary to be considered a nonresident. First, Taxpayer has already spent more than 30 days of 2006 tax year in Pennsylvania. Moreover, even if Taxpayer spends less than 30 aggregate days in Pennsylvania in upcoming tax years, Taxpayer's abode in the foreign country cannot be considered a

“permanent abode” as it is occupied only during a fixed or limited period of time for a particular purpose, in this case, Taxpayer’s contract with the Federal Agency.

Therefore Taxpayer continues to be considered a Pennsylvania resident and is subject to Pennsylvania Personal Income Tax on all taxable income received from any source. If Taxpayer has gross taxable income in excess of \$35.00 that would result in a tax liability of at least \$1.00 (absent a loss) he must file a Pennsylvania Personal Income Tax Return.

If, however, Taxpayer was not domiciled in Pennsylvania prior to his reassignment, he is considered a resident only if he maintains a permanent abode in Pennsylvania and spends a total of more than 183 days of the taxable year in Pennsylvania. If he does not meet these conditions, he is considered a nonresident and is only subject to tax on Pennsylvania source income.

^[1]To establish a new domicile, a taxpayer must satisfy these three requirements:

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.