Bill Analysis

Andre Imbrogno *Legislative Service Commission*

H.B. 73

126th General Assembly
(As Introduced)

Rep. Trakas

BILL SUMMARY

- Replaces the existing "bright line" test for residency--based upon the number of "contact periods" in the state--with a test based on more circumstantial evidence of domicile.

CONTENT AND OPERATION

Residency tests changed

(R.C. 5747.01, 5747.24 (repealed), and 5747.25 (repealed))

Any individual earning or receiving income in Ohio is subject to the state's income tax, whether or not the individual is an Ohio resident. Residency affects how Ohio credits a taxpayer for any tax liability to another state on the same income. An Ohio resident may claim a credit for taxes paid to another state (up to the amount of the Ohio tax on the same income). A nonresident 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.

Current "bright line" residency test

For income tax purposes, a "resident" is a person who is domiciled in this state. Under current law, a person is presumed to be domiciled depending upon the number of "contact periods" the person has in Ohio during the taxable year. A person has one contact period in Ohio if the person spends at least some portion, however minimal, of two consecutive days in Ohio while away overnight from an abode located outside Ohio.

A person is presumed to be *not* domiciled in Ohio during a taxable year if the person has no more than 120 contact periods in Ohio during the taxable year and has at least one abode outside Ohio during the entire taxable year. Generally speaking, this presumption is conclusive.[1]

A person is presumed to be domiciled in Ohio during the entire taxable year if the person has no more than 182 contact periods in Ohio during the taxable year but does not satisfy the presumption (above) of not being domiciled in Ohio. A person can rebut this presumption for any portion of the taxable year with a preponderance of the evidence to the contrary. A person who rebuts the presumption for any portion of the taxable year, but not the entire year, is presumed to be domiciled in Ohio for the remainder of the year.

A person also is presumed to be domiciled in Ohio during an entire taxable year if he or she has at least 183 contact periods in Ohio during the taxable year. An individual can rebut this presumption for any portion of the taxable year only with clear and convincing evidence to the contrary. Here again, an individual who rebuts the presumption for any portion of the taxable year is presumed to be domiciled in Ohio for the remainder of the taxable year.[2]

Under current law, an individual who is presumed to be a resident of Ohio under the existing residency tests may elect to be treated as a nonresident in return for a reduction in the amount of the nonresident credit. An individual who makes the election for any taxable year is considered to be a nonresident for the entire taxable year. When an individual makes this election, the number of contact periods the individual has in excess of 120 is 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 has in excess of 120, the larger the portion of income allocable to Ohio and, accordingly, the smaller the amount of the nonresident credit that may be claimed by the individual.

Under the bill, domicile continues to be a basis for being treated as a resident for purposes of the Ohio income tax; however, the bill eliminates the bright-line test for domicile based upon contact periods. The bill also eliminates

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[1] *The Tax Commissioner may request a statement from an individual verifying that the individual was not domiciled in Ohio by virtue of having 120 or fewer contact periods and an abode outside of Ohio. If the individual does not furnish the statement, the individual is presumed to have been domiciled in the state for the entire taxable year. The individual may rebut this presumption with a preponderance of evidence to the contrary. (R.C. 5747.24(B) and (C).)*

[2] *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. (A.C. 5703-7-16.)*

taxpayers' option of being treated as nonresidents in exchange for a reduced nonresident credit calculated on the basis of contact periods.

The bill defines a "resident" as an individual who lives in and maintains a permanent place of abode in Ohio and who does not maintain a permanent place of abode anywhere else, unless the individual, in the aggregate, lives outside of Ohio for more than 183 days during the taxable year. Presumably, under the bill, domicile would be determined by examining all of the facts and circumstances surrounding an individual's residency.

In effect, the bill restores the statutory test for residency that existed until 1993, when the General Assembly enacted the contact period test in S.B. 123 of the 120th General Assembly.

HISTORY

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Introduced	02-22-05	p. 225

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