



**Sub. H.B. 73**

126th General Assembly

(As Re-reported by H. Ways and Means)

**Reps. Trakas, Kilbane, Latta, Gibbs, Blessing, Collier, Schaffer, Blasdel, Hagan, Brinkman, Gilb, Ujvagi, Taylor**

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**BILL SUMMARY**

- Increases by two months the amount of time an individual may spend in Ohio before being presumed to be an Ohio resident for income tax purposes.

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**CONTENT AND OPERATION**

**Residency tests changed**

**Significance of residency**

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**

(R.C. 5747.01, 5747.24, and 5747.25 (repealed))

For income tax purposes, a "resident" is a person who is domiciled in Ohio. 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.<sup>1</sup>

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 (explained 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 the person 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.<sup>2</sup>

### **Exempted contacts**

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

Current law allows an individual to have up to 30 contact periods with Ohio per year without the periods counting toward the residency test, but only if some part of the day is 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.

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<sup>1</sup> *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 Ohio 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).)*

<sup>2</sup> *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.)*

### **Nonresident election**

(R.C. 5747.25)

Under current law (R.C. 5747.25), 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.

### **Proposed changes in residency test**

#### **Basic test**

The bill increases the number of contact periods an individual may have before being presumed to be domiciled in Ohio and therefore treated as a resident for income tax purposes. The number of contact periods is increased from 120 to 182. So, an individual who has 182 or fewer contact periods and who has a permanent abode outside Ohio throughout the year is presumed not to be an Ohio resident for Ohio income tax purposes. This presumption is conclusive unless the Tax Commissioner requests written verification of nonresident status from the individual and the individual either does not reply within 60 days or files a fraudulent statement.

As under current law, 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).)

The bill 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(D).)

#### **Exempted contacts eliminated**

The bill eliminates current law's 30-day 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 bill eliminates current law's provision 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.)

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**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

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