



Sub. H.B. 73*

126th General Assembly

(As Reported by S. Ways & Means & Economic Development)

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

BILL 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 that a statement of nonresidency be filed 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.
- Provides that the exemption does not apply to pay and allowances received for active duty service while stationed in Ohio.
- Provides that the exemption also applies to school district income taxes that use the same tax base as the state income tax.

** This analysis was prepared before the report of the Senate Ways and Means and Economic Development Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Current residency tests

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.

"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(R.C. 5747.01(G) and (H)(1), 5747.24, and 5747.25 (repealed))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. Under current law, an individual is presumed to be domiciled depending 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 two consecutive days in Ohio while away overnight from an abode located outside Ohio.

An individual is presumed to be *not* domiciled in Ohio during a taxable year if the individual 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. The Tax Commissioner may request a statement from the 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.

An individual is presumed to be domiciled in Ohio during the entire taxable year if the individual has less than 183 contact periods in Ohio during the taxable year, but does not satisfy the presumption (explained above) of not being domiciled in Ohio. An individual can rebut this presumption for any portion of the taxable year with a preponderance of the evidence to the contrary. An individual 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.

for which the individual does not provide a preponderance of the evidence to the contrary.

An individual also is presumed to be domiciled in Ohio during a taxable year if the individual 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. 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 for which the individual does not provide clear and convincing evidence to the contrary.¹

Exempted contacts

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

Current law allows 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 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.

Nonresident election

(R.C. 5747.25)

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.

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.)*

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, but the bill requires that the individual, on or before the 15th day of the fourth month following the close of the taxable year, file a statement with the Tax Commissioner, on a form prescribed by the Commissioner, verifying that during the entire taxable year, the individual was not domiciled in Ohio and that the individual had at least one abode outside Ohio. The individual must specify in the statement the location of each abode located outside Ohio. 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 individual fails to timely file the statement or makes a false statement, in which case the individual is presumed to have been domiciled in Ohio the entire taxable year. 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).)

As under current law, an individual who has fewer than 183 contact periods in Ohio during the taxable year, but who does not satisfy the basic test, is presumed to be a resident unless the individual rebuts the presumption with a preponderance of the evidence to the contrary, and 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 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(E).)

Exempted contacts eliminated

The bill eliminates current law's 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 bill eliminates the current 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) and 5747.011 (repealed))

Under current law, the pay and allowances of persons serving in a branch of the military, including the reserves and National Guard, are subject to state and school district income taxes, unless the pay and allowances are earned for service in a declared combat zone.² 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. Also, current 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 bill 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 in a declared combat zone. The exemption does not apply to pay and allowances for active duty service while stationed in Ohio. In addition to expanding the current 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.

² The current combat zones are designated to include the following (including airspace): Arabian Peninsula Areas (Persian Gulf, Red Sea, Gulf of Oman, the part of the Arabian Sea north of 10° North latitude and west of 68° East longitude, the Gulf of Aden, and the countries of Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates); Kosovo area (Federal Republic of Yugoslavia [Serbia and Montenegro], Albania, the Adriatic Sea and the Ionian Sea north of the 39th Parallel); Bosnia and Herzegovina, Croatia, and Macedonia; Afghanistan and supporting areas (including Pakistan, Tajikistan, Jordan, Incirlik Air Base, Turkey, Kyrgyzstan, Uzbekistan, Philippines [only troops with orders referencing Operation Enduring Freedom], Yemen, Djibouti), Turkey, and Egypt.

The 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 bill repeals that section so that the bill's new exemption applies instead.

Effective date

(Section 3)

The bill'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	---

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