Maryland Income Tax
ADMINISTRATIVE RELEASE

Administrative Release No. 37

Subject: Domicile and Residency

I. General

Title 10, subtitle 2, of the Tax-General Article provides for the taxation of residents and nonresidents. The requirement to file an income tax return with the State of Maryland is based upon an individual's connection with the State. If an individual is a resident of Maryland and meets the income filing requirements, then an income tax return must be filed.

II. Definition of Resident

The definition of "resident" is set forth in § 10-101(k) of the Tax-General Article, Annotated Code of Maryland[1] and Code of Maryland Regulations (COMAR) 03.04.02.01B. Briefly stated, an individual is a resident of Maryland if the individual is domiciled in Maryland on the last day of the taxable year or if the individual maintains a place of abode in Maryland for more than six months of the taxable year and is physically present in the State for 183 days or more during the taxable year.

A "day" is defined to mean any part of a day, provided, however, that a continuous period of 24 hours or less may not constitute more than one day.

III. Domicile

A. Defined

"Domicile" is not defined by statute, but has been defined by the appellate courts of this State to mean "…that place where a man [or woman] has his [or her] true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he [or she] has, whenever ... absent, the intention of returning."[2] The courts have also held that once domicile is established, it continues until superseded by a new domicile.

B. Change of Domicile or Change of Residence

Domicile is a question of intent. It is established by the individual intending to treat a place as the person's true, fixed, and permanent home. However, an individual's mere intent to treat a place as the person's domicile is not enough. Intent must be supported by action. An individual must take specific actions to change the person's domicile. The individual must be physically present in the new domicile and must establish ties that create the new domicile, while severing ties with the old domicile.[3]

The two most important criteria in determining a person's domicile are where the person lives and where the person is registered to vote.

Additional criteria used to determine a person's domicile include home, time, items near and dear, active business involvement, and family connections. The total facts and circumstances of each case are reviewed to determine whether a change of domicile has occurred. The following issues are considered within each factor:

1. Home

    a. What residences are owned or rented by the taxpayer

    b. Where are the residences located

    c. What is the size and value of each residence

2. Time

    a. Where and how does the taxpayer spend time during the tax year

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[1] All statutory references are to the Tax-General Article, Annotated Code of Maryland, unless otherwise indicated.

[2] *Blount v. Boston*, 351 Md. 360, 367 (1998) (quoting *Shenton v. Abbott*, 178 Md. 526, 530 (1940)).

[3] In *Comptroller v. Lenderking*, 268 Md. 613, 617-618 (1973), the Court stated:

"Although we recognize that a change of domicile is an exercise of the mind,…*Shenton v. Abbott*, 178 Md. 526, 534, (1940), the cerebration must be supported by or at least not be at variance with extrinsic circumstance. Moreover, there may be a sharp distinction between a change of domicile and a change of residence, *Shenton v. Abbott*, supra, 178 Md. at 530-531."

b. Is the taxpayer retired or actively involved in a business, occupation, or profession

c. How much does the taxpayer travel during the year and the nature of the travel

d. What is the overall living pattern or life style of the taxpayer

3. Items near and dear

a. What is the location of the items or possessions that the taxpayer considers:

(1) "near and dear" to his or her heart

(2) of significant sentimental value

(3) family heirlooms

(4) collections of valuables

b. Where are the possessions that enhance the qualities of one's life style

4. Active business involvement

a. How does the taxpayer earn a living

b. Is the taxpayer actively involved in any business ownerships or professions

c. To what degree is the taxpayer involved in business ownerships

d. How does this compare to business interests outside of the State

5. Family connections

a. Where does the remainder of the taxpayer's family live

b. Where do the minor children attend school

c. Where are the taxpayer's social, community and religious ties

Other factors that are considered include where that person's automobiles are registered, bank accounts, safe deposit boxes, and other evidence indicating the taxpayer's intention to make a place the person's permanent residence.

C. Legal Restrictions

A person may be legally prohibited from establishing a domicile in a foreign jurisdiction because of immigration or visa restrictions. For example, an individual who is sent to a foreign country to perform the duties of the individual's job may not be allowed to remain in that country for an indefinite period of time. The individual's presence in that country may be conditioned on continuing employment or on good relations with that country. An individual who is required to leave a foreign country after a certain period of time, or upon the happening of a certain event, cannot establish a domicile in that country and, therefore, cannot effectuate a change of domicile, regardless of their intent.

Certain factors to consider include:

1. Is the taxpayer employed by the U.S. Government, including the military

2. Is the taxpayer in the foreign country under a work visa or other restrictive visa

3. Is the taxpayer in the foreign country on a temporary assignment

D. Presence in New Domicile

A taxpayer not only has to abandon the taxpayer's old domicile, but the person must establish a new domicile. In order to establish a new superseding domicile, the taxpayer must be physically present in the state or foreign country that the individual intends to be the new domicile. For example, a taxpayer cannot leave Maryland for an assignment in Spain, but claim Florida as their new domicile without being physically present in Florida and without taking steps to establish the new Florida domicile.

Once an individual establishes a domicile, it continues until it is superseded by the individual establishing a new domicile. Every person at all times must have a domicile. An individual may have more than one residence, but can only have one domicile. This principle can be illustrated in the following examples:

1. **Example 1.** A, having a domicile in State X, decides to make A's home in State Y. A has not yet gone to State Y. A's domicile is State X.

2. **Example 2**. A, having a domicile in State X, decides to make A's home in State Y. A leaves State X and is on A's way to State Y, but has not yet reached State Y. A's domicile is State X.

This principal of law is deep-rooted as indicated by the Maryland Court of Appeals case, *Shenton v. Abbott*, 178 Md. 526, 530 (1940). Therein, the Court stated:

"It is a fundamental rule that, in order to effect a change of domicile, there must be an actual removal to another habitation, coupled with an intention of remaining there permanently or at least for an unlimited time. But a change of residence, to enable a person to perform the duties of a civil office, whether elective or appointive, does not of itself constitute a change of domicile. No temporary residence, whether for the purposes of business, health, or pleasure, occasions a change of domicile. Even though a person may be absent from his domicile for many years, and may return only at long intervals, nevertheless he retains his domicile if he does not acquire a domicile elsewhere."

IV. Statutory Resident

An individual may also be a resident of Maryland, even though not domiciled in this State, if the individual maintains a place of abode in this State for more than six months of the taxable year and is physically present for 183 days or more during the taxable year.[4] The term "maintaining a place of abode in this State for more than six months of the taxable year" is not intended to include every person who owns property within this State. If a residence is used for the purpose of a vacation home or for the purpose of returning to Maryland to visit family and friends, then the individual cannot be considered a resident of this State unless they are physically present in the State for 183 days or more of the taxable year.

V. Military Personnel

Maryland law, like most states which have an income tax law, provides that military persons whose permanent residence is in the State, but who are serving outside the State, continue to be residents of the state in which they resided upon entering the military, unless they specifically change that residence to another state. This provision is also guaranteed by the Service members Civil Relief Act[5], which provides that only one state may tax a member of the military, and that taxing state, by default, is the state in which the individual resided when they entered the military service. For a more detailed explanation of this Act and the taxation of military personnel and civilian spouses, see Administrative Release No. 1.

VI. Reciprocal Agreement

Maryland has reciprocal agreements with Pennsylvania, Virginia, West Virginia, and the District of Columbia. Except for differences set forth in the agreements, nonresidents from these jurisdictions are exempt from taxation on the wages, salary, and other compensation for personal services rendered in Maryland, and Maryland residents are exempt from taxation on wages, salary, and other compensation for personal services rendered in those jurisdictions. If the individual's only income from the other state is from wages, salary, or other compensation for personal services rendered in the nonresident jurisdiction, then the individual is not required to file an income tax return in that jurisdiction.

Except for West Virginia, the reciprocal agreements do not apply to individuals who are physically present in the nondomiciliary state for 183 days or more during the taxable year. The reciprocal agreement between West Virginia and Maryland applies regardless of the time a nonresident is physically present in the nondomiciliary state.

For additional information on reciprocal income tax agreements with other states, see Administrative Release No. 3.

VII. Frequently Asked Questions

Question 1: I have been a resident of Maryland for the last six (6) years; however, I was not in Maryland at any time during the last tax year. I did not benefit from any state or local privileges. I did not use the roads, schools, shops or anything here. Why do I have to pay tax here in Maryland?

Answer: Unless it is your intent to sever ties with Maryland and establish a new domicile elsewhere and that intent is demonstrated by the actual establishment of a new domicile, you are still considered a Maryland resident. Therefore, you are obligated to pay tax to Maryland.

Question 2: My job required me to go away for three (3) years, and I was not sure if I was coming back. Why do I have to pay tax here in Maryland?

Answer: Your domicile has not changed simply because your job assignment sent you out of

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[4] §10-101(k) and COMAR 03.04.02.01B.

[5] Formerly the Soldiers' and Sailors' Civil Relief Act of 1940.

Maryland. Temporary absences from Maryland do not constitute a change of domicile.

Question 3: I was a Maryland resident and I am now in the military service and was not stationed in Maryland. Why do I have to pay tax here in Maryland?

Answer: Members of the armed forces who were residents when they entered the military do not lose their domicile until a new "legal residence" is established with the armed forces. Therefore, regardless of your assigned duty station outside of Maryland, the requirement to file a resident tax return with Maryland does not change. The Servicemembers Civil Relief Act protects military personnel from taxation in more than one state. It provides that only the state of domicile, that state in which you were domiciled when you entered the military, can tax your military income unless you follow established military procedures to change your domicile.

Question 4: My employer sent me overseas for two (2) years and I was issued a J-1 visa. Why must I still pay taxes to Maryland?

Answer: Maryland residents who move overseas remain subject to the State income tax as residents. Temporary absences from Maryland do not constitute a change of domicile. Your employment was under a short-term contract for two (2) years, renewable at the employer's option. A J-1 visa holder is required to leave the host country when the job assignment is completed.

Question 5: I am married and have lived with my spouse and children in Maryland. My job sent me to work in two (2) adjacent states where I have paid taxes. My spouse and children remained in Maryland. During my job assignment, I lived in the adjacent states. Why am I subject to Maryland taxes?

Answer: A Maryland resident who takes up temporary residence in another state does not lose their Maryland domicile for purposes of the Maryland income tax. This is reinforced by the fact that your family remained in Maryland. Maryland is your permanent home. Maryland will allow a credit for taxes paid to the other state on this same income.

Question 6: I moved from Maryland overseas to work for the United States government and never intended to return to Maryland. I returned to the United States and stayed temporarily with friends in other states. Why am I subject to Maryland income taxes?

Answer: It is a fundamental rule that in order to affect a change in domicile, there must be an actual removal to another habitation, coupled with an intention of remaining there permanently, or at least for an unlimited period of time. But, a change of residence to enable a person to perform the duties of a civil office, whether elected or appointive, does not of itself constitute a change of domicile. No temporary residence, whether for the purpose of business, health or pleasure, occasions a change of domicile. Even though a person may be absent from their domicile for many years and may return only after long intervals, nevertheless, they retain their domicile if they do not acquire a domicile elsewhere.

Question 7: I am not a Maryland domiciliary and was only in Maryland for a portion of the year. I have Maryland source income and I paid taxes to my state of domicile. Why do I need to file a Maryland tax return?

Answer: Any individual who maintains a place of abode in Maryland and spends in the aggregate 183 days or more in Maryland is considered a resident for Maryland personal income tax purposes and must file a Maryland Resident Personal Income Tax Return.[6] You may be eligible for a credit on your other state's return for taxes paid to Maryland.

If an individual maintains a place of abode in Maryland and spends fewer than 183 days in Maryland, they are considered a nonresident and must file a Maryland Nonresident Personal Income Tax Return and pay tax on all income from Maryland tangible sources. A nonresident individual is subject to tax on that portion of the federal adjusted gross income that is derived from tangible property, real or personal, permanently

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[6] This answer is applicable to residents of all states except West Virginia. The reciprocal agreement between Maryland and West Virginia provides that an individual is only taxed on wages and salaries in the state of domicile, regardless of the amount of time spent in the nondomiciliary state. For example, an individual who is a domiciliary of West Virginia, spends the entire year in Maryland, and receives only salary or wages in Maryland, pays tax on all of their income to West Virginia. The individual has no Maryland filing requirement or income tax obligation on their wages.

located in Maryland and on income from a business, trade, profession, or occupation carried on in Maryland and on all gambling winnings derived from Maryland sources. Adjustments to federal gross income and losses not allocable to Maryland may not be used to reduce Maryland income. Again, you may be eligible for a credit on your other state's return for taxes paid to Maryland.

Question 8: I am not a Maryland resident, but I receive Maryland source income consisting of wages earned while performing services in this State, conducting a trade or business in this State, and income earned on real property located in this State. Why do I have to pay Maryland personal income taxes?

Answer: You are a nonresident with income from Maryland sources and must file a Maryland Nonresident Personal Income Tax Return and pay tax on income derived from Maryland sources. You may be eligible for a credit on the return for your state of residence for tax paid to Maryland on the income derived from Maryland sources.

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