

SALT

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Current State of The States

WATCH

Ohio Changes Residency Test for Income Tax Purposes

Background and Impact on Ohio Taxpayers

On January 2, 2007, former Governor Bob Taft signed into law Substitute H.B. 73 (also called the “Snowbird Bill”). Substitute H.B. 73 changes the residency test for income tax purposes from 120 contact periods to a bright-line test of 182 contact periods (consecutive days are not required), before an individual is presumed to be domiciled in Ohio and thus treated as a resident for income tax purposes. The new legislation also makes mandatory the filing of a statement with the Department of Taxation (“Department”) that an individual is not domiciled in Ohio and has an abode located outside of the state. Previously, an individual was required to file such a statement at the election of the Tax Commissioner. The changes to the residency test are effective taxable years beginning on or after January 1, 2007.

Under Substitute H.B. 73, an individual who has 182 or fewer contact periods and who has a permanent abode located outside Ohio throughout the year is presumed not to be an Ohio resident for Ohio income tax purposes. In order for the presumption to be conclusive, the individual must timely file (on or before April 15 of each year) a statement with the Department 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 statement must be filed on a form prescribed by the Tax Commissioner and must list the specific locations of each of the individual’s abodes outside Ohio. In the event the individual fails to file a statement timely, or makes a false statement, the individual is presumed to have been domiciled in Ohio the entire taxable year. Such a presumption, however, may be rebutted by the individual.

Substitute H.B. 73 retains two key provisions from prior law: (1) definition of contact period—one contact period equals some portion of time during each of two

consecutive days, however minimal, spent in Ohio while away overnight from an abode located outside Ohio; (2) the Tax Commissioner’s authority to challenge an individual’s number of contact periods and to require the individual to prove the number of contact periods by a preponderance of the evidence.

Substitute H.B. 73 eliminates the 30-contact period exemption for time spent in Ohio related to medical hardship and philanthropic purposes. It also eliminates the nonresident election that individuals may choose in exchange for a reduction in the otherwise allowable nonresident credit. Substitute H.B. 73 does not impact individuals changing residency from or to Ohio. Such an individual is still considered domiciled in Ohio for that portion of the taxable year before or after the change.

The concept of residency is significant because it affects the way in which Ohio credits taxes paid to another state on the same portion of income. Specifically, an Ohio resident may claim a credit for taxes paid to another state up to the amount of Ohio income tax on the same income. A nonresident may claim a credit for the amount of tax on the portion of the nonresident’s Ohio adjusted gross income that is not allocable to Ohio. Residency does not determine whether or not an individual is subject to Ohio income tax. Generally, any individual earning or receiving income in Ohio is subject to Ohio income tax.

The Ohio personal income tax rates are decreasing each year by a total of 21% over five years, beginning with taxable year 2005 and ending 2009 (see H.B. 66, the biennial state budget bill for fiscal years 2006-2007). The top personal income tax rate will decrease from 7.50% (at the time H.B. 66 was enacted) to 5.925% by 2009.

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Action Items

GBQ will continue to monitor this development, as necessary. GBQ SALT professionals are available to assist you in determining how best to address tax issues related to the changes to the residency test for Ohio income tax purposes.

FOR MORE INFORMATION, PLEASE CONTACT:

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