

Administrative Release No. 3

Subject: Nonresident Credits, Reciprocal Income Tax Agreements, Nonresident County Income Tax, and Nonresident with Maryland Resident Spouse

I. Nonresident credits

Chapter 1 of the Acts of 1992 (First Special Session) amended the law in several important respects regarding certain nonresident taxpayers. Nonresident taxpayers from Arizona, California, Indiana, Virginia, West Virginia and Washington, D.C., can no longer claim a credit on the Maryland return for income taxes paid to the other jurisdiction based on income taxed by Maryland and the other jurisdiction. For taxable years beginning after December 31, 1991, nonresidents must claim the credit on the resident income tax return of the jurisdiction in which the individual is domiciled, i.e., the permanent residence of the individual.

II. Reciprocal income tax agreements

A. Before 1992

Before 1992, nonresidents who were from jurisdictions having income tax laws similar to Maryland, and which laws exempted Maryland residents from taxation on wages, salary or other compensation for personal services rendered in their jurisdictions, were exempt under Maryland law from taxation on their compensation for personal services rendered in Maryland. Similarly, Maryland residents were exempt from paying income tax on such income earned in those jurisdictions. For the jurisdictions of Arizona, California, Indiana, Michigan, Virginia, Wisconsin and Washington, D.C., the laws of the respective jurisdictions operated automatically without the need for written reciprocal agreements.

Written reciprocal agreements, however, were entered into with Pennsylvania and West Virginia. The agreements provided the same tax treatment for nonresidents as was provided for under the laws of the respective jurisdictions referred to above.

B. After 1991

The law was amended in 1992. For taxable years beginning after December 31, 1991, wages, salary and other compensation for personal services rendered in Maryland by a nonresident will be subject to taxation unless Maryland has entered into a written reciprocal agreement with another jurisdiction exempting this income from taxation. At present, Maryland has written reciprocal agreements with Pennsylvania, Virginia, West Virginia and the District of Columbia. Except for differences set forth in the agreements, and as noted in Section III, nonresidents from these jurisdictions will be exempt from taxation on the wages, salary and other compensation for personal services rendered in Maryland, and Maryland residents will be exempt from taxation on wages, salary and other compensation for personal services rendered in those jurisdictions. Withholding will not be required if the individual files an exemption certificate with the employer. An income tax return will not be required by the nonresident if the individual's only income is from wages, salary and other compensation for personal services rendered in the nonresident jurisdiction.

C. Exceptions

Except for West Virginia, the reciprocal agreements do not apply to individuals who maintain a place of abode in the non-domiciliary state for more than six months of the taxable year, and are physically present in the non-domiciliary state for 183 days or more. The agreement between West Virginia and Maryland applies regardless of the time a nonresident maintains a place of abode and is physically present in the non-domiciliary state.

III. Nonresident County Income Tax

A. Maryland Filing Requirement

Chapter 759 of the Acts of 1980 added a Maryland income tax return filing requirement for county income tax purposes for nonresidents who derive income from salaries, wages, or other compensation for personal services from employment in a county located in Maryland. This provision is not applicable if the Comptroller determines that the locality in which the nonresident resides:

1. Imposes no tax on the income of a Maryland resident derived from wages for employment in that locality;
2. Exempts that income from its tax on income; or
3. Allows a credit for that income and exempts that income from the withholding requirements for its tax on income.

A nonresident who is liable for the local income tax must file a Maryland income tax return, Form 515, Nonresident Local Tax. This form is available on the Comptroller's website at www.marylandtaxes.com, or at any of the Comptroller's Office locations.

B. Withholding

The employer of the nonresident who is required to file a Maryland return and pay the county income tax under this section must withhold the county income tax from the wages, salaries or other compensation paid to the nonresident. The withholding must comply with the requirements set forth in the Maryland Employer Withholding Guide.

C. Effective Date

The requirements set forth in this section are required for all taxable years beginning after December 31, 1980.

IV. Nonresident with Maryland Resident Spouse

Chapter 3 of the Acts of 2007 (Special Session) provided for new graduated Maryland income tax rates, and provided that for a nonresident with Maryland source income, these rates are determined by the nonresident's total income from all sources.

This requires special guidance for a nonresident with income from Maryland sources who has a Maryland resident spouse and files a federal income tax return using a filing status of "married filing jointly." The nonresident should file a Maryland nonresident income tax return using a filing status of "married filing separately." The resident spouse should file a Maryland resident income tax return using a filing status of "married filing separately."

If the nonresident chooses to file a joint Maryland return with the resident spouse, a pro forma Maryland nonresident joint return must also be completed and submitted as an attachment to the Maryland resident return. The joint filing uses the total joint income to determine the nonresident's tax rate, and the joint filing cannot be submitted electronically.

Specifically, the pro forma Maryland Form 505 is completed using the figures from the joint federal return for lines 1 through 31. On Maryland Form 505NR, the amount reported on line 5 should include the amount of the joint federal adjusted gross income that is attributable to the Maryland resident spouse. The total Maryland tax figure from line 32c of the Form 505 should be added to the figures on lines 30 and 35 of the Form 502, and that total should be entered on line 36 of the Form 502. The remainder of the Maryland Form 505, lines 33 through 55b should be left blank.

The Form 502 should be completed using the figures from the joint federal return. The amount of the joint federal adjusted gross income attributable to the nonresident spouse should be entered on line 13 of the Form 502.

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