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**MEMORANDUM**

**RE:** Changing domicile from  
Pennsylvania to Florida

**DATE:** September 22, 2015  
*(last updated)*

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**I. Introduction**

Our law firm represents clients who live all over the world. However we begin our relationship with many of them when, as Pennsylvania residents, they are subject to Pennsylvania tax and other laws.

Some clients move permanently from Pennsylvania to a new jurisdiction because of work or family obligations, while others decide to move after retiring to climates that are more to their liking – perhaps where summers are cooler or winters are milder. These clients sell their Pennsylvania residence and leave most (or even all) of their Pennsylvania connections behind. We often maintain our representation of these clients, but unless one of our attorneys is a member of the bar in the jurisdiction where the clients now reside, we typically coordinate our representation with estate planning counsel in the new jurisdiction. In other cases, we no longer work with clients who move because they form relationships with counsel located near their new home.

Some of our clients seek to become residents in other states or countries, in whole or in part because the tax or other laws are more favorable than Pennsylvania's laws. Becoming subject to the laws of a new jurisdiction has always been a two-part process: meeting the requirements for residence under the laws of the new jurisdiction, and disconnecting from the state where the clients resided previously. Although the focus of this memorandum is on our clients who originally lived in Pennsylvania, similar concepts apply to clients leaving other high-tax jurisdictions such as New York and New Jersey.

Below in Section V of this memorandum, we list steps that clients can take in connection with the first part of the process of becoming Florida residents – that is, meeting Florida's requirements to establish residency (and accordingly, to become subject to its tax and other laws). Other jurisdictions may have similar "checklists" to establish residency. In most cases, new jurisdictions welcome new residents and are generally quite accommodating with respect to the process of their declaring their new residency. The process for taking the second step – disconnecting from Pennsylvania – can be thought of as the "mirror image" of the steps necessary to become a resident of Florida. For example, if you register to vote in Florida, you should remove yourself from the voting rolls in Pennsylvania.

It is commonly believed that one way to ensure that an individual has "disconnected" from Pennsylvania is to spend less than half the year in Pennsylvania (fewer than 183 days). Clients who maintain ties in Pennsylvania or other jurisdictions keep careful records regarding

the time they spend in each place. Recently, it has become clear that merely complying with this commonly-recited “rule” is not likely to be sufficient to “disconnect” from Pennsylvania if a taxpayer maintains significant contacts with Pennsylvania. The Pennsylvania Department of Revenue, supported by the Pennsylvania courts, has successfully asserted claims against some taxpayers who were Pennsylvania residents, sought to move elsewhere, and maintained greater or lesser ties with Pennsylvania.

Section II of this memorandum outlines some of the recent developments in Pennsylvania’s case law. These new cases suggest that it may now be more difficult to leave Pennsylvania behind for income and inheritance tax purpose than it once was for clients who continue to maintain homes and other contacts in Pennsylvania.

## II. Recent Developments

The cases below speak in terms of “domicile” which is a legal term generally defined as the place where an individual has his or her permanent home, and the place where he or she intends to return to whenever he or she is absent.<sup>1</sup> Because the courts tend to use “residency” and “domicile” interchangeably, we do so in this memorandum as well.

A. Pennsylvania Income Tax. Recent case law suggests that a person who wishes to change his or her domicile from Pennsylvania to Florida risks the imposition of Pennsylvania income tax if he or she is still considered a “resident individual” under Pennsylvania law.

Pennsylvania defines a “resident individual” in two ways : (1) an individual who is *not domiciled in Pennsylvania* but is present in Pennsylvania for more than 183 days in a calendar year,<sup>2</sup> or (2) a person who *is domiciled in Pennsylvania*, maintains a “permanent place of abode” in Pennsylvania,<sup>3</sup> and spends at least 30 days in Pennsylvania each taxable year. *If an individual is domiciled in Pennsylvania, the maintenance of a permanent place of abode in Pennsylvania alone is sufficient to make him or her a Pennsylvania resident for income tax purposes.*<sup>4</sup>

Therefore, the critical determination for a person who maintains a residence in Pennsylvania while attempting to change his or her domicile to Florida becomes whether or not that person is still considered a Pennsylvania domiciliary for income tax purposes. The Pennsylvania Department of Revenue has published a long list of factors to be considered in the determination of one’s domicile. The list focuses on an individual’s connections to the jurisdiction and includes such factors as where the taxpayer owns a residence, where he or she spends the greatest amount of time, where the taxpayer’s doctors, lawyers and accountants are located, where he or she worships, votes, has active banking accounts, and maintains professional licenses, where the taxpayer records his or her address for insurance policies, deeds, mortgages, leases, passport, federal and local tax returns, where he or she attends family and social events, and even where the taxpayer keeps his or her pets.<sup>5</sup> A copy of the Department’s

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<sup>1</sup> See Black’s Law Dictionary 435 (Fifth Ed. 1979).

<sup>2</sup> Fla. Stat. §198.015; 72 Pa. C.S. §7301.

<sup>3</sup> The Pennsylvania Code defines “permanent place of abode” as a “dwelling place, maintained by the taxpayer, whether or not owned by him.” 61 Pa. Code §101.1.

<sup>4</sup> *Hvizdak v. Commonwealth*, 50 A.3d 788, 792 (Pa. Cmwlth. Ct. 2012)

<sup>5</sup> “Determining Residency for PA Personal Income Tax Purposes,” REV-611 PO (07-13).

brochure, "Determining Residency for PA Personal Income Tax Purposes," is attached to this memorandum.

Consistent with case law, the Pennsylvania Administrative Code defines domicile as "[t]he place which an individual intends to be his permanent home and to which he intends to return whenever he may be absent."<sup>6</sup> When a person has more than one home, "the one which he regards and uses as his permanent home" is considered his domicile.<sup>7</sup> The Pennsylvania Supreme Court requires domicile to be shown by both intention and conduct,<sup>8</sup> and the burden of proving a change of domicile is on the person advocating the change.<sup>9</sup>

Recently the Pennsylvania Supreme Court affirmed a lower court ruling that a taxpayer who attempted to change his domicile to Florida was still a Pennsylvania domiciliary for income tax purposes, even though he had changed his driver's license to Florida, registered to vote and voted in Florida, worshipped regularly in Florida, participated in social organizations in Florida, belonged to a golf club in Florida, and all of his social events were held in Florida "but for the fact that he visited Pennsylvania to spend Christmas with his children."<sup>10</sup> The court focused on the fact that the taxpayer had continued to be married to a Pennsylvania resident and had provided financial support for his wife and minor children (who lived in Pennsylvania) throughout the tax year in question.

The court distinguished its decision from a much earlier case where the Pennsylvania Supreme Court determined that a defendant had established his new domicile in Florida by "sever[ing] all Pennsylvania ties and establish[ing] himself anew in Florida."<sup>11</sup>

This case signals that individuals attempting to change their domicile from Pennsylvania to Florida for income tax purposes may face opposition from Pennsylvania tax authorities if they continue to maintain significant connections with Pennsylvania, especially continued ownership and use of a residence in Pennsylvania. In particular cases, it appears that the Department's focus is on individuals who claim nonresident income tax status after having filed Pennsylvania income tax returns as Pennsylvania residents in prior years. A copy of the "Nonresident Review Questionnaire" used by the Pennsylvania Department of Revenue in connection with income tax audits of taxpayers is attached to this memorandum.

B. Pennsylvania Inheritance Tax. With respect to one's residency at death for inheritance tax purposes, the test applied by the courts is somewhat more subjective, but the considerations are similar to those discussed above. In addition, in this context a court is likely to consider the networks that an individual has established – where family, friends, doctors, lawyers, favorite charities and religious communities are centered, as well as where an individual spent most of his or her lifetime and is buried.<sup>12</sup>

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<sup>6</sup> 61 Pa. Code § 101.1.

<sup>7</sup> 61 Pa. Code § 101.3(b).

<sup>8</sup> *Dorrance's Estate*, 163 A. 303, 309 (Pa. 1932).

<sup>9</sup> *In re Nomination Petition of Prendergast*, 673 A.2d 324, 327-38 (Pa. 1996).

<sup>10</sup> *Hvizdak v. Com.*, 69 A.3d 170 (Pa. 2012).

<sup>11</sup> *Hvizdak*, 50 A.3d at 792, n.7, quoting *Smith v. Smith*, 70 A.2d 630, 633 (Pa. 1950).

<sup>12</sup> *Perelman Estate*, 3 Fid. Rep: 3d (Phila. O.C.: 2013).

### III. Tax Considerations

A. Death Taxes. The imposition of **federal** estate tax does not change when one changes domicile from Pennsylvania to Florida. Pennsylvania and Florida tax treatment at death, however, differs as follows:

1. Inheritance Tax.

(a) In Pennsylvania, transfers at death to surviving spouses and charities are exempt from Pennsylvania inheritance tax. Transfers at death to descendants, parents, and the spouses of children are subject to a 4.5% inheritance tax rate, transfers to siblings are subject to a 12% inheritance tax rate and transfers to others are subject to a 15% inheritance tax rate. Also, gifts made within one year of death are subject to inheritance tax. Pennsylvania inheritance tax will be a deduction utilized when calculating any federal estate tax due. Note that the estates of individuals who are non-residents of Pennsylvania will still be subject to Pennsylvania inheritance tax to the extent they own real or personal property located in Pennsylvania at death.<sup>13</sup>

(b) Florida does not impose an inheritance tax or estate tax on transfers at death.

2. Because Pennsylvania has an inheritance tax, transfers at death to individuals or entities other than a surviving spouse or charities will result in higher death taxes, as compared to Florida, if decedent was a resident of Pennsylvania upon his or her death.

B. Income Tax.

1. Pennsylvania imposes a 3.07% flat rate tax on the receipt of statutorily defined classes of income. Only very limited deductions are available. Note that neither retirement income, such as distributions from employer-sponsored plans, nor mandatory distributions from IRAs and 401(k) plans are taxed under Pennsylvania law as income.<sup>14</sup> In addition, counties impose varying earned income taxes. Pennsylvania income tax is deductible for federal income tax purposes in the year the Pennsylvania tax is paid. Non-residents of Pennsylvania are subject to Pennsylvania income tax only on "Pennsylvania source" income. Pennsylvania source income would include, for example, income from a business located in Pennsylvania and rents from property located in Pennsylvania, as well as compensation for services performed in Pennsylvania (unless the individual is a resident of a state that has a reciprocal tax agreement with Pennsylvania).

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<sup>13</sup> Pennsylvania allows the personal representatives of the estates of non-residents to elect one of two methods to calculate the inheritance tax due. Very generally speaking, a personal representative may elect to have Pennsylvania inheritance tax apply in much the same way it would apply to a Pennsylvania resident, and have the tax apply only to assets located in Pennsylvania, or may elect to have tax calculated on a proportionate basis, taking into account the proportion of a non-resident's Pennsylvania-situs assets in comparison to his or her assets located elsewhere.

<sup>14</sup> See 72 Pa. C.S. §7301 *et seq.* Classes of income include compensation, net profits, net gains or income from disposition of property, net gains or income derived from or in the form of rents, royalties, patents and copyrights, dividends, interest derived from obligations which are not statutorily free from state or local taxation, gambling and lottery winnings (other than prizes of the Pennsylvania State Lottery) and net gains or income derived through estates or trusts.

2. Florida does not impose a state income tax.

C. Sales Tax: Pennsylvania and Florida both impose a 6% sales tax, with certain exemptions. In addition, various localities in each jurisdiction may impose a separate sales tax in varying percentages.

D. Real Property Tax.

1. Florida Homestead. Florida grants up to a \$50,000 “homestead exemption” against the imposition of real property tax upon a dwelling. Specifically, every person who owns and resides on real property in Florida on January 1 and makes the property his or her permanent residence is eligible to receive a homestead exemption. The first \$25,000 applies to all property taxes, including school district taxes. The additional exemption up to \$25,000, applies to the assessed value between \$50,000 and \$75,000 and applies only to non-school taxes.

In addition, as provided in Section 193.155(1) of the Florida Statutes, known as the “Save our Homes Limitation,” beginning in 1995, or the year after the property receives homestead exemption, an annual increase in assessment shall not exceed the lower of the following:

(a) Three percent of the assessed value of the property for the prior year; or

(b) The percentage change in the Consumer Price Index (CPI) for all urban consumers, U.S. city average, all items 1967 = 100 or successor reports<sup>15</sup> for the preceding calendar year as initially reported by the U.S. Department of Labor, Bureau of Labor Statistics.

For 2014, the increase cap is .8%. Under certain circumstances, the “cap” can be imported from one Florida residence to another.

2. Pennsylvania Homestead. In 2006, the Pennsylvania legislature enacted a property tax relief program for homesteads, which results in a modest exemption from school district-related real estate taxes for an owner’s primary residence.<sup>16</sup>

As noted below, clients who wish to become residents of Florida should declare any Florida home as their “homestead” and should ensure that any Pennsylvania home is removed from Pennsylvania’s homestead roles.

#### IV. Florida Homestead – Benefits and Limitations

A. Creditor Protection. The Florida Constitution provides that homestead property less than or equal to one-half acre within a municipality, or less than or equal to 160 acres outside a municipality, “shall be exempt from forced sale under process of any court, and no

<sup>15</sup> The current successor report is the 1982 - 84 = 100 current series.

<sup>16</sup> Act 1 of 2006(1), P.L. 1873; 53-P.S. § 6926.101, as amended.

judgment, decree or execution shall be a lien thereon” with certain limited exceptions.<sup>17</sup> This exemption may be claimed by any “natural person” who resides on such property and is a resident of Florida and, importantly, by the “surviving spouse or heirs of the owner.”<sup>18</sup>

B. Limitations on Transfer.

1. A testator may not devise homestead property if he or she leaves a surviving spouse or minor child (although a testator may devise the property to a surviving spouse if he or she does not leave a minor child). Note that although a spouse may waive these restrictions or disclaim a homestead devise, a minor child cannot.<sup>19</sup>

2. This limitation can be a serious impediment when a testator wishes to fund part of his or her federal estate tax exclusion amount with a Florida residence but cannot do so because the testator has a spouse (particularly a second spouse who cannot be relied upon to disclaim his or her interest in the residence) or a minor child. Pursuant to Florida law, if a testator dies with a surviving spouse and minor child, the surviving spouse receives a life estate in the property and the decedent’s then living lineal descendants receive a vested remainder in the residence.<sup>20</sup> Note, however, that for deaths after October 1, 2010, a surviving spouse may, within six months from the date of death, elect to take a one-half interest as a tenant in common in the homestead property instead of a life estate.<sup>21</sup>

V. **Establishing Domicile**

A. In General. Florida law establishes a presumption that a person died a resident of Florida if he or she lived in Florida for twelve consecutive months within the twenty-four month period preceding death. While Pennsylvania does not have a straightforward process that allows a person to change his or her domicile from Pennsylvania to another state, certain steps can be taken to demonstrate a change in domicile from Pennsylvania to Florida for those who do not intend to reside in Florida for twelve months of the year.

B. Critical Indicators. There are certain steps that most commentators agree carry particular weight when courts and taxing authorities consider questions of domicile. In this Section B, we have attempted to identify those factors most often-cited as indicators of domicile. Note, however, that merely taking the steps listed below will not likely be sufficient to establish one’s domicile. Accordingly, we recommend that clients take some (or all) of the steps listed in Section C in addition to all the steps listed in Section B when they desire to establish a new domicile in Florida.

1. Own or rent a dwelling in Florida.
2. File a Florida Homestead Exemption with respect to a Florida dwelling.

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<sup>17</sup> Fla. Const. Art. X §4(a). Exceptions include taxes and assessments relating to the property, and obligations incurred for purchase of or work done to the property. *Id.*

<sup>18</sup> Fla. Const. Art. X §4(b).

<sup>19</sup> See Fla. Stat. §§196.031, 732.401 and 732.4015; see also *James v. James*, 843 So.2d 304 (Dist.Ct.App. Fl. 2003); Fla. Stat. §732.801.

<sup>20</sup> See Fla. Stat. §732.401 *et seq.*

<sup>21</sup> *Id.*

3. File a Declaration of Domicile with the clerk of the Circuit Court in the county where you reside (each county has its own form, which must be executed before a clerk).
4. File a document with the Pennsylvania Board of Assessment Appeals Office for the county in which a Pennsylvania residence is maintained requesting removal from Pennsylvania's homestead roles.
5. Obtain a Florida driver's license and register vehicles in Florida.
6. Change voter registration to Florida and vote in a Florida election as soon as possible.<sup>22</sup>

C. Other Important Indicators.

1. Declare a Florida residence in a new will, consider preparing a revocable trust along with your new will and ensure that your executor, financial advisors and legal advisors understand you have changed your domicile to Florida.
2. Sell your Pennsylvania dwelling.
3. Spend fewer than 183 days per calendar year in Pennsylvania,<sup>23</sup> and spend more days in Florida than in Pennsylvania.
4. Locate bank accounts and safe deposit boxes in Florida.
5. Establish library memberships, club memberships, museum memberships and concert subscriptions in Florida. Change memberships in Pennsylvania organizations to reflect non-resident status.
6. Change professional licenses and union memberships to ensure that such affiliations are consistent with your claim of domicile.
7. Keep works of art, family heirlooms and family papers in your Florida residence.
8. Your pets' permanent home (and the veterinarians who provide their care) should be in Florida.
9. Change billing addresses to Florida for your credit cards and other accounts such as department stores, etc.
10. See Florida doctors and other professionals located in Florida.

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<sup>22</sup> Note that "[the fact that an individual registers and votes in one place is important but not necessarily conclusive, especially if the facts indicate that he did this merely to escape taxation in some other place." 61 Pa. Code §101.3(b).

<sup>23</sup> Note that "[i]n counting the number of days spent within and without [Pennsylvania], presence within [Pennsylvania] for any part of a calendar day constitutes a day spent within [Pennsylvania], except that the presence . . . may be disregarded if it is solely for the purpose of boarding a plane, ship, train or bus for travel to a destination outside of [Pennsylvania], or while traveling by [such conveyance] through [Pennsylvania] to a destination outside [Pennsylvania.]: 61 Pa. Code §101.5.

11. Support Florida charitable organizations.
12. File a final Pennsylvania income tax return indicating a permanent move to Florida.
13. File your Federal Income Tax Return in, and submit quarterly Federal Income Tax Payments to, the Internal Revenue Service, Atlanta, Georgia 39901.
14. If you worship regularly, join a congregation in Florida, and worship regularly there.
15. If you are separated from your spouse, ensure that there is legal documentation of that separation and of any support obligations.

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## FOR GENERAL TAX QUESTIONS:

Online Customer Service Center  
www.revenue.state.pa.us

### Taxpayer Service & Information Center

Personal Taxes: 717-787-8201

Business Taxes: 717-787-1064

e-Business Center: 717-783-6277

1-888-PATAXES (728-2937)

Touch-tone service is required for this automated 24-hour toll-free line. Call to order forms or check the status of a corporate tax account.

Automated Forms Ordering Message Service  
1-800-362-2050

Services for Taxpayers with Special Hearing  
and/or Speaking Needs  
1-800-447-3020

Call or visit the Revenue district office nearest you, listed in the blue pages of your local phone directory.

## DETERMINING RESIDENCY FOR PA PERSONAL INCOME TAX PURPOSES



**R** pennsylvania  
DEPARTMENT OF REVENUE

### How do I determine residency for PA income tax purposes?

Individuals who have domiciles or statutory residences in PA are subject to PA personal income tax on income, regardless of where income was earned. They may qualify for credits against tax paid to other states or countries on income earned outside of PA.

Individuals who do not maintain domiciles or statutory residences in PA are taxed only on income from sources within PA and cannot qualify for PA credits against taxes paid to other states or countries.

### What is a domicile?

A domicile is the place where a person maintains permanent abode and intends to return when absent. A person may only have one domicile at a time. However, for an individual who lives in more than one permanent place, two factors determine domicile: (1) Which is the one place where the individual has had the greatest connections for the taxable year; and (2) Which place does the individual intend to be the domicile.

For example, a locality with the greatest connections is where a person:

- spends the greatest amount of time
- supports a spouse and children
- purchases the necessities of life
- has doctors, lawyers and accountants
- houses pets
- has active banking accounts
- worships regularly
- participates in social, fraternal or athletic organizations
- has works of art, furniture, family portraits or heirlooms
- fulfills local tax obligations
- is employed
- owns real estate fit for year-round living
- maintains a driver's license and vehicle registration
- maintains professional licenses
- maintains union membership
- declares residency for hunting or fishing licenses, income tax returns or school tuition
- conducts business
- receives mail
- receives unemployment compensation
- records his or her address for insurance policies, deeds, mortgages, leases, passport, federal and local tax returns, etc.
- was domiciled at birth
- maintains safe deposit boxes
- owns a cemetery plot

- claims a homestead exemption
- is listed in the telephone directory
- obtains homestead exemption
- gathers for family and social events
- maintains TV and Internet connections
- registers to vote

### What is a statutory residence?

A statutory residence is the place where an individual spends the most time during the year. More specialized definitions, however, apply when the person does not maintain a permanent place of residence in PA or has frequent or prolonged absences from his/her place of residence. A person is considered a statutory resident of PA unless:

- the person spends more than 181 days (midnight to midnight) of the tax year outside PA; or
- the person has no permanent abode in PA for any part of the tax year.

### What is a permanent abode?

A permanent abode is a house, apartment, dwelling place or other residence maintained as a household for an indefinite period, whether the occupants own it or not. An abode is not permanent if it is occupied only during a fixed or limited period of time for a particular purpose.

Barracks, bachelor officer's quarters, quarters on ships and other living accommodations provided by an employer for a definite period do not qualify as permanent abodes. Further, college dormitories, fraternity houses, sorority houses and off-campus rentals by students enrolled in college or universities do not qualify as permanent abodes.

### How do I establish a new domicile?

A person can have only one domicile at a time, and it does not change until they move to another state or country with the intention of making a new permanent home there, abandoning the previous domicile.

If a person moves to another state or country, but intends to stay there only for a fixed or limited time (no matter how long), domicile does not change. Domicile is not dependent upon continuous physical presence. It is not abandoned by absence there or by presence in a former domicile, so long as there is not firm, sincere, unconditional intention of remaining in the other jurisdiction for an indefinite and uncertain period.

For example, PA domicile does not change when a person is temporarily absent - to return to a former domicile for business, health, pleasure or education - with intention to return to the PA domicile.

To establish a new domicile, a taxpayer must:

1. Show evidence of definite intention to discontinue making the former domicile the primary base of operations;

2. Show evidence of definite intention to make the new domicile the primary base of operations; and
3. Show evidence of physical presence and abode (transient, temporary or permanent) in the new location.

If all three requirements are met, the date of the change is the first day of physical presence in the new location. If a person left the domicile to seek new employment, intending to remain in the other location only if they find employment, there is no change in domicile.

**I am retired with a permanent summer home outside PA and a permanent winter home in PA. How do I determine domicile?**

A person may have only one state of domicile at any given time, and state of domicile does not change until someone moves to another state or country with the intention of making a new permanent home there, abandoning the previous domicile.

To determine which location is your domicile, review the bulleted list of activities previously identified in this brochure to determine the location with the greatest connection. Then determine if you have taken the necessary steps to establish a new domicile outside PA, considering the three requirements identified in the previous question.

**How does being in the military or foreign service affect my domicile and my family's domicile?**

Unless there is an intention to change domicile, a person generally does not acquire a new domicile or lose the domicile maintained before entering the armed forces. This is also true of the service member's spouse. A person in the military or his or her spouse is not precluded, however, from establishing a new domicile where family is stationed. A person in the military or foreign service, or someone living in a foreign country for something other than a temporary or transitory purpose is treated as a domiciliary of that country if the person:

- Is not an employee of the U.S., its agencies or instrumentalities (including the armed forces and U.S. foreign service); and
- Does not hold an appointive office in the executive branch of the U.S. government.

However, special rules may apply if the employee or officer maintains a permanent place of abode in the other country. An individual who has a domicile in PA is considered a non-resident if the person meets all three of the following requirements:

1. The individual is absent from PA for more than 335 complete calendar days of the tax year;
2. The individual maintains a permanent place of abode elsewhere during the entire tax year; and

3. The individual maintains no permanent place of abode in PA at any time during the tax year.

The Military Spouses Residency Relief Act (MSRRA), which was signed into federal law on Nov. 11, 2009, permits a service member's nonmilitary spouse to retain status as an out-of-state resident and source any nonmilitary compensation to the state of residence under the following circumstances:

1. The service member must be in PA in compliance with military orders;
2. The service member's spouse must be in PA solely to be with his/her spouse; and
3. The service member's spouse must have the same domicile (legal residence) as the service member.

For detailed information on how MSRRA impacts state taxation of income earned by a service member's nonmilitary spouse, review the comprehensive personal income tax Tax Bulletin 2010-01 on the department's website, [www.revenue.state.pa.us](http://www.revenue.state.pa.us).

For more information of taxation of military pay, review brochure REV-612, Military Pay for PA Personal Income Tax Purposes.

**How do dependents determine domicile?**

Generally, children have the same domiciles as their parents or legal custodians. If the parents are separated, the child's domicile is the domicile in which the child lives or that of child's legal custodian. Becoming an adult does not by itself separate a child from a parent's or legal custodian's domicile. The child merely acquires the power to establish a separate or new domicile.

College dormitories, fraternity houses, sorority houses and off-campus rentals by students enrolled in college or universities do not qualify as permanent abodes.

**How does PA tax nonresidents?**

PA taxes nonresidents on the following income from PA sources:

- **Compensation** for services performed in PA, unless the nonresident is a resident of Indiana, Maryland, New Jersey, Ohio, Virginia or West Virginia. If you are a resident of one of these states, your PA employer should withhold and remit tax to that state.
- **Net income (loss) from the operation of a business, profession or farm** in PA. If you derive income from sources inside and outside PA, you should maintain separate accounts and records that clearly reflect your PA business activity. Otherwise, you must file a PA Schedule NRH to apportion your income.
- **Net income (loss) from the sale, exchange or disposition of property** in PA. If you sell property in your

former state before moving into PA, you are not subject to PA income tax on the gain. However, if you moved from PA to another state and then sell tangible property in PA, you must report the gain. You may qualify for an exclusion from paying tax on the gain on the sale of your principal residence in PA.

- **Net income (loss) from rents, royalties, patents and copyrights** in PA or used in PA.
- **Estate or trust income**, only to the extent the beneficiary's PA-source income is taxable to nonresidents.
- **Gambling and lottery winnings** from PA sources except prizes from the PA Lottery.

PA does not tax nonresidents on ordinary interest and dividend income, even from financial institutions and corporations located in PA. PA does not tax nonresidents on the gain (or loss) realized from the sale, exchange or disposition of intangible property.

**When is a person considered a part-year resident?**

A person who moves into or out of PA with the intention of acquiring a new domicile is considered a part-year resident for the part of the tax year the individual maintains a permanent place of abode in PA.

There are two exceptions to this general rule:

1. An individual is considered a nonresident rather than a part-year resident if that person spent less than 31 days of the year in PA, maintained a permanent place of abode outside PA during the entire tax year and maintained no permanent place of abode in PA at any time during the tax year.
2. An individual is considered a resident rather than a part-year resident if that person was physically present in PA for at least 184 days (or parts of 184 days) and maintained a permanent place of abode in PA at any time during the tax year.

**What kinds of income should part-year residents report on PA personal income tax returns?**

Part-year residents are subject to PA tax on all income earned, received or credited for the part of the year they were a residents of PA, as well as on all income earned, received or credited from PA sources for the part of the year they were nonresidents.

Part-year residents of PA must file PA personal income tax returns, filling in the oval for a part-year return and recording the time they were residents. Part-year residents are not subject to PA tax on ordinary interest, dividends and gains on intangible property while nonresidents.

**What are reciprocal tax agreements?**

PA has reciprocal tax agreements with Indiana, Maryland, New Jersey, Ohio, Virginia and West Virginia. Under these

agreements, one state will not tax a resident of the other state on compensation subject to employer withholding. These agreements apply to most W-2 compensation earned while a taxpayer is a resident of one of these states. Such agreements do not apply to miscellaneous and non-employee compensation; compensation earned while a PA resident and received while a resident of the reciprocal compensation agreement state; or compensation paid to Ohio-resident shareholder-employees who worked or performed services in PA and have 20 percent or greater interest in a PA S corporation.

**What if I am a PA resident working in a reciprocal agreement state?**

For PA residents who work in reciprocal agreement states, PA taxes compensation, not the reciprocal state. It is the taxpayer's responsibility to notify the employer of PA residency, and the employer should withhold PA tax from pay, not income tax of the reciprocal state.

If an out-of-state employer does not withhold PA tax, the taxpayer must report compensation as taxable income to PA and pay the tax. The taxpayer must make PA estimated payments if compensation not subject to withholding by a PA employer is more than \$8,000. The taxpayer may also file a return and apply for a refund from the other state.

**What if I have dual residency?**

PA residents who are also residents of reciprocal states for income tax purposes are subject to special rules. A PA resident credit may be claimed only if each of the following applies:

1. The income on which the reciprocal state's tax is imposed is not only subject to tax in the same taxable year by PA, but also taxable under the reciprocal state's laws regardless of residence or domicile; and
2. The taxpayer is not entitled to claim any credit for PA tax against the reciprocal state's tax.

To claim the PA resident credit, a taxpayer must file PA Schedules G-S or G-L and G-R and include a copy of the tax return filed with the other state. The copy of the other state's return shows the other state taxed the person as a resident, and no credit was claimed for the PA tax paid to that state.

A special administrative procedure applies if PA and Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island or Vermont made an initial determination that the individual is a domiciliary of the non-PA state. The taxpayer may apply for a closing agreement with PA and the applicable state from the PA Department of Revenue Taxpayers' Rights Advocate. The procedure applies before the formal appeals process is utilized (e.g., filing a petition for reassessment or refund).



**pennsylvania**  
DEPARTMENT OF REVENUE

**Pennsylvania Department of Revenue**  
**NONRESIDENT REVIEW QUESTIONNAIRE**

Name(s): \_\_\_\_\_ Tax Year (s): \_\_\_\_\_

Please provide the following information and be specific in your answers.

1. Full name of taxpayer and spouse (if applicable).
2. Address at which you, or minor children, if any, resided for the greater part of the year(s) listed above.

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Did you have any children attending school during the year(s) listed above?

Yes [ ] No [ ]

If so, where do they attend school?

3. Do you own or rent a dwelling place in Pennsylvania?

Yes [ ] No [ ] Rented [ ] Owned [ ]

If so, when did you or your minor children first occupy this dwelling?

Have you disposed of a dwelling place located in Pennsylvania? If so, when did you dispose of it?

How did you dispose of it?

If sold, please submit a copy of the sales contract.

Address of all prior homes located in Pennsylvania:

	Address	Disposition	Period Occupied
A.			_____ To _____
B.			_____ To _____
C.			_____ To _____
D.			_____ To _____

4. Current Pennsylvania Address:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

5. When staying in Pennsylvania, indicate whether you are:

- |   |     |
|---|-----|
| (a) Occupying a house owned by self or others | [ ] |
| (b) Renting a house                           | [ ] |
| (c) Renting an apartment                      | [ ] |
| (d) Renting a room or rooms                   | [ ] |
| (e) Staying with friends or others            | [ ] |
| (f) Staying at a hotel                        | [ ] |

If you do not maintain living quarters in Pennsylvania, where do you regularly stay while in Pennsylvania?  
Address: \_\_\_\_\_

6. State whether or not in the years in question, you continue to maintain your place of abode in the State of Pennsylvania while you are staying in the place of residence claimed.

7. Address where residence is claimed:

Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

8. Do you own or rent a dwelling place in the State where residence is claimed?

Own [ ] Rent [ ]

If so, when did you or your minor children first occupy this dwelling? Date: \_\_\_\_\_

Are you living in this dwelling currently? Yes [ ] No [ ]

9. When staying in the place where residence is claimed, state whether you are:

- |   |     |
|---|-----|
| (a) Occupying a house owned by self or others | [ ] |
| (b) Renting a house                           | [ ] |
| (c) Renting an apartment                      | [ ] |
| (d) Renting a room or rooms                   | [ ] |
| (e) Staying with friends or others            | [ ] |
| (f) Staying at a hotel                        | [ ] |

10. State whether the house, apartment, room or rooms located in Pennsylvania indicated in questions #3 thru #6 are furnished with your own furniture.

Yes [ ] No [ ]

11. Are any of your belongings or furniture still in Pennsylvania?

Yes [ ] No [ ]

If yes, list type of belongings that are still located in Pennsylvania?

If no, please give the date when you removed your furniture and belongings to your present residence. Provide documentation such as receipts from moving companies etc.

Date: \_\_\_\_\_

12. Give the dates that you actually stayed in Pennsylvania during the above tax year. Be specific and provide a travel log documenting the days.

13. Give the dates that you actually stayed in a place where residence is claimed during the above tax year. Be specific and provide any documentation you may have to support the dates listed (e.g. records showing purchases made, ATM transactions, etc.)

14. What is your business, trade, profession or occupation?

15. Give the principal address at which you carry on your business, trade, profession, or occupation?

Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

16. If employed by another, give the name and address of employer and in what capacity you were employed.

Did your employer provide living quarters for you or your minor children's use in Pennsylvania at any time during the review period?

Yes [ ] No [ ]

If yes, what was the address:

Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

17. Since what date have you been carrying on your business, trade, profession, occupation or employment at the above address? Date: \_\_\_\_\_