



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Mackenzie Damon

H.B. 292

132nd General Assembly
(As Passed by the House)

Reps. Scherer, Hambley, Retherford, Anielski, Antani, Brown, Faber, Galonski, Ginter, Goodman, Greenspan, Henne, Householder, Hughes, Lang, Patton, Reineke, Riedel, Roegner, Rogers, Ryan, Schaffer, Seitz, R. Smith, Sprague, Sweeney, Thompson

BILL SUMMARY

- Specifies that an individual cannot be presumed to be an Ohio resident for income tax purposes unless the individual has an Ohio abode for at least a portion of the taxable year.
 - Extends the deadline for filing a statement affirming out-of-state residency to the 15th day of the tenth month following the end of the taxable year.
 - Adds several objective criteria for establishing the presumption that an individual is not an Ohio resident for income tax purposes.
 - Limits the factors that may be used by the Tax Commissioner to rebut the presumption that a taxpayer is not an Ohio resident.
 - Specifies that the changes apply to taxable years beginning in 2018 or thereafter.
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CONTENT AND OPERATION

Income tax residency test

The bill modifies the test for determining an individual's state of residence for income tax purposes by adding several explicit, objective criteria for establishing the presumption that an individual is not an Ohio resident, extending the deadline for filing a statement attesting that the individual is not an Ohio resident, and limiting the factors that may be considered by the Tax Commissioner to rebut the presumption that an individual is not an Ohio resident. The bill's changes would first apply to taxable years beginning in 2018.

Taxation of residents versus nonresidents

Ohio's income tax applies to residents, and also applies to nonresidents who have income that is attributable to Ohio (e.g., compensation from working in Ohio or net profit from conducting business in Ohio). Both residents and nonresidents must report all their federal adjusted gross income regardless of whether the source of the income is in Ohio or elsewhere, and the tax rates are applied to this income after various adjustments. Residents receive an Ohio tax credit for income taxes paid to another state, up to the amount of Ohio tax that would be due on that non-Ohio income. Nonresidents receive a credit equal to the Ohio tax paid on income not attributable to Ohio under income apportionment and allocation rules set forth by law.

Presumptions about residency

Under current law changed in part by the bill, the test to determine if an individual is domiciled in Ohio – and therefore is an Ohio resident for income tax purposes – depends primarily on the number of overnight stays, or "contact periods," a person has in Ohio during the person's taxable year. Technically, a contact period is any period of time during a 24-hour period that includes midnight. The number of contact periods and whether a person has an "abode" outside Ohio are used to establish presumptions about the person's residency; these presumptions may be rebutted under specified circumstances.¹ The current test is commonly referred to as a "bright line" test as, on its face, it concentrates primarily on number of contact periods, the existence of a non-Ohio abode, and a taxpayer's affirmation, rather than on the various circumstantial elements that influence traditional common law domicile determinations.

Persons presumed to be residents

Currently, if a person has at least 213 contact periods, the person is presumed to be a full-year Ohio resident for income tax purposes. A person can rebut this presumption only with clear and convincing evidence and only for as much of the year as such evidence is provided.

If a person has less than 213 contact periods, the person currently is presumed to be a full-year Ohio resident unless (1) the person moved during the year, or (2) the person has a full-year abode outside Ohio and files a statement with the Tax Commissioner affirming that the person was not domiciled in Ohio during the entire

¹ "Abode" is not defined by law for this purpose, so it would be construed according to its common, ordinary meaning. According to *Webster's New World Dictionary*, an abode is "a place where one lives or stays; home; [or] residence."



year and had a full-year abode outside Ohio. The state can rebut this presumption (for all or part of the year) by providing a preponderance of evidence to the contrary.

The bill specifies that these presumptions apply only if the person also had an abode in Ohio for at least part of the taxable year. The bill also adds criteria that must be attested to in the statement filed with the Commissioner (see below in "**Persons presumed to be nonresidents**").²

Persons presumed to be nonresidents

Continuing law establishes a process by which a person with fewer than 213 contact periods and a full-year out-of-state abode may file a statement affirming that they are not domiciled in Ohio. The statement, if truthful and filed before the 15th day of the fourth month following the close of the taxable year, establishes an "irrebuttable" presumption that the person is a nonresident.

The bill extends the deadline for filing the statement to the 15th day of the tenth month following the close of the taxable year. The bill also establishes additional objective criteria that must be met to establish the presumption – specifically, that the person:

- Did not claim a federal depreciation deduction with respect to the out-of-state abode (the deduction is available only for property used in business or held for the production of income – e.g., as rental property);
- Did not hold a valid Ohio driver's license or identification card;
- Did not receive the benefit of an Ohio homestead exemption or 2½% tax reduction for the property tax year that began in the person's taxable year (both of which depend on ownership and occupancy);
- Did not receive a tuition discount based on residency for attending an Ohio institution of higher education.

The bill limits the factors that may be used by the Tax Commissioner to rebut this presumption of nonresident status to (1) an individual's number of contact periods, (2) the possession of a full-year abode outside the state, and (3) any of the new objective criteria prescribed by the bill.³ Currently, the Commissioner may rebut such a presumption with evidence that an individual is "domiciled" in this state under the

² R.C. 5747.24(B), (C), and (D).

³ R.C. 5747.24(B)(3).



common law definition of the term – and that the individual's affirmation of nondomicile is therefore false – even though the individual satisfies the contact period and non-Ohio abode criteria and files the affirmation statement on time.⁴ Current administrative rules specify 18 circumstances that may not be considered in rebutting or confirming the presumption, including such things as where a person's banks, medical providers, attorneys, accountants, lenders, relatives, and political contributees are located.⁵

HISTORY

ACTION	DATE
Introduced	06-27-17
Reported, H. Ways and Means	10-26-17
Passed House (92-1)	11-01-17

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⁴ See, *Cunningham v. Testa*, 144 Ohio St.3d 40 (2015).

⁵ Ohio Administrative Code sec. 5703-07-16.

