

Pursuant to Rule 17.08 of the Supreme Court of Ohio Rules of Practice, appellant, Joseph W. Testa, Tax Commissioner of Ohio, hereby gives notice of the following additional authorities upon which he will rely in presenting oral argument before the Court:

Cases

Schill v. Cincinnati Ins. Co., 141 Ohio St.3d 382, 2014-Ohio-4527

Gifford v. Zaino, BTA Case No. 2002-G-1222, 2003 WL 22959266 (Dec. 12, 2003)

Davis v. Limbach, BTA Case No. 89-C-267, 1992 WL 275694 (Sept. 25, 1992)

Tyson v. Zaino, BTA Case No. 2001-B-1327, 2003 WL 22294864 (Oct. 3, 2003)

Other Authorities

Excerpt from Legislative Acts including Appropriation Acts passed and Joint Resolutions Adopted by the 120th General Assembly of Ohio, Volume CXLV, January 4, 1993 to December 31, 1994, Senate Bill 123 as enacted (enacting R.C. 5747.24 and amending R.C. 5747.01)

Excerpt from Legislative Service Commission, Summary of Enactments, 120th General Assembly (discussion of enactment of R.C. 5747.24)

Excerpt from General Laws of the 126th General Assembly, Substitute House Bill 73 as enacted (amending R.C. 5747.24)

Legislative Service Commission Final Analysis of Substitute House Bill 73 of the 126th General Assembly

Excerpt from Amended Substitute House Bill 494 of the 130th General Assembly (as enacted and amending R.C. 5747.24)

Excerpt from Legislative Service Commission Final Analysis of Amended Substitute House Bill 494 of the 130th General Assembly (discussion of amendment to R.C. 5747.24)

Appellant attaches a copy of the above-referenced authorities to this filing.

Respectfully submitted,

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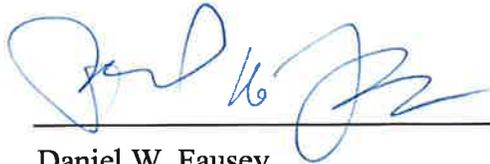
Counsel for Appellee

Joseph W. Testa,

Tax Commissioner of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Supplemental Authority has been sent by email this 2nd day of March, 2015, to J. Donald Mottley, Taft, Stettinius & Hollis LLP, 65 E. State Street, Suite 1000, Columbus, OH 43215-4221, mottley@taftlaw.com.



Daniel W. Fausey

1992 WL 275694 (Ohio Bd.Tax.App.)

Board of Tax Appeals

State of Ohio

S. ROBERT DAVIS, APPELLANT

v.

JOANNE LIMBACH, TAX COMMISSIONER OF OHIO, APPELLEE

CASE NO. 89-C-267

September 25, 1992

***1 (PERSONAL INCOME TAXATION)**

DECISION AND ORDER

APPEARANCES:

For the Appellant

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This cause and matter comes on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on April 10, 1989. This appeal is taken from a certificate of final determination (certificate), dated March 14, 1989, of the Tax Commissioner (appellee) whereby said official affirmed her previous assessment of personal income tax of \$238,960.68 plus interest of \$4,032.87 against appellant for tax year 1985. The notice of appeal and certificate are incorporated herein by reference.

The following facts are undisputed. The appellant reported \$3,185,376 as his federal adjusted gross income on line 31 of his 1985 federal income tax return. However, appellant only reported \$91,712 as his federal adjusted gross income on line 1 of his 1985 Ohio income tax return. While the address "2011 Riverside Drive, Columbus, Ohio 43221" appears on the return in the box marked "present address," appellant also wrote the following notation: "Resident address Winterhaven Fla. All correspondence to Address Below." (S.T. p. 1.) Further, appellant claimed a refund of Ohio tax of \$40,075.

Upon audit of appellant's 1985 Ohio return, appellee rejected appellant's claim of Florida residency. Appellee required appellant to report his total federal adjusted gross income of \$3,185,376 on line 1 of his Ohio return. Instead of granting appellant's refund claim of \$40,075, the appellee assessed appellant Ohio income tax of \$238,960.68 plus interest of

\$4,032.87 for a total assessment of \$242,993.55.

Appellant timely filed a petition for reassessment, claiming that he was a Florida resident and that he was entitled to offset his federal adjusted gross income with the non-resident credit for income not earned in Ohio. He again asserted his claim for a refund of \$40,075.

The appellee held that appellant's claim of Florida residency was without merit. On March 14, 1989, she issued her certificate whereby she affirmed her previous assessment. In reaching her decision, the appellee made the following findings of fact:

“In this case, during the years in issue the petitioner maintained a permanent residence in Ohio. He filed his state and federal income tax returns using an Ohio address. Mr. **Davis** kept an office in Ohio. Moreover, he did not file a Declaration of Domicile or an intangible property tax return with the state of Florida. The petitioner has not established that he intended to abandon his Ohio domicile nor that he intended to make Florida his new domicile.”

*2 (emphasis added)

Appellant paid the assessment under protest and filed the instant appeal with the Board of Tax Appeals on April 10, 1989. We held evidentiary hearings in this matter on May 21 and 22, 1990. During the evidentiary hearings, the parties stipulated that:

“(1) If appellant's 1985 domicile was Florida, then his 1985 Ohio income tax liability was only \$81,587.68 (See: Joint Exhibit B); and

“(2) If appellant's 1985 domicile was Ohio, then his 1985 Ohio income tax liability was \$238,960.68 (See: Joint Exhibit A).”

The Board approves of the parties' stipulations and enters them as findings of fact in the matter.

This appeal is submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript provided by the appellee. We also have the transcript of testimony and other evidence adduced during the hearings held before this Board. Also, legal briefs have been submitted on behalf of the parties.

It appears from the record that the appellant was born in Columbus, Ohio. Appellant was a driving force behind a number of publicly traded companies. One such company, Orange-co, Inc., had its principal place of business in Columbus, Ohio until 1982. In 1982, Orange-co's principal place of business moved to Lake Hamilton, Florida to be nearer what had become the company's major business focus, its orange and grapefruit groves. The business retained an office at 2011 Riverside Drive, Columbus, Ohio, during 1985, in order to wind down previous business obligations. (H.T. p. 102.)

It is clear from the record that appellant owned a home and spent at least part of the year in Florida prior to 1985. Mr. **Davis** testified that he physically separated from his wife in December, 1982. He removed his possessions from the home he shared with his wife in Upper Arlington in early 1983 and moved those possessions to his residence in Florida. The dissolution of marriage was finalized in 1986.

In late 1984, the appellant registered to vote and obtained a Florida driver's license. Mr. **Davis** also had a salary income paid to him at his Florida address, and, at some time prior to 1985, opened a Florida bank account.

In 1985, appellant attempted to extricate himself from business dealings in the Columbus area. Mr. **Davis** transferred a number of business holdings, resigned from a number of charitable and educational boards, made significant charitable gifts of both real and personal property situated in Ohio.

During 1983, 1984 and 1985, appellant also held himself out to be a Florida resident. At the hearing before this Board, Mr. Jeffrey Grossman, testified. Mr. Grossman represented appellant in the dissolution of his marriage. The witness testified that Mr. **Davis** made inquiries as to how his status as a Florida resident would affect his Ohio divorce proceedings. (H.T. p. 44)

Moreover, the statutory transcript contains a document filed with the Franklin County Probate Court, identifying appellant as “non-resident” and requesting appointment as his mother’s guardian even though the law requires a guardian to be a resident of the state in most cases. (S.T. p. 37–49) It appears from the record that the Court permitted appellant to serve as his mother’s guardian knowing of his purported residency.

***3** The Tax Commissioner found the appellant to be domiciled in the State of Ohio for the 1985 tax year. We disagree. For the reasons set forth below, this Board finds that appellant was a Florida resident and not an Ohio resident in 1985.

R.C. 5747.02(A) imposes an income tax on individuals “residing in” Ohio and provides, in pertinent part, as follows:

“(A) For the purpose of providing revenue for the support of schools and local government functions, to provide relief to property taxpayers, to provide revenue for the general revenue fund, and to meet the expenses of administering the tax levied by this chapter, there is hereby levied on every individual and every estate residing in or earning or receiving income in this state an annual tax measured in the case of individuals by adjusted gross income less an exemption of six hundred and fifty dollars each for the taxpayer, his spouse, and each dependent, and measured in the case of estates by taxable income.”

(Emphasis added)

For purposes of Chapter 5747, R.C. 5747.01(I) defines “resident” as follows:

“(I) ‘Resident’ means: (1) An individual who is domiciled in this state; (2) An individual who lives in and maintains a permanent place of abode in this state, and who does not maintain a permanent place of abode elsewhere, unless such individual in the aggregate, lives more than three hundred thirty-five days of the taxable year outside this state; or (3) The estate of a decedent who at the time of his death was domiciled in this state.”

R.C. 5747.01 also states that:

“Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter has the same meaning as when used in a comparable context in the Internal Revenue Code, and all other statutes of the United States relating to federal income taxes.”

(Emphasis added)

For the purposes of the Internal Revenue Code (IRC), the Internal Revenue Service (IRS) states that “a taxpayer has only one domicile even though he may have more than one residence. A taxpayer’s domicile is a permanent legal residence that the taxpayer intends to use for an indefinite or unlimited period, and to which, when absent, the taxpayer intends to return. The question of domicile is primarily a matter of intent. When domicile or residency is questioned, the taxpayer must be able to show factually that he intends a given place or state to be his permanent home.” IRS Pub. No. 555, Community Property and the Federal Income Tax (Rev. Nov. 1988), at page 1. Subsequent revisions of IRS Pub. No. 555 are in accord.

Domicile as defined by the United States Supreme Court and the courts of Ohio is identical to the definition of domicile used for taxation purposes. In *Gilbert v. David* (1915), 235 U.S. 561, the Court held that domicile is residence in fact, combined with the intention of making the place of residence one’s home for an indefinite period. In *Williamson v. Osenton* (1914), 232 U.S. 619, the Court inferred that domicile has both physical and mental dimensions. The Court held that domicile is the place where a person has his true, fixed home and principal establishment and to which, whenever he is absent, he intends to return.

***4** In Ohio, the terms “resident” and “domicile” are frequently used interchangeably. However, the Ohio courts recognize that they in fact are distinctly different, albeit related, concepts. See, for example, *Grant v. Jones* (1882), 39 Ohio St. 506; *Larrick v. Walters* (1930), 39 Ohio App. 363; *Board of Education v. Dille* (1959), 109 Ohio App. 344. Domicile is generally defined as a legal relationship between a person and a particular place which contemplates two factors: first, residence, at

least for some period of time and, second, the intent to reside in that place permanently or at least indefinitely. *Hill v. Blumenburg* (1924), 19 Ohio App. 404, 409, quoting from *Pickering v. Winch* (1906) 48 Ore. 500; *Black's law Dictionary* (4 ed. 1979) 435-436. Hence, "residence" is encompassed within the definition of "domicile". The primary distinction between the two is that while a person can have only one domicile, he generally may have more than one residence. *Board of Education v. Dille*, supra; *Jones*, supra; *Spires v. Spires* (1966), 7 Ohio Misc. 197; *Hill v. Blumenberg*, supra; *State*, ex rel. *Kaplan v. Kuhn* (1901), 8 Ohio N.P. 197.

As the preceding discussion demonstrates, the issue of domicile is one of intent determined by the facts of the individual case. In determining domicile Ohio courts uniformly look not only at the acts and declarations of the person but to the accompanying circumstances, such as "family relations, business pursuits and vocation in life, mode of life, means, fortune, earning capacity, conduct, habits, disposition, age, prospects, residence, lapse of time, voting and payment of taxes ***." *State* ex rel. *Kaplan*, supra, 8 Ohio N.P., at 202; *Cleveland v. Surella*, (1989), 61 Ohio App.3d 302.

Once acquired, a domicile is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged, the person making the allegation must prove by a preponderance of the evidence that he has changed his domicile. *Cleveland v. Surella*, supra, citing: *Mitchell v. United States* (1874). 88 U.S. (21 WALL) 350; *Desmare v. United States* (1876), 93 U.S. 605; *Texas v. Florida* (1938), 306 U.S. 398; *Whitmore v. Internal Revenue Service* (1955), 25 T.C. 293.

There is no bright line test stating exactly which factors are necessary for an individual to effectively change his domicile. However, certain factors are accorded more weight than others. One factor which is accorded significant weight in such a case is whether or not an individual actually resided in a certain state. Residence is significant because domicile includes "residence in fact"—the necessary nexus a state must have in order to tax an individual. See *Angell v. Toledo* (1950), 153 Ohio St. 179; *Columbus v. Firebaugh* (1983), 8 Ohio App.3d 366.

In order to reside in a state, one must have a place of abode. See *Columbus v. Firebaugh*, supra; *Calanni v. Limbach* (June 10, 1988), B.T.A. Case No. 86-A-1314, unreported. In the present case, the Tax Commissioner affirmatively found that, during 1985, appellant "maintained a permanent residence in Ohio." However, we find this statement not supported by the evidence.

*5 Appellant testified that, during 1985, he did not have a residence in Ohio. (H.T. p. 80) Appellant has continuously asserted his residence to be Winterhaven, Florida. He made that assertion on his 1985 federal income tax return, his 1985 state income tax return, and at the hearing before this Board. We assume the Tax Commissioner made her finding because the Riverside Drive address is listed on the 1985 federal and state returns. It is clear, however, that 2011 Riverside Drive is an office building. (H.T. p. 116.) We do not find it reasonable to conclude that appellant lived in an office building during 1985.

We agree that appellant has had residences in Ohio both before and after 1985. Prior to 1985, appellant resided at 4300 Squirrel Road, Upper Arlington, Ohio. That residence was owned by his former wife and was included in the property deemed to be hers by the dissolution agreement. (Appellee's Ex. "A".) It is reasonable to conclude that appellant abandoned this residence at the time of the breakup of the marriage.

After 1985, appellant lived at 104 Browning Court, Dublin, Ohio. That address appears on many of the documents mailed to appellant by appellee. However, the evidence indicates that a vacant lot was purchased in 1985, and construction of a residence was not completed until late 1986. (H.R. p. 141-143, appellee's Exhibit "E") Therefore, it is reasonable to conclude that 104 Browning Court was not the appellant's residence at any time during 1985.

We have carefully reviewed the record and can find no other locations asserted by the parties to be the residence of appellant in 1985. Therefore, we find that appellant had a residence in Winterhaven Florida, and did not have a residence in the State of Ohio during the 1985 tax year.

In many cases the fact that an individual has no residence within the state would be sufficient to find the state without the ability to tax said individual. See *Columbus v. Firebaugh*, supra. However, in this case, since appellant had clear ties with the community prior to 1985, and the burden to prove a change in domicile, we find the lack of a residence merely one factor to be considered. The appellant must further prove he did not intend to return to Ohio. Therefore, in addition to our finding that the appellant did not have a residence in the State of Ohio for 1985, the following facts and circumstances support appellant's

contention that he abandoned his Ohio domicile in 1984 and that he adopted his Florida residence as his domicile in 1985:

- (1) The fact that he had a home in Florida and he moved all of his personal belongings to that location;
- (2) The fact that he had a personal property insurance policy issued with a Florida address for the periods of August 13, 1984 through August 13, 1985; and August 13, 1985 through August 13, 1986;
- (3) The fact that he registered to vote in Florida in October, 1984 and voted in Florida in 1985. He did not vote in Ohio in 1985;
- *6** (4) The fact that he maintained bank accounts at Sun Bank in Florida and that the account statements showed and were mailed to his Florida home address. We acknowledge that appellant maintained accounts at banks, especially the Huntington National Bank, in Ohio as well. Appellant has a **twenty-five** year relationship with the Huntington National Bank (HNB) in Columbus, Ohio. He maintains personal checking, savings and other accounts with HNB. He has a personal line of unsecured credit in the amount of five million dollars with HNB. Orange-co has a line of credit of ten million dollars. He explained that his relationship with HNB is so special that he would continue to deal with the bank no matter where he resides. Appellee would have this Board find that appellant's failure to sever his relationship with HNB is evidence that he did not abandon his Ohio domicile. We find no support for appellee's contention either in fact or law;
- (6) The fact that he maintained memberships in clubs and associations in Florida;
- (7) The fact that his paychecks from Orange-co were sent to his Florida residence and deposited in his account at Sun Bank in Florida;
- (8) The fact that he obtained a Florida drivers' license on October 4, 1984. The Board acknowledges that appellant renewed his Ohio driver's licenses in **September**, 1984 and improperly failed to cancel said license when he obtained his Florida license; and
- (9) The fact that he liquidated many of his Ohio assets and severed most of his Columbus ties in 1984 and 1985. He sold Country Corners, an apartment complex, for \$6,600,000. He donated 220 acres of land located in Licking County, Ohio to Children's Hospital located in Columbus, Ohio. He resigned as the chairman of the board of directors of the Strata Corporation, an Ohio company in which appellant was the majority shareholder. He also divested himself of his Strata stock. He also resigned all positions that he held with the Buckeye Federal Savings and Loan Association, a Columbus, Ohio company, and divested himself of his Buckeye Federal stock. With few exceptions he resigned his positions as board member with various colleges, hospitals and civic associations located in Ohio.

We find that the foregoing facts and appellant's articulated intent to adopt his Florida as his domicile clearly establish by a preponderance of the evidence that appellant abandoned his Ohio domicile and adopted his Florida residence as his domicile for tax year 1985.

In her legal brief, appellee assigns little or no weight to the foregoing facts. Rather, appellee assigns dispositive weight to the following facts: (1) the declaration of Ohio residency allegedly made by appellant in relation to the guardianship of his mother's estate and the dissolution of his marriage; (2) that appellant had not registered any vehicles in Florida but maintained registration of certain vehicles in Ohio; and (3) that appellant had not completely severed all social and business ties with Ohio. Upon these alleged facts, appellee contends that appellant's domicile remained in Ohio in 1985. We disagree.

***7** We reiterate that almost universally, and certainly in Ohio, mere declarations are not sufficient to establish or show abandonment of residency or domicile. Again, declarations are usually only evidence of intent. In every case where a person of long standing ties with a community attempts to sever those ties, there will be "loose ends" and prior residency declarations. Such is the case here.

Appellee's entire case appears to be based upon the assumption that one cannot abandon his domicile unless he severs all social and business ties with a prior domicile. Such a requirement is neither necessary nor practicable given the mobility of this society. We are mindful that our duty is to weigh the facts and circumstances. As an example, appellee places weight on

the fact that cars are registered in Ohio. However, the evidence indicates that the persons actually using said vehicles were members of appellant's family or other persons, all of whom resided in Ohio. Registration of these vehicles and such use is not relevant to appellant's claim of domicile.

When the facts are weighed, we find the preponderance of the evidence supportive of our conclusion that appellant effectively abandoned his Ohio domicile for tax year 1985.

In consideration of the foregoing, we find that the appellee erroneously found that appellant was a resident of and domiciled in Ohio in 1985. Again, appellant was a resident of and domiciled in Florida in 1985. In conformity with parties' stipulations, we further find that appellant's 1985 Ohio income tax liability was \$81,587.68 and not \$238,960.68 as erroneously determined by the Tax Commissioner.

It is the Decision and Order of the Board of Tax Appeals that the certificate of final determination of the Tax Commissioner is hereby modified by reducing appellant's 1985 Ohio income tax liability from \$238,960.68 to \$81,587.68. The Tax Commissioner is ordered to refund to appellant the sum of \$157,373.00 plus the appropriate amount of interest.

I hereby certify the foregoing to be a true and correct copy of the action of the Board of Tax Appeals of the State of Ohio, this day taken, with respect to the above matter.

Kiehner Johnson
Chairman

1992 WL 275694 (Ohio Bd.Tax.App.)

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2003 WL 22294864 (Ohio Bd.Tax.App.)

Board of Tax Appeals

State of Ohio

MICHAEL G. TYSON, APPELLANT

v.

THOMAS M. ZAINO, TAX COMMISSIONER OF OHIO, APPELLEE

Case No. 2001-B-1327

October 3, 2003

***1 (Personal Income Tax)**

DECISION AND ORDER

Appearances:

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Ms. Jackson, Ms. Margulies and Mr. Eberhart concur.

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed under date of December 14, 2001 by appellant, Michael G. Tyson. Mr. Tyson appeals from a final determination of the Tax Commissioner in which the commissioner denied a request for refund of Ohio income tax illegally or erroneously paid for calendar years 1995 and 1996. The matter is submitted upon the notice of appeal, the statutory transcript, the record of the hearing, and the briefs of counsel.¹

Mr. Tyson has been a professional boxer since approximately 1984 and he won the world heavyweight boxing championship in 1986. (R II, 10, 11.) Sometime in 1990, Mr. Tyson first occupied a house in Southington, Ohio. (R II, 11, 12.) He filed an Ohio income tax return for tax year 1991, which identified his residence as 3737 State Route 534 South, Southington, Ohio. On February 11, 1992, Mr. Tyson was convicted of a felony in Marion County, Indiana, and sentenced by the court to prison in Indiana. (R II, 26, S.T. 60, 63.) On March 25, 1995, he was granted probation time of 4.4 years, to be supervised by the Marion County, Indiana Probation Department. The probation supervision was also transferred to the judicial and administrative authorities of Ohio pursuant to his petition titled "Indiana Interstate Compact for Probation." In the petition, he

stated that he would make his home at 3737 Rt. 534, Southington, Ohio. (S.T., 64, 65.) The Indiana Interstate Compact for Probation "Investigative Report" to the receiving state of Ohio states, in relevant part, as follows:

"We request transfer of probation supervision of this person to your State because:

(A) He/she is a resident

(B) He/she has family in your state

(C) He/she has employment." (S.T., 63.)

The Southington house was occupied by Mr. Tyson during the tax years in question and beyond, and was sold in 1999. (R I, 132.)

Shortly after moving back to the Southington, Ohio house, Mr. Tyson, with the aid of his promoter, Don King, purchased a house in Las Vegas, Nevada. (R II, 34.) The purchase agreement was dated April 4, 1995 and provided for a closing date of April 10, 1995. (R II, 33; S.T. 28.) The transaction was completed on April 17, 1995. (S.T., 32.)

For tax year 1995, Mr. Tyson filed an Ohio income tax return and paid personal income tax in the amount of \$2,020,937. (S.T., 148.) He filed an Ohio income tax return for calendar year 1996, and paid personal income tax in the amount of \$3,874,572. (S.T., 199.)

*2 By his notice of appeal, Mr. Tyson contends that he changed his domicile and residence to Nevada upon his release from prison in 1995, and he was therefore not subject to Ohio income tax during the years of 1995 and 1996. He seeks a total refund of \$5,895,509, plus applicable interest. R.C. 5747.11. The commissioner denied the refund based upon his determination that Mr. Tyson was domiciled in Ohio during the years in question.

Appellant's notice of appeal reads as follows:

"MICHAEL G. TYSON ('Taxpayer') appeals the Final Determination ('Determination') issued by the Ohio Department of Taxation ('Department') on October 23, 2001 (a copy of which is attached hereto and incorporated herein by reference as though fully set forth) regarding Forms IT-1040X, Ohio Amended Individual Income Tax Returns, for calendar years 1995 and 1996 ('years in issue') filed by him requesting refunds of Ohio income taxes in the respective amounts of \$2,020,937 and \$3,874,572, plus statutory interest ('Claims'). Taxpayer specifically appeals the rejection of the Claims based upon the erroneous determination by the Department that he qualified as an Ohio resident and therefore was subject to Ohio income taxation during the years in issue.

"During a part of the 1990s, Taxpayer employed the services of an accounting firm to prepare his federal and Ohio income tax returns. During a segment of that time, Taxpayer was incarcerated in the State of Indiana. Upon being paroled, Taxpayer immediately changed his domicile and residence from Ohio to Nevada. The accounting firm, however, continued to use an Ohio address and thus erroneously filed Ohio resident income tax returns for the years in issue.

"Thereafter, Taxpayer timely filed the Claims. On April 27, 2001, a hearing was held before the Department which thereafter issued the Determination.

"The Department erroneously concluded that Taxpayer continued to be an Ohio resident during the years in issue. The Department's findings of fact and legal conclusions are erroneous for the reasons set forth as follows:

"1. In 1995, Taxpayer changed his domicile and residence from Ohio to Nevada as manifested by his acquisition of a Nevada home, his contact periods out of Ohio, together with various other factors manifesting such intent.

"2. In 1996, Taxpayer met the bright-line residency test by spending less than the requisite minimum contact periods in Ohio thereby creating the presumption of a non-Ohio domiciliary under the Ohio Revised Code."

We begin our review of this matter by observing that the findings of the Tax Commissioner are presumptively valid. Consequently, it is incumbent upon a taxpayer challenging a determination of the Tax Commissioner to rebut that presumption. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. When no competent and/or probative evidence is developed and properly presented to the board to establish that the commissioner's determination is "clearly unreasonable or unlawful," the determination is presumed to be correct. *Id.*

*3 R.C. 5747.02 levies an income tax on every individual residing in or earning or receiving income in Ohio. As initially adopted, R.C. 5747.01(H)(1) [later division (I)(1)], provided:

"(I) 'Resident' means:

"(1) An individual who is domiciled in this state:

"(2) An individual who lives in and maintains a permanent place of abode in this state, and who does not maintain a permanent place of abode elsewhere, unless such individual in the aggregate, lives more than three hundred thirty-five days of the taxable year outside this state; * * *".

Over the years, Ohio courts have developed common law principles in defining domicile and residence which are distinct, albeit related, concepts. *Grant v. Jones* (1882), 39 Ohio St. 506; *Larrick v. Walters* (1930), 90 Ohio App. 363; *Bd. of Edn. v. Dille* (1959), 109 Ohio App. 344.

Domicile is generally defined as a legal relationship between a person and a particular place that contemplates two factors: (1) residence, at least for some period of time, and (2) the intent to reside in that place permanently or indefinitely. *Hill v. Blumenberg* (1924), 19 Ohio App. 404, 409, citing *Pickering v. Winch* (1906), 48 Ore. 500. In order to reside in a state, one must have a place of abode. *Columbus v. Firebaugh* (1983), 8 Ohio App.3d 366; *Calanni v. Limbach* (June 10, 1988) BTA No. 1986-A-1314, unreported.

Residence, which denotes the place in which one physically lives for a period of time, is embodied in the definition of domicile. The primary distinction between the two is that while a person can have only one domicile at any given time, he or she may have more than one residence. *Saalfeld v. Saalfeld* (1949), 86 Ohio App. 225. Moreover, once a domicile has been established, it is presumed to continue until it is shown by a preponderance of the evidence that it has been abandoned in favor of a new one. *Cleveland v. Surella* (1989), 61 Ohio App.3d 302; *Saalfeld*, supra, 226.

In *S. Robert Davis v. Limbach* (Sept. 25, 1992), BTA No. 1989-C-267, unreported, the board had to determine whether the taxpayer had changed his domicile from Ohio to Florida. In considering the authorities on domicile, we commented:

"There is no bright line test stating exactly which factors are necessary for an individual to effectively change his domicile. However, certain factors are accorded more weight than others. One factor which is accorded significant weight in such a case is whether or not an individual actually resided in a certain state. Residence is significant because domicile includes 'residence in fact' - the necessary nexus a state must have in order to tax an individual. See, *Angell v. Toledo* (1990), 153 Ohio St. 179; *Columbus v. Firebaugh* (1983), 8 Ohio App.3d 366."

In *S. Robert Davis*, we concluded on the evidence before us that the taxpayer had manifested his intent to change his domicile to Florida.

*4 In its next regular session after this board decided *S. Robert Davis*, the 120th General Assembly adopted S.B. 123, 145 Ohio Laws 1113, eff. Oct. 29, 1993 for the following purpose:

"To amend sections 5747.01, 5747.05 and 5748.01 and to enact 5747.24 and 5747.25 of the Revised Code to establish income tax domicile tests and to allow individuals to elect to pay income taxes under special nonresident provisions."

R.C. 5747.01(I)(1) was amended to define "resident" as "(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code." R.C. 5747.24 sets forth certain presumptions regarding an individual's domicile. It provides, in pertinent part, as follows:

"(A)(1) An individual 'has one contact period in this state' if the individual is away overnight from his abode located outside of this state and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in this state.

"(2) An individual is considered to be 'away overnight from his abode located outside this state' if the individual is away from his abode located outside this state for a continuous period of time, however minimal, beginning at any time on one day and ending at any time on the next day.

"(B) An individual who during a taxable year has no more than one hundred twenty contact periods in this state, which need not be consecutive, and who during the entire taxable year has at least one abode outside this state, is presumed to be not domiciled in this state during the taxable year. * * *

"(C) An individual who during a taxable year has less than one hundred eighty-three contact periods in this state, which need not be consecutive, and who is not irrebuttably presumed under division (B) of this section to be not domiciled in this state with respect to that taxable year, is presumed to be domiciled in this state for the entire taxable year. An individual can rebut this presumption for any portion of the taxable year only with a preponderance of the evidence to the contrary. An individual who rebuts the presumption under this division for any portion of the taxable year is presumed to be domiciled in this state for the remainder of the taxable year for which the individual does not provide a preponderance of the evidence to the contrary.

"(D) An individual who during a taxable year has at least one hundred eighty-three contact periods in this state, which need not be consecutive, is presumed to be domiciled in this state for the entire taxable year. An individual can rebut this presumption for any portion of the taxable year only with clear and convincing evidence to the contrary. An individual who rebuts the presumption under this division for any portion of the taxable year is presumed to be domiciled in this state for the remainder of the taxable year for which the individual does not provide clear and convincing evidence to the contrary.

*5 "(E) If the tax commissioner challenges the number of contact periods an individual claims to have in this state during a taxable year, the individual bears the burden of proof to verify such number, by a preponderance of the evidence. An individual challenged by the commissioner is presumed to have a contact period in this state for any period for which he does not prove by a preponderance of the evidence that the individual had no such contact period."

Uncodified section 3 of S.B. 123 provided for the Tax Commissioner to adopt:

"[A] rule setting forth criteria with respect to the requirements to provide 'a preponderance of the evidence' and 'clear and convincing evidence' under section 5747.24 of the Revised Code. The criteria shall include examples of fact and circumstances that are to be accorded no evidentiary weight."

At the board's evidentiary hearing, appellant utilized Ohio Adult Parole Authority travel permits to show his frequency of travel outside Ohio. (Appellee's Exh. 6.) He also presented an American Express charge card receipt summary to show when charges were made outside Ohio. (S.T., 68-77.) The Southington estate property manager, Maria Hunt, testified on Mr. Tyson's behalf regarding her records of his presence at the Southington property. (R I, 13.) And finally, Mr. Tyson testified in support of his position. (R II, 9.) The appellee presented the testimony of John Maxse, a reporter for the Cleveland Plain Dealer, Dennis Almasi, Mr. Tyson's parole officer at the time in question, and Roger Wilson, the deputy compact administrator with the Ohio Adult Parole Authority. (R I, 148; R II, 150; R II, 175.)

TAX YEAR 1995

Mr. Tyson, at various points in his testimony, declared his intention in 1995 to change his domicile from Ohio to Nevada. However, mere declarations are not sufficient to establish or show abandonment of residency or domicile. *S. Robert Davis*, supra. Mr. Tyson's primary contention is that he had fewer than 121 contact periods in the state of Ohio for 1995 and therefore, pursuant to R.C. 5747.24(B), he is entitled to a "conclusive presumption" that he was not domiciled in Ohio for

this tax year.³ (Appellant's Brief, 21.)

We cannot agree with Mr. Tyson's application of the statutory presumption. R.C. 5747.24(B) is clear and unambiguous. For this presumption to arise, he must have had at least one abode outside this state for "the entire taxable year." It is uncontroverted that he did not purchase the Nevada house until mid-April of 1995. (Appellant's Brief, 24.) And even if we were to accept his argument that his abode outside Ohio must also include the prison and a "temporary residence" in Las Vegas "while he waited for the purchase of his house to close," Mr. Tyson acknowledges that there would still be a minimum of six days in 1995 in which he did not have an abode outside Ohio. (Appellant's Brief, 22.) Therefore, R.C. 5747.24(B), by its literal terms, does not give rise to the presumption in Mr. Tyson's favor.

*6 Mr. Tyson's next contention is that even if he does not meet the requirements of R.C. 5747.24(B) for tax year 1995, R.C. 5747.24(C) allows him to overcome the presumption of an Ohio domicile by a preponderance of the evidence, which he contends has been clearly presented at the board's hearing. (Appellant's Brief, 22.)

Although we agree that R.C. 5747.24(C) may be applicable to the circumstances before us for tax year 1995, we find that appellant has not established by a preponderance of the evidence that he had abandoned his Ohio domicile in favor of a Nevada domicile. Compare *John M. and Dayne Maple* (Sept. 3, 1999) BTA No. 1998-T-268, in which the board held that,

"[W]hile R.C. 5747.24 has set forth certain presumptions and burdens with respect to domicile, it has not altered the basic concept of what constitutes a domicile."

Although Mr. Maple maintained a second residence in Tennessee for purposes of his employment, he maintained a family residence in Ohio to which he returned on weekends and as time would permit. He retained an Ohio driver's license and voter registration. Lastly, he testified he never intended to remain in Tennessee. From this evidence, the board concluded he had not demonstrated that he had abandoned his Ohio domicile.

In the instant appeal, Mr. Tyson filed Ohio income tax returns and paid the tax reported for the years 1995 and 1996. These returns, completed by a professional preparer, are in themselves positive affirmations by Mr. Tyson of his Ohio domicile. S.T. 148, 199. Both returns were filed upon extensions, in October 1996 and 1997, respectively. There is limited testimony concerning the circumstances under which the returns were prepared on behalf of Mr. Tyson. His testimony is limited to an acknowledgement that he relied upon other people to take care of his tax obligations, a denial that he signed the returns, and a lack of knowledge about the 1995 or 1996 taxes. R. II 17, 18, 89. We find that such denial of the authenticity of his personal income tax returns for the two years at issue lacks credibility. Accordingly, we find that testimony does not overcome the presumption of Ohio domicile established by R.C. 5747.24(C).

At the board's evidentiary hearing, Mr. Tyson's counsel utilized Ohio Adult Parole Authority travel permits to show his frequency of travel outside Ohio. (Appellee's Exh. 6.) He also presented an American Express charge card receipt summary to show when charges were made outside Ohio. (S.T., 68-77.) The Southington estate property manager, Maria Hunt, testified on Mr. Tyson's behalf regarding her records of his presence at the Southington property. (R I, 13.) And finally, Mr. Tyson testified in support of his position. (R II, 9.)

Mr. Tyson claims that he formed his intent to change his domicile to Nevada while he was still in prison. He states that his business dealings made Nevada a more workable home and that his lifestyle was more suited to Las Vegas rather than anything an Ohio city could offer. He contends that his presence in Ohio "was always predicated upon other people's requirements, not his own. This prevented him forming the requisite intent to ever make Ohio his domicile." (Appellant's Brief, 22, 23.)

*7 Mr. Tyson's application for the change of parole to Ohio and his submission to the Ohio Adult Parole Authority in actuality support the statutory presumption in R.C. 5747.24(C) that he was domiciled in Ohio. The travel permits are a further affirmation that he was domiciled in Ohio in 1995 and that it was his intention to return to Ohio. Such supervision of Mr. Tyson continued until the Marion County Superior Court entered an order under date of June 16, 1997, pursuant to which probation and supervision by Ohio were terminated.

His testimony as to domicile is not convincing. Under cross-examination, Mr. Tyson responded as follows:

“Q: Now I’m going to change subjects for just a second and clarify your testimony about your residency and your intent.

“Did you at any time — Is it your testimony that you at no time had an intent to be an Ohio resident?

“A: I was an Ohio resident.

“Q: You were or were not? I couldn’t hear you.

“A: I did stay in Ohio. I had a house in Ohio.

“Q: Okay. And were you at any time intending to make Ohio your residence and home?

“A: At what particular time?

“Q: Okay. How about the year 1991?

“A: I lived in there in ‘91 — it was in ‘91. I was other places as well.

“Q: Okay. So you regarded Ohio as your home and residence for the year 1991?

“A: I believe so, yes.

“Q: And what about during the time that you were in prison, did you regard Ohio as your home?

“A: Yes, sir.

“Q: And what about 1995 when you came out of prison?

“A: When I came out of prison — At what particular time? Was I still in prison? The day I got out of prison? What particular time?

“Q: Let’s say the month of March 1995. That was the month that you were released on probation?

“A: Yes. And when I came out of prison I went straight to Ohio, yes.

“Q: So at that time when you came out you intended to make your residence in Ohio, correct?

“A: No. I had other plans. I was explaining earlier today that when I was in prison I signed some contracts concerning this being involved with Showtime and the MGM Grand and all that stuff.

“Q: So your testimony is that by sometime in March of 1995 you were developing an intent to change your home and residence to another state?

“A: Well, I spoke — It was spoken about when I was in prison, sir.

“Q: Okay.

“A: ‘95.

“Q: So even before March of ‘95?

“A: I don’t know. It was before ‘95, sir.

“Q: Was it in 1994 that you began to change your intent?

“A: We have speculation from —Don King and John Horne would come with me and they would discuss deals with Nevada, places that we’d be stationed in Nevada, like the hotel and the fights and stuff.

“Q: And so those discussions were primarily either late ‘94 or early ‘95, is that a fair statement?

“A: Yes, sir.

*8 “Q: Okay. So your testimony is that this intent to change your residence and home out of Ohio was formed probably in early 1995; is that a fair statement of your testimony?

“A: It could have been, sir, yes.” (R II, 100-102)

Although the matter of a residence in Nevada may have been discussed while Mr. Tyson was in prison, it is not clear that he formed an intent to change his domicile to Nevada. Having “spoken about” a change in domicile is not the same as having formed the intent to do so. Mr. Tyson’s testimony is unclear and not persuasive.

The fact that Mr. Tyson’s presence in Ohio may have been set in motion by the decisions of others does not negate the establishment of domicile if he authorizes or accedes to such action. We note that he had the residence in Southington, Ohio since 1989 or 1990 and that he filed his 1991 Ohio income tax return listing the home as his address, as he did for his 1995 and 1996 Ohio and federal returns. (Appellee’s Exh. 9-13.) (Apparently, there were no tax return filings for 1992-1994.) He obtained a temporary Ohio driver’s license in 1995. Thus, his stay at the Southington, Ohio location was not insignificant and he considered it his home. (R II, 100, 101.)

Mr. Tyson also points to the fact that he told his parole officer, Dennis Almasi, on March 29, 1995 that he wanted to spend “as much time as possible in Las Vegas” and contends that he “made it clear to whomever he could, that he was a Nevada resident.” (Appellant’s Brief, 23.)

While it is true that Mr. Tyson made such a statement to Mr. Almasi, Mr. Almasi’s probation report lends a more complete understanding of the context. Said report reads as follows:

“Comment: Michael had initially expressed a desire to spend as much time as possible in Las Vegas, Nevada. He was advised to consider a transfer of his supervision to Nevada if that is the case, as we could not provide adequate supervision if he spends lengthy periods of time in Nevada. He has a contractual agreement with his Showtime Boxing business to appear at the MGM Grand Hotel in Las Vegas, Nevada in April of 1995, and he was issued a travel permit to Las Vegas for employment purposes and to visit his daughter, Michall, while there. Michael also states that he will begin training for his boxing profession while there.

“Subsequent contact with Michael reveals that he intends to settle down in Southington upon his return from Las Vegas and he will train in Orwell. He indicated he does not want a transfer.” (Appellee’s Exh. 7.)

This report tends to affirm the domicile of Mr. Tyson in Ohio and support his own written statement to the state of Indiana that the purpose of his March 25, 1995 trip to Ohio was “(t)o resume residence under probation supervision.” (Appellee’s Exh. 7, Indiana Interstate Compact for Probation.)

Although counsel argues, in his brief, that Mr. Tyson received a Nevada driver’s license in 1995 to support his claim of domicile in Nevada, the evidence is not clear on that point. When asked by his attorney if he obtained a Nevada driver’s license in 1995, he could only respond “I believe so.” We would also note that the statutory transcript contains a copy of Mr. Tyson’s Nevada driver’s license. It appears to indicate an application date of 1997 rather than 1995. (S.T., 137.)

*9 Finally, Mr. Tyson argues that his probation in Ohio cannot be used to establish his intent to be domiciled in Ohio, as this was simply a “practical solution to an administrative problem,” and he directs us to his purchase of a Nevada house in support. (Appellant’s Brief, 23, 24.)

Mr. Tyson’s agreement with Indiana and Ohio terms of probation, to maintain his domicile in Ohio and not to leave the state without written permission from Ohio probation authorities, provides a substantial basis as to why he would maintain his domicile in Ohio. Had he failed to fulfill the requirements of his probation, he could have been subject to a loss of privileges, including a return to prison. The travel permits state, above the signature line:

“I understand that travelling outside my county of residence is a privilege and as such could be revoked at any time.

“It also has been explained to me and I understand that many cities have felony registration ordinances and that I must check with the local police authorities upon reaching my destination to comply with any such ordinance.

“I further understand that if I am granted permission to be in another state, or if I should be there without permission and my return to Ohio is authorized, I hereby waive extradition to the State of Ohio and agree not to contest efforts to effect such return.” (Appellee’s Exh. 6.)

His statements made within the probation documents as to his residence within the state of Ohio are supportive of the Tax Commissioner’s determination of domicile in this matter. Nor do we find evidence that Mr. Tyson, during the time in question, communicated to others that he was a Nevada resident.

In reviewing the totality of the record before us, we find that Mr. Tyson has failed to rebut, by a preponderance of the evidence, the presumption that he was domiciled in the state of Ohio for the entire tax year of 1995.

TAX YEAR 1996

For tax year 1996, Mr. Tyson contends that he had fewer than 121 contact periods within Ohio and owned an abode outside Ohio for the entire year and is therefore entitled to the “conclusive presumption” that he was not domiciled in Ohio for that year. R.C. 5747.24(B), supra.

Appellant agrees that the travel permits show that he was in Ohio for 141 days in 1996 but explains that he also traveled out of state without a permit over Thanksgiving and Christmas that year as well as at other times.

He points to his property manager’s summary which shows 124 contact periods in Ohio during 1996. He then “corrects” her log by utilizing travel permits, an American Express charge receipt summary, and appellant’s testimony to reduce the total to 96 contact days within Ohio.

Appellant also argues that other combinations of the evidence for 1996 yield a count of fewer than 121 contact days within Ohio. (Appellant’s Brief, 26, 27.)

Although appellee agrees that 141 contact days within Ohio are indicated by the travel permits, he disputes that Maria Hunt’s analysis can be used to reduce this figure, claiming that her data is unreliable and flawed. Appellee further contends that Mr. Tyson’s testimony regarding out-of-state travel is not credible and that his use of American Express charges to change the number of contact days in Ohio is not accurate. (Appellee’s Brief, 13-18.)

*10 Ms. Hunt, Mr. Tyson’s property manager for the Southington estate since 1995, utilized Southington property employee time sheets and alarm company records to prepare summary documents of the number of days she calculated that Mr. Tyson was in Ohio during 1995 and 1996. (Appellant’s Exh. A-0 through A-1.) She testified that the security alarm system would be turned off when Mr. Tyson was at the estate (R I, 50-51) and that notations like airport pick-ups on employee time sheets indicated Mr. Tyson’s presence at the Southington home. (R I, 71-76.)

We agree with appellee’s contention that Ms. Hunt’s 1996 summary document is inadequate evidence to offset the number of days the travel reports indicate Mr. Tyson spent in Ohio for 1996. On cross-examination, Ms. Hunt testified regarding the

summary documents, as follows:

“These conclusions — I was asked when I originally did the summary to go through my records and state when I can *definitely* say he was in Ohio according to my records.” (R I, 139, emphasis added.)

Thus, the summary is limited to days about which Ms. Hunt was positive. Further testimony shows that questionable days, or days spent in other Ohio locations, may not have been accounted for. She testified on cross examination as follows:

“Q: *So your logs don't necessarily reflect all of the time that he's in Southington or Ohio, correct?*

“A: *No, if I didn't know about it.*

“Q: Okay. And in fact, and we touched on this in the deposition and in the testimony today, you would know if Mr. Tyson were in Ohio but in Cleveland, *only if you were told by one of his agents, right?*

“A: *Correct.*

“Q: And it's entirely possible that there were occasions where they did not tell you he was in Ohio, correct?

“* * *

“THE WITNESS: *Sure it's possible.*” (R I, 135, emphasis added.)

Thus, Ms. Hunt's summaries are directed primarily at Mr. Tyson's stays at Southington, Ohio. This would not account for all of Mr. Tyson's many stays at the Cleveland apartment or other locations in Ohio. On redirect examination of Ms. Hunt, appellant's counsel attempts further explanation, as follows:

“Q: Ms. Hunt, you testified that it was possible that you would not know that Mr. Tyson was in the Southington area. Using that context as you understand it to be, what period of time would it be possible that you would not know Mr. Tyson was not — was in the Southington area but you didn't know it?

“A: I don't understand.

“Q: Would it be a day that you wouldn't know it, or two days, or a week? In other words, what — From your understanding of Mr. Tyson's whereabouts, as the property manager and your contacts with Mr. Tyson and his agent, what would be the longest period of time that you would not know that Mr. Tyson was not in the — was in the area?

“A: A couple days.

“Q: A couple days?

“A: At the most.” (R I, 144.)

*11 However, her testimony about knowing the period of time she would not have known of Mr. Tyson's whereabouts diminishes her credibility here, particularly when we compare her testimony that the longest period Mr. Tyson might stay in Cleveland would be a week (R I, 130) with Mr. Tyson's testimony that a stay in Cleveland might last about two weeks. (R II, 56.)

Her testimony makes clear that she did not always know Mr. Tyson's location away from the Southington home. Under direct examination, she testified:

“Q: Okay. Do you know where Mr. Tyson would be located *if he was not in the Southington house* during those two years?

“A: *Most of the times.*” (R I, 48, emphasis added.)

“***

“Q: Okay. Do you know whether Mr. Tyson ever stayed in Cleveland, Ohio?”

“A: Yes.

“Q: We’ll get to that down the road a little bit more, but were you ever notified that Mr. Tyson was staying in Cleveland, Ohio by Mr. Tyson or any of his agents?”

“A: *Sometimes.*”

(R I, 110, 111, emphasis added.)

Further, Ms. Hunt’s use of the alarm reports in creating the summaries of Mr. Tyson’s contact days in Ohio is flawed. Since Ms. Hunt did not always know Mr. Tyson’s location outside the Southington home, the alarm system reports would not necessarily indicate his stays outside Southington, Ohio. Her testimony indicates that she was in a position to be notified of Mr. Tyson’s presence in Cleveland, Ohio when Mr. Tyson might visit the Southington estate, but there is no indication that she was in the position to be notified otherwise. Thus, the alarm system shutdown records are limited to the dates of Mr. Tyson’s visits, or possible visits, to the Southington estate and are not reliable in calculating the number of days Mr. Tyson may have been in other Ohio locations during 1996.

In addition, under cross-examination, Ms. Hunt stated that the alarm reports might occasionally have inaccuracies in them. (R I, 143.)

We find Ms. Hunt’s testimony and summaries to be too limited in scope to determine Mr. Tyson’s 1996 contact days in Ohio. There are too many gaps in her knowledge of Mr. Tyson’s location when he was away from the Southington estate. Coupled with somewhat inaccurate alarm reports, the credibility of the overall summary is lacking.

Appellant presents an American Express charge receipt summary to “correct” the travel permits. Purportedly, the receipts show Mr. Tyson’s actual out-of-state location despite the indications of the travel permits. (S.T. 68-77 and Appellant’s Exhibit K.) It is contended that this evidence would support corrections to the number of Ohio contact days for Mr. Tyson.

However, we note that the receipts and summary do not indicate whether the purchases were made in person or by telephone, nor can we tell who authorized the expenditure and/or signed the receipt. Without more, we cannot determine Mr. Tyson’s location using these exhibits.

*12 Finally, Mr. Tyson’s own testimony that he was out of Ohio beyond those days indicated by the travel permits is unreliable in determining whether a reduction in the number of Ohio contact days is warranted.

Mr. Tyson claims that he was in Washington, D.C. from Thanksgiving 1996 to the end of the year, even though he did not have a travel permit. Yet, the aforementioned American Express charge receipts, which were presented as evidence of Mr. Tyson’s location, show a December 2, 1996 charge of \$9,999.99 to “Davis Automotive Group” in Cleveland Heights, Ohio, and a \$3,013.88 charge to “Klivan’s Jewelry” in Warren, Ohio on December 14, 1996, (S.T., 80), and it appears that there are about six other charges during this period in Ohio. (S.T., 90.) We further note that of the only two “non-Ohio charges or no state indicated” charges listed for this period, at least one was for New York City. This was for \$181.32 on December 31, 1996. (S.T., 80, 90.) Mr. Tyson’s testimony is seemingly contradicted by his documentary evidence.

As appellee points out in his brief, Mr. Tyson testified that the probation authority in Ohio allowed him to “go anywhere (he wanted.)” (R II, 146.) He filed a travel permit for his visit to Washington, D. C. for the period of December 21, 1995 to January 2, 1996, which was granted. (S.T. 107.) Yet, he filed no such travel permit for the period for which he claims to have been absent from Ohio. There appears to be no valid reason not to file for such a permit, especially in light of the possible penalties for a violation of parole terms, as we discussed earlier.

Not only is Mr. Tyson’s testimony contradictory to some of his own evidence, it is unsure and unclear in many instances. We

find Mr. Tyson's testimony to be too tentative and questionable to be probative on the issue of the number of days he spent in Ohio in 1996.

For the reasons stated above, we determine that the appellant has not presented sufficient evidence to show that he had fewer than 121 contact periods with Ohio for tax year 1996. Therefore, he is not entitled to the presumption that he was not domiciled in Ohio for that year.

Rather, he is presumed to have been domiciled in the state of Ohio, as the evidence reveals that Mr. Tyson had more than 120, but fewer than 183 contact days in Ohio. See R.C. 5747.24(C). Nevertheless, the appellant may overcome this presumption by a "preponderance of evidence to the contrary." See R.C. 5747.24(C).

His evidence consists of two home purchases — one in Nevada and one in Connecticut — soon after his release from prison and his own testimony that he had formed his intent to move his domicile to Nevada. He also argues that his Nevada driver's license is supportive evidence of his change of domicile to Nevada.

The fact that Mr. Tyson owned three houses in 1996 does not, in and of itself, support his contention that he changed his domicile from Ohio to Nevada. Appellant argues that "[t]he two abodes outside Ohio and a presence in the state only approximately one-third of the year demonstrate a strong intent not to be a resident of Ohio." (Appellant's Brief, 28.)

*13 We disagree. We earlier said that one may have more than one residence but only one domicile. *Saalfeld v. Saalfeld*, supra. R.C. 5747.24(C) establishes the presumption of domicile in Ohio, which the appellant must overcome by a preponderance of the evidence. We also note that Mr. Tyson had two locations in Ohio where he could stay, the Southington estate and his Beachwood apartment, which had two-year leases starting January 11, 1996 and February 9, 1996. (Appellee's Exhibit 14.)

Regarding the purchase of the Connecticut property, Mr. Tyson testified:

"Q: Now, did you ever purchase any other house after the Las Vegas house?"

"A: Yes.

"Q: Where was that house located?"

"A: Connecticut.

"Q: Do you recall the city?"

"A: Windford — Farmington.

"Q: Could you tell me the reason that you purchased the Farmington house?"

"A: This is a story, okay? A friend of mine who was my manager at the time named Rory Holloway, and he seen this property and he showed me the property, but I truly didn't want the property.

"But it was pretty cool once you put work into it. And he put the money up and I really bought it because he — he put up for a down payment. He was really devastated, and he couldn't get the money back, so I bought the house." (R II, 40, 41.)

It appears that his purchase of the Connecticut house was not predicated upon any special desire to be outside Ohio but more as a favor for a friend who would lose the nonrefundable down payment he made for Mr. Tyson. (R II, 40, 41.) This property was only visited by Mr. Tyson five or six times over a seven-year period, (R II, 45.), which is not a basis for stating that a strong intent to domicile outside Ohio has been demonstrated by this purchase.

With respect to the Nevada house, we have little evidence about the time Mr. Tyson might have actually stayed there. Appellant's counsel contends his intent to domicile in Nevada is further supported by Mr. Tyson's testimony. However, as

we earlier stated, we find such testimony to lack certainty and to be unreliable. Regarding the issue of intent, Mr. Tyson testified on direct examination, as follows:

“Q: When you were in Indiana did you think about where you’d like to go after you left as far as your houses or homes?”

“A: Probably thinking about Ohio; probably, Southington.

“Q: When the word ‘home’ comes to mind, what does that word mean to you?”

“A: I don’t know, thinking of a house.

“Q: When you were in Indiana did you think about not making Southington your permanent house or home?”

“A: I didn’t know what I wanted to do when I went to prison.” (R II, 26.)

Under redirect examination, Mr. Tyson testified as follows:

“Q: When you left Indiana did you intend to stay at the house in Southington?”

“A: When I left Indiana?”

“Q: Yes.

“A: Yes.

“Q: And did you intend to stay at the house or home as you have now defined it, to be interchangeably throughout ‘95 and 1996?”

*14 “A: In Ohio?”

“Q: Yes.

“A: Yes.

“* * *

“Q: What was the reason for your intending to be there during those years?”

“A: For residence.” (R II, 140, emphasis added.)

Mr. Tyson seems to hedge, as if unsure, in his testimony about intent. We find Mr. Tyson’s testimony does little to overcome the presumption of Ohio domicile for the reasons stated.

His assertion that his Nevada driver’s license is added evidence of an intent to change his domicile to Nevada is without merit. It is uncontroverted that Mr. Tyson first obtained an Ohio temporary driver’s permit in 1995 (Appellee’s Exhibit 16), but he also claims he received a Nevada license in 1995. His testimony reads, as follows:

“Q: Okay. Did you ever — Did you obtain a Nevada driver’s license?”

“A: Yes.

“Q: Did you obtain it in 1995?”

“A: I believe so.” (R II, 81)

Again, Mr. Tyson hedges in his answer. We find such a response to be of little value in establishing the existence of a 1995 Nevada driver's license, especially in light of our previously expressed concerns regarding his testimony. And as we discussed earlier, the statutory transcript contains a copy of Mr. Tyson's Nevada driver's license with an expiration year of 2001, which would appear to indicate an issuance year of 1997. (S.T. 137.)

It is uncontroverted that Mr. Tyson agreed with the states of Indiana and Ohio to make his Southington, Ohio home his residence until a duly authorized change was made by the proper authorities. (S.T. 63-66.) He had this home since 1989 or 1990 and acknowledged that, at least for 1991, he regarded Ohio as his home and residence. (R II, 12, 100.) He also filed his 1991 state tax return in Ohio. His contention that "the establishment of probation in Ohio was simply a practical solution to an administrative problem" (Appellant's Brief, 23) does not negate the fact that he asserted to the Indiana court and administrative bodies of Indiana and Ohio (parole authorities) that he would reside in Ohio and not leave without written authority. The appellant now approaches the Ohio Board of Tax Appeals, another administrative agency, seeking that we ignore his earlier statements of Ohio residence to the court and parole authorities because they were "simply a practical solution." We decline to do so.

Upon our consideration of the record before us, we conclude that Mr. Tyson's claim of Nevada domicile for tax years 1995 and 1996 is not supported by a preponderance of competent and probative evidence and is without merit. We find that he has failed to meet his burden of proof in overcoming the presumption that he was domiciled in Ohio during the years in question, and the preponderance of the evidence supports the conclusion that he was domiciled in Ohio. Accordingly, it is ordered by the Board of Tax Appeals that the Tax Commissioner's final determination, as set forth in his journal entry dated October 23, 2001, must be and the same is hereby affirmed.

Footnotes

- ¹ Mr. Tyson's counsel has made a request for findings of fact in his brief in chief, and presents specific factual statements identified in fifty-three numbered paragraphs at pages 3 through 16. Civ. R. 52 pertains to findings by the court upon trial without a jury, which may be generally in favor of the prevailing party unless a party makes a timely request for separate conclusions of fact and law. Although the board may utilize the civil rules as a guide to its discovery and hearing procedure, there is no statutory requirement or rule that requires the board to separately state conclusions of fact, and we decline to do so.
- ² Such rule is codified as Ohio Adm. Code 5703-7-16, effective Dec. 31, 1993.
- ³ We would note that R.C. 5747.24(B) does not include the word "conclusive."

2003 WL 22294864 (Ohio Bd.Tax.App.)

2003 WL 22959266 (Ohio Bd.Tax.App.)

Board of Tax Appeals

State of Ohio

DANIEL L. GIFFORD, APPELLANT

v.

THOMAS M. ZAINO, TAX COMMISSIONER OF OHIO, APPELLEE

Case No. 2002-G-1222

December 12, 2003

***1 (Personal Income Tax)**

DECISION AND ORDER

Appearances

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Ms. Jackson, Ms. Margulies and Mr. Eberhart concur.

This matter is before the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant. Appellant appeals a final determination of the Tax Commissioner, in which said official affirmed a personal income tax assessment levied against the appellant for tax year 1997. The Tax Commissioner's final determination is incorporated herein by reference.

The instant assessment is the result of the appellant's failure to file a 1997 income tax return. In his petition for reassessment, the appellant claims that his employer withheld state of Ohio income taxes and therefore, he did not owe any taxes. Consequently, he did not need to file a return for tax year 1997. In the telephone hearing on his petition for reassessment, the appellant injected an additional argument that he was not required to file a return because he was a resident of Tennessee for most of calendar year 1997. Subsequent to the telephone hearing, at the request of the department, the appellant filed a return for tax year 1997. Under the residency section the appellant circled "nonresident." In the part-year resident section of the form, he wrote total of eight weeks, "Jan 1 - Feb/97 Nov - Dec 31."

At the hearing before this board, the appellant, Mr. Gifford, testified regarding the nature and times of his employment. In

1996, the appellant became affiliated with a restaurant known as Ciao Baby Cucina (“Ciao Baby”). He became a substitute/visiting manager for a failing store¹ in Hackensack, New Jersey. He also worked at Ciao Baby’s Washington D.C. store on a rotating basis. Around November of 1996, the appellant went to Memphis, Tennessee to decide if he wanted to become the general manager of a Ciao Baby that was located there. In January of 1997, the appellant returned to Cincinnati for an approximate “two-week vacation.” Thereafter, he returned to Memphis to become the general manager for Ciao Baby, where he stayed until he left the company around November 26, 1997. Mr. Gifford returned to Cincinnati and moved into an apartment located above his parents’ apartment.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner (“S.T.”), the record of the evidentiary hearing before this board, and the post-hearing legal arguments of the parties.

*2 In reviewing appellant’s appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Company v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner’s determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is presented to this board by the appellant to show that the Tax Commissioner’s findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner’s findings. *Kern*, supra; *Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan Aluminum Corp.*, supra.

R.C. 5747.02 levies an income tax on every individual residing in or earning or receiving income in the state of Ohio. R.C. 5747.08 requires an annual return to be filed with respect to the tax imposed by section 5747.02. R.C. 5747.04 provides that “[a]ll reports, returns, and payments required of a taxpayer or employer by this chapter *** shall be filed with the tax commissioner.” For the purpose of imposing the income tax under chapter 5747 of the Ohio Revised Code, R.C. 5747.01(I) defines a “resident” as follows:

“(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;”

R.C. 5747.24 addresses domicile tests and presumptions. Most applicable to this case is R.C. 5747.24(C) and provides in part as follows:

“(C) An individual who during a taxable year has less than one hundred eighty-three contact periods in this state, which need not be consecutive, and who is not irrebuttably presumed under division (B) of this section to not be domiciled in this state with respect to that taxable year, is presumed to be domiciled in this state for the entire taxable year. An individual can rebut this presumption for any portion of the taxable year only with a preponderance of the evidence to the contrary. ***.”

While R.C. 5747.24 has set forth certain presumptions and burdens with respect to domicile, it has not altered the basic concept of what constitutes a domicile. The terms “residence” and “domicile” are often used interchangeably. However, Ohio courts have acknowledged that these terms are distinct, albeit related, concepts. *Grant v. Jones* (1882), 39 Ohio St. 506; *Larrick v. Walters* (1930), 90 Ohio App. 363; *Bd. of Edn. v. Dille* (1959), 109 Ohio App. 344.

The facts presented in *Maple v. Tracy* (Sept. 3, 1999), BTA Nos. 1998-T-268, 1998-T-312, unreported, involved a situation similar to the instant case. The appellant had established a residence in Tennessee for purposes of complying with his employment. In determining that the appellant had not established by a preponderance of the evidence that he was not a resident of Ohio, we stated:

*3 “Domicile is generally defined as a legal relationship between a person and a particular place that contemplates two factors: (1) residence, at least for some period of time, and (2) the intent to reside in that place permanently or indefinitely. *Hill v. Blumenburg* (1924), 19 Ohio App. 404, 409, citing *Pickering v. Winch* (1906), 48 Ore. 500; *Columbus v. Firebaugh* (1983), 8 Ohio App.3d 366. Residence, which denotes the place in which one physically lives for a period of time, is embodied in the definition of domicile. The primary distinction between the two is that while a person can have only one domicile at any given time, he or she may have more than one residence. *Saalfeld v. Saalfeld* (1949), 86 Ohio App. 225.

(Footnote omitted.) Moreover, once a domicile has been established, it is presumed to continue until it is shown by a preponderance of the evidence that it has been abandoned in favor of a new one. *Cleveland v. Surella* (1989), 61 Ohio App.3d 302; *Saalfeld*, supra, 226.” Id. at 5-6.

See, also, *Tyson v. Zaino* (Oct. 3, 2003), BTA No. 2001-B-1327, unreported.

Mr. Gifford contends that he did not live in the state of Ohio for the tax year 1997. Further, he contends that Ohio income tax was illegally withdrawn from his paycheck while he resided in Memphis. Based on the record in this matter, we disagree. At the hearing before this board, Mr. Gifford could not testify with any certainty to the dates he resided in Cincinnati, Ohio and the dates he resided in Memphis, Tennessee. The tax return which he eventually filed contained dates which conflicted with those stated at the hearing. Although he gave reasons why he did not have a Tennessee driver’s license, or change of voter registration, this, coupled with the lack of any evidence that he had a bank account in Tennessee or other indices of his intent to reside there permanently, Mr. Gifford has not provided competent or probative evidence that he intended to change his residency/domicile indefinitely or permanently to Memphis, Tennessee. Moreover, after terminating his employment with Ciao Baby, he returned to Cincinnati, Ohio, which is where he lived prior to his accepting the position as general manager in Memphis. Also, in his rebuttal to the Tax Commissioner’s brief, he states that, “Restaurant managers are moved on very short notice to problem stores ***.” This being the case, we find that Mr. Gifford was a resident of Ohio for Ohio income tax purposes.

Appellant’s exhibit E, form W-2 Wage and Tax Statement 1997, indicates that \$660.00 was withheld for Ohio income tax. In his final determination, the Tax Commissioner indicated that appellant was “asked both by the tax agent and the hearing officer to submit a W-2 form showing that Ohio income tax was withheld from his 1997 wages. However, he stated that he lost all of his documentation for his 1997 taxes, and he has not submitted any information supporting this contention.” (S.T. 2.) In light of appellant’s exhibit E showing income tax withheld from the appellant’s paycheck, we find this matter should be remanded to the Tax Commissioner to determine the correct amount of taxes, penalties and interest owed to the state of Ohio. As to the Tax Commissioner’s determination that the appellant was required to file an income tax return for tax year 1997, we affirm the determination. See R.C. 5747.08.

*4 Giving consideration to the entire record in this matter, it is the decision and order of the Board of Tax Appeals that the Tax Commissioner’s final determination is affirmed in part, and the matter is remanded for a recalculation of the amount due the state of Ohio.

Footnotes

¹ Although the appellant repeatedly referred to Ciao Baby as a store in his testimony, he explained that Ciao Baby was actually an upscale restaurant.

THE STATE OF OHIO

VOLUME CXLV

LEGISLATIVE ACTS
INCLUDING APPROPRIATION ACTS
PASSED

AND

JOINT RESOLUTIONS
ADOPTED

BY THE
ONE HUNDRED AND TWENTIETH GENERAL ASSEMBLY
OF OHIO

AT ITS REGULAR SESSION
JANUARY 4, 1993, TO DECEMBER 31, 1994, INCLUSIVE

Issued by

Bob Taft
Secretary of State

(120th General Assembly)
(Senate Bill Number 123)

AN ACT

To amend sections 5747.01, 5747.05, and 5748.01 and to enact sections 5747.24 and 5747.25 of the Revised Code to establish income tax domicile tests and to allow individuals to elect to pay income taxes under special nonresident provisions.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5747.01, 5747.05, and 5748.01 be amended and sections 5747.24 and 5747.25 of the Revised Code be enacted to read as follows:

Sec. 5747.01. Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter has the same meaning as when used in a comparable context in the Internal Revenue Code, and all other statutes of the United States relating to federal income taxes.

As used in this chapter:

(A) "Adjusted gross income" OR "OHIO ADJUSTED GROSS INCOME" means adjusted gross income as defined and used in the Internal Revenue Code, adjusted as follows:

(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities;

(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States that are exempt from federal income taxes but not from state income taxes;

(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States;

(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income;

(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code;

under divisions (A) and (B) of this section in accordance with rules prescribed by the tax commissioner. In no event shall the same income be subject to both credits.

(J) The credit allowed under division (A) of this section shall be calculated based upon the amount of tax due under section 5747.02 of the Revised Code after subtracting all other credits to which the taxpayer is entitled under this chapter except the credits under section 5747.057 of the Revised Code and division (B) of this section. The credit allowed under division (B) of this section shall be calculated based upon the amount of tax due under section 5747.02 of the Revised Code after subtracting all other credits to which the taxpayer is entitled under this chapter except the credit under section 5747.057 of the Revised Code.

(K) No credit shall be allowed under division (B) of this section unless the taxpayer furnishes such proof as the tax commissioner shall require that the income tax liability has been paid to another state or the District of Columbia.

(L) No credit shall be allowed under division (B) of this section for compensation that is not subject to the income tax of another state or the District of Columbia as the result of an agreement entered into by the tax commissioner under division (A)(3) of this section.

Sec. 5747.24. THIS SECTION IS TO BE USED SOLELY FOR THE PURPOSES OF CHAPTERS 5747. AND 5748. OF THE REVISED CODE.

(A) AS USED IN THIS SECTION AND SECTION 5747.25 OF THE REVISED CODE:

(1) AN INDIVIDUAL "HAS ONE CONTACT PERIOD IN THIS STATE" IF THE INDIVIDUAL IS AWAY OVERNIGHT FROM HIS ABODE LOCATED OUTSIDE THIS STATE AND WHILE AWAY OVERNIGHT FROM THAT ABODE SPENDS AT LEAST SOME PORTION, HOWEVER MINIMAL, OF EACH OF TWO CONSECUTIVE DAYS IN THIS STATE.

(2) AN INDIVIDUAL IS CONSIDERED TO BE "AWAY OVERNIGHT FROM HIS ABODE LOCATED OUTSIDE THIS STATE" IF THE INDIVIDUAL IS AWAY FROM HIS ABODE LOCATED OUTSIDE THIS STATE FOR A CONTINUOUS PERIOD OF TIME, HOWEVER MINIMAL, BEGINNING AT ANY TIME ON ONE DAY AND ENDING AT ANY TIME ON THE NEXT DAY.

(B) AN INDIVIDUAL WHO DURING A TAXABLE YEAR HAS NO MORE THAN ONE HUNDRED TWENTY CONTACT PERIODS IN THIS STATE, WHICH NEED NOT BE CONSECUTIVE, AND WHO DURING THE ENTIRE TAXABLE YEAR HAS AT LEAST ONE ABODE OUTSIDE THIS STATE, IS PRESUMED TO BE NOT DOMICILED IN THIS STATE DURING THE TAXABLE YEAR. THE TAX COMMISSIONER, IN WRITING AND BY PERSONAL SERVICE OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, MAY REQUEST A STATEMENT FROM AN INDIVIDUAL VERIFYING THAT THE INDIVIDUAL WAS NOT DOMICILED IN THIS STATE UNDER THIS DIVISION DURING THE TAXABLE

YEAR. THE COMMISSIONER SHALL NOT MAKE SUCH A REQUEST AFTER THE EXPIRATION OF THE PERIOD, IF ANY, WITHIN WHICH THE COMMISSIONER MAY MAKE AN ASSESSMENT UNDER SECTION 5747.13 OF THE REVISED CODE AGAINST THE INDIVIDUAL FOR THE TAXABLE YEAR. WITHIN SIXTY DAYS AFTER RECEIVING THE COMMISSIONER'S REQUEST, THE INDIVIDUAL SHALL SUBMIT A WRITTEN STATEMENT TO THE COMMISSIONER STATING BOTH OF THE FOLLOWING:

(1) DURING THE ENTIRE TAXABLE YEAR, THE INDIVIDUAL WAS NOT DOMICILED IN THIS STATE;

(2) DURING THE ENTIRE TAXABLE YEAR, THE INDIVIDUAL HAD AT LEAST ONE ABODE OUTSIDE THIS STATE.

THE PRESUMPTION THAT THE INDIVIDUAL WAS NOT DOMICILED IN THIS STATE IS IRREBUTTABLE UNLESS THE INDIVIDUAL FAILS TO SUBMIT THE STATEMENT AS REQUIRED. IF THE INDIVIDUAL FAILS TO SUBMIT THE STATEMENT AS REQUIRED, HE IS PRESUMED UNDER DIVISION (C) OF THIS SECTION TO HAVE BEEN DOMICILED IN THIS STATE THE ENTIRE TAXABLE YEAR.

IN THE CASE OF AN INDIVIDUAL WHO DIES, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE DECEASED INDIVIDUAL MAY COMPLY WITH THIS DIVISION BY MAKING TO THE BEST OF THE REPRESENTATIVE'S KNOWLEDGE AND BELIEF THE STATEMENT UNDER THIS DIVISION WITH RESPECT TO THE DECEASED INDIVIDUAL, AND SUBMITTING THE STATEMENT TO THE COMMISSIONER WITHIN SIXTY DAYS AFTER RECEIVING THE COMMISSIONER'S REQUEST FOR IT.

AN INDIVIDUAL OR PERSONAL REPRESENTATIVE OF AN ESTATE WHO KNOWINGLY MAKES A FALSE STATEMENT UNDER THIS DIVISION IS GUILTY OF PERJURY UNDER SECTION 2921.11 OF THE REVISED CODE.

(C) AN INDIVIDUAL WHO DURING A TAXABLE YEAR HAS LESS THAN ONE HUNDRED EIGHTY-THREE CONTACT PERIODS IN THIS STATE, WHICH NEED NOT BE CONSECUTIVE, AND WHO IS NOT IRREBUTTABLY PRESUMED UNDER DIVISION (B) OF THIS SECTION TO BE NOT DOMICILED IN THIS STATE WITH RESPECT TO THAT TAXABLE YEAR, IS PRESUMED TO BE DOMICILED IN THIS STATE FOR THE ENTIRE TAXABLE YEAR. AN INDIVIDUAL CAN REBUT THIS PRESUMPTION FOR ANY PORTION OF THE TAXABLE YEAR ONLY WITH A PREPONDERANCE OF THE EVIDENCE TO THE CONTRARY. AN INDIVIDUAL WHO REBUTS THE PRESUMPTION UNDER THIS DIVISION FOR ANY PORTION OF THE TAXABLE YEAR IS PRESUMED TO BE DOMICILED IN THIS STATE FOR THE REMAINDER OF THE TAXABLE YEAR FOR WHICH HE DOES NOT PROVIDE A PREPONDERANCE OF THE EVIDENCE TO THE CONTRARY.

(D) AN INDIVIDUAL WHO DURING A TAXABLE YEAR HAS AT LEAST ONE HUNDRED EIGHTY-THREE CONTACT PERIODS IN THIS STATE, WHICH NEED NOT BE CONSECUTIVE, IS PRESUMED TO BE DOMICILED IN THIS STATE FOR THE ENTIRE TAXABLE YEAR. AN INDIVIDUAL CAN REBUT THIS PRESUMPTION FOR ANY PORTION OF THE TAXABLE YEAR ONLY WITH CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY. AN INDIVIDUAL WHO REBUTS THE PRESUMPTION UNDER THIS DIVISION FOR ANY PORTION OF THE TAXABLE YEAR IS PRESUMED TO BE DOMICILED IN THIS STATE FOR THE REMAINDER OF THE TAXABLE YEAR FOR WHICH HE DOES NOT PROVIDE CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.

(E) IF THE TAX COMMISSIONER CHALLENGES THE NUMBER OF CONTACT PERIODS AN INDIVIDUAL CLAIMS TO HAVE IN THIS STATE DURING A TAXABLE YEAR, THE INDIVIDUAL BEARS THE BURDEN OF PROOF TO VERIFY SUCH NUMBER, BY A PREPONDERANCE OF THE EVIDENCE. AN INDIVIDUAL CHALLENGED BY THE COMMISSIONER IS PRESUMED TO HAVE A CONTACT PERIOD IN THIS STATE FOR ANY PERIOD FOR WHICH HE DOES NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE HAD NO SUCH CONTACT PERIOD.

Sec. 5747.25. (A) AN INDIVIDUAL MAY ELECT TO BE TREATED AS A NONRESIDENT TAXPAYER UNDER THIS SECTION FOR ANY TAXABLE YEAR. AN INDIVIDUAL WHO MAKES AN ELECTION IN ACCORDANCE WITH THIS SECTION SHALL BE CONSIDERED A NONRESIDENT FOR THE ENTIRE TAXABLE YEAR WITH RESPECT TO THE TAX IMPOSED BY SECTION 5747.02 OF THE REVISED CODE AND THE CREDITS ALLOWED AGAINST THAT TAX. EXCEPT AS PROVIDED IN DIVISION (B) OF THIS SECTION, FOR AN INDIVIDUAL WHO MAKES AND DOES NOT REVOKE AN ELECTION UNDER THIS SECTION, THE PORTION OF OHIO ADJUSTED GROSS INCOME ALLOCATED OR APPORTIONED TO THIS STATE FOR PURPOSES OF COMPUTING THE NONRESIDENT TAXPAYER CREDIT UNDER DIVISION (A) OF SECTION 5747.05 OF THE REVISED CODE SHALL BE THE SUM OF THE FOLLOWING:

(1) THE INDIVIDUAL'S OHIO ADJUSTED GROSS INCOME ALLOCATED OR APPORTIONED TO THIS STATE UNDER SECTIONS 5747.20 TO 5747.23 OF THE REVISED CODE FOR PURPOSES OF COMPUTING THE NONRESIDENT TAXPAYER CREDIT UNDER DIVISION (A) OF SECTION 5747.05 OF THE REVISED CODE;

(2) THE REMAINING AMOUNT OF THE INDIVIDUAL'S OHIO ADJUSTED GROSS INCOME, IF ANY, MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE NUMBER OF CONTACT PERIODS IN EXCESS OF ONE HUNDRED TWENTY THAT THE INDIVIDUAL HAS IN THIS STATE DURING THE TAXABLE YEAR AND THE DENOMINATOR OF WHICH IS SIXTY-THREE.

residency, is domiciled in the school district or lives in and maintains a permanent place of abode in the school district;

(2) An estate of a decedent who, at the time of his death, was domiciled in the school district.

(G) "School district income" means:

(1) With respect to an individual, the portion of the taxable income of an individual that is received by the individual during the portion of the taxable year that the individual is a resident of the school district and the school district income tax is in effect in that school district. An individual may have school district income with respect to more than one school district.

(2) With respect to an estate, the taxable income of the estate for the portion of the taxable year that the school district income tax is in effect in that school district.

(H) "Taxpayer" means an individual or estate having school district income upon which a school district income tax is imposed.

(I) "School district purposes" means any of the purposes for which a tax may be levied pursuant to section 5705.21 of the Revised Code.

SECTION 2. That existing sections 5747.01, 5747.05, and 5748.01 of the Revised Code are hereby repealed.

SECTION 3. Within six months after the effective date of this act, the Tax Commissioner, in accordance with section 119.03 of the Revised Code, shall file a proposed rule setting forth criteria with respect to the requirements to provide "a preponderance of the evidence" and "clear and convincing evidence" under section 5747.24 of the Revised Code. The criteria shall include examples of fact and circumstances that are to be accorded no evidentiary weight.

If, as a result of section 119.03 of the Revised Code, changes are made to the proposed rule or any portion of the proposed rule is invalidated, the fact that such changes were made or such invalidation occurred shall not be admissible as evidence in any court, tribunal, administrative proceeding, or any other hearing where the rights, obligations, liabilities, or duties of any party are being considered, ascertained, determined, or otherwise decided.

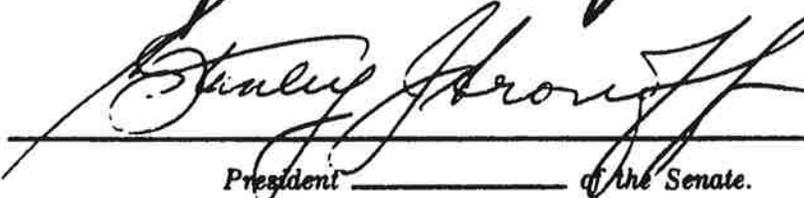
SECTION 4. This act applies to taxable years ending on and after its effective date. Notwithstanding any provision of section 5747.25 of the Revised Code to the contrary, an individual may make an election to be treated as a nonresident taxpayer under that section for the taxable year in which this act takes effect at any time within thirty days after the effective date of this act. The individual may revoke the election for that taxable year only by applying to the Tax Commissioner under division (C)(2) of section 5747.25 of the Revised Code and presenting clear and convincing evidence showing good cause that the election should be revoked.

SECTION 5. Section 5747.05 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 361 and Am. S.B. 358 of the 119th General Assembly, with the new language of

neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.



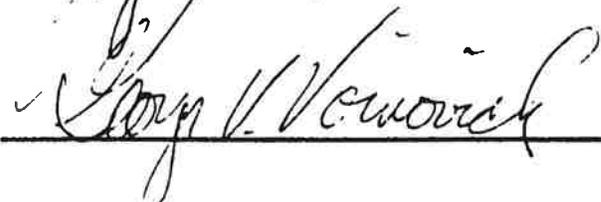
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed July 1, 1993

Approved July 30, 1993 9:35 AM



Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Robert M. Shapiro

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 30th day of July, A. D. 1903.

Bob Taft

Secretary of State.

File No. 61 Effective Date October 29, 1903

Section 5747.01 of the Revised Code is amended by this act and also by Am. Sub. H.B. 152 of the 120th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable, so that they are required by that section to be harmonized to give effect to each amendment.

Robert M. Shapiro
Director, Legislative Service Commission

SUMMARY OF ENACTMENTS

120th General Assembly

1993

SENATE MEMBERS

Stanley J. Aronoff, *Chairman*
Robert J. Boggs
Richard H. Finan
Theodore M. Gray
Roy Ray
Eugene J. Watts
Alan J. Zaleski

HOUSE MEMBERS

Vern Riffe, *Vice-Chairman*
William G. Batchelder
Jo Ann Davidson
William L. Mallory
Barney Quilter
Patrick A. Sweeney

Robert M. Shapiro, *Director*

Ohio Legislative Service Commission

Repeal of the Island Taxing District Law

The act repeals the Island Taxing District Law. This Law was held by the Supreme Court of Ohio to violate Section 26 of Article II of the Ohio Constitution, under which "all laws, of a general nature, shall have a uniform operation throughout the state." Put-In-Bay Island Taxing Dist. Auth. v. Colonial, Inc. (1992), 65 Ohio St.3d 449.

Secs. 5703.052, 5727.83 to 5727.86, 5739.101 to 5739.107, 5739.13, 5739.16, 5739.21, and 5739.99.

* * *

Am. S.B. 122

Sens. Finan, Sinagra, Burch, Watts.

Reps. Sawyer, Krebs, Nein, Troy, Mottley, Kasputis, Mead, Thomas, Amstutz, Hodges, Seese.

Provides that the sales and use tax does not apply to employment services provided between members of an affiliated group of companies. (Emergency: effective June 30, 1993)

Under continuing law, the sales and use tax applies to sales of employment services. "Employment service" is defined as providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so supplied receive their wages, salary, or other compensation from the provider of the service.

The act adds an exclusion from the sales tax--for employment services transactions between members of an affiliated group of companies. The act defines "affiliated group" as two or more companies related in such a way that one company owns or controls the business operations of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than 50% of the other corporation's common stock with voting rights.

Sec. 5739.01.

* * *

S.B. 123

Sens. Finan, Levey, Sinagra.

Reps. Troy, Koziura, Hagan, Sutton, Mottley, Hodges.

Establishes tests for determining residency for income tax purposes for a person who maintains an abode outside Ohio, depending on the number of times the taxpayer spends the night in this state within the taxable year, and allows an individual to elect to be considered a nonresident taxpayer under special income tax provisions. (Effective: October 29, 1993)

Domicile tests for income tax purposes

Under prior law, "resident" meant either (1) an individual who is domiciled in Ohio, or (2) an individual who lives in and maintains a permanent place of abode in Ohio, and who does not maintain a permanent place of abode elsewhere, unless the individual, in the aggregate, lives more than 335 days of the taxable year outside Ohio.

The act eliminates the latter provision for determining residency, and makes the determination of domicile subject to the tests described hereunder.

Income tax domicile tests--presumption of non-Ohio domicile

Under the act, an individual who during a taxable year has no more than 120 "contact periods" in Ohio, which need not be consecutive, and who during the entire taxable year has at least one abode outside Ohio, is presumed to be not domiciled in Ohio during the taxable year. "Contact period" is defined in such a way that an individual has one contact period in Ohio if the individual is away overnight from his abode located outside Ohio, and while away overnight spends at least some portion, however minimal, of each of two consecutive days in Ohio. An individual is considered to be away overnight from his abode located outside Ohio if the individual is away from that abode for a continuous period of time, however minimal, beginning at any time on one day and ending at any time on the next day.

If the Tax Commissioner challenges the individual's non-Ohio domicile status under this test, the individual may make the presumption of his status irrebuttable by submitting to the Commissioner, within 60 days after receiving the Commissioner's request for it and under penalties of perjury, a written statement that during the taxable year, he (1) was not domiciled in Ohio and (2) had at least one abode outside Ohio. The Commissioner is required to make the request for the statement in writing, delivered by personal service or certified mail, return receipt requested, and may not request a statement after the statute of limitations has expired for the taxable year in question (generally, four years after the required return date). An individual who fails to submit the statement when requested by the Commissioner is presumed to have been domiciled in Ohio the entire taxable year.

If the Commissioner challenges an individual's non-Ohio domicile status for a prior taxable year and the individual has since died, the personal representative of the estate of the deceased may make the presumption of non-Ohio domicile irrebuttable by submitting the statement with respect to the deceased to the best of the representative's knowledge and belief.

Presumptions of Ohio domicile

Under the act, an individual who during a taxable year has fewer than 183 contact periods in Ohio, which need not be consecutive, and who is not irrebuttably presumed to have a non-Ohio domicile as described above, is presumed to be domiciled in Ohio with respect to the entire taxable year. The individual can rebut this presumption for any portion of the taxable year only by presenting a preponderance of the evidence to the contrary to the Tax Commissioner. If the individual rebuts the presumption for only a portion of the taxable year, he is presumed domiciled in Ohio for the remainder of the year.

If an individual has 183 or more contact periods in Ohio during a taxable year, he also is presumed to be domiciled in Ohio for the entire taxable year, and this presumption is more difficult to rebut. The individual must present clear and convincing evidence to the contrary to rebut the presumption for any portion of the taxable year. If the individual rebuts the presumption for only a portion of the taxable year, he is presumed domiciled in Ohio for the remainder of the year.

Burden of proof

If the Tax Commissioner challenges the number of contact periods an individual claims to have had in Ohio during a taxable year, the individual bears the burden of proof to verify the number, by a preponderance of the evidence. An individual challenged by the Commissioner is presumed to have a contact period in the state for any period for which he does not prove that he had no such contact period.

Rules of the Tax Commissioner

The domicile tests apply to taxable years ending on and after the act's effective date. Within six months after that date, the Tax Commissioner must file a proposed rule in accordance with the Administrative Procedure Act setting forth criteria with respect to the requirements for taxpayers to rebut the presumption of their domicile status by a preponderance of the evidence or clear and convincing evidence. The act requires the criteria to include examples of fact and circumstances that are to be accorded no evidentiary weight.

The act provides that if, as a result of any action under the Administrative Procedure Act, changes are made to the

proposed rule or any portion of the proposed rule is invalidated, the fact that such changes were made or such invalidation occurred is not admissible as evidence in any court, tribunal, administrative proceeding, or any other hearing where the rights, obligations, liabilities, or duties of any party are being considered, ascertained, determined, or otherwise decided.

Taxpayer's election to pay income taxes under special nonresident provisions

The act allows individuals who are not sure how much time they will spend in Ohio during the upcoming taxable year to elect to pay taxes as a nonresident under special provisions for calculating the amount of the nonresident taxpayer credit. An individual who makes the election is considered a nonresident for the entire taxable year. The portion of his adjusted gross income (AGI) allocated to Ohio for purposes of computing the nonresident credit is the sum of the amount of AGI that is allocated to Ohio without regard to whether or not the special election is made, plus the remaining amount of AGI multiplied by a fraction, the numerator of which is the number of contact periods in excess of 120 that the individual has in Ohio during the taxable year and the denominator of which is 63. The numerator of the fraction can be zero, but cannot exceed 63. Thus, if an individual made the special election and ended up spending more than 183 nights in Ohio during the taxable year, the fraction in the formula would be one, meaning all of his AGI would be allocated to Ohio and his nonresident credit would be \$0.

If the individual making the election is subject to another state's income tax in addition to that of Ohio during the taxable year, the formula is modified to lessen the possible double taxation of his income: before application of the fraction, his AGI not allocated to Ohio is reduced by the portion of AGI allocated to the other state under allocation law identical to Ohio's. To be eligible for this reduction, the individual must file an income tax return with the other state within 90 days of filing his Ohio return. For good cause shown, the Tax Commissioner can extend the 90-day deadline.

An individual may make the election to be considered a nonresident taxpayer by filing a written statement with the Tax Commissioner during the taxable year immediately preceding the taxable year to which the election applies. If the individual changes his mind about the election before the start of the taxable year, he may revoke it by filing a written revocation with the Commissioner before the first day of the taxable year to which the election would otherwise apply. Thereafter, the individual may revoke the election only by applying to the Commissioner and presenting clear and convincing evidence showing good cause that the election should be revoked. The Commissioner's decision on the matter is final, subject to appeal to the Board of Tax Appeals. The Commissioner is required to

transmit a copy of his certificate of final determination to the individual by personal service or certified mail. If an individual makes an election for a taxable year and dies during or after that year, the death does not affect the election unless the personal representative of the estate of the deceased applies to the Commissioner to permit the election to be revoked and the Commissioner permits the revocation.

After the end of a taxable year to which an election applies, the Commissioner may request an affidavit from the individual verifying the election. The request must be made in writing and delivered by personal service or certified mail, return receipt requested. Within 60 days after receiving the Commissioner's request, the individual is required to submit a written affidavit stating under penalties of perjury that during the entire taxable year to which the election applies, he (1) was not domiciled in Ohio and (2) had at least one abode outside Ohio. In the case of an individual who has died, the personal representative of the estate is authorized to submit the affidavit to the best of the personal representative's knowledge and belief. If the individual or personal representative does not submit the affidavit as required, the individual is considered to be a resident taxpayer for the entire taxable year to which the election applies, and the individual or personal representative has no authority to challenge that residence status. However, even if he does not submit the required affidavit, the individual or personal representative may still apply to the Commissioner to permit the election to be revoked as described in the preceding paragraph. An individual or personal representative of an estate may not apply to permit an election to be revoked, and the Tax Commissioner may not request an affidavit verifying an election, after the statute of limitations has expired for the taxable year in question (generally, four years after the required return date).

An individual who makes an election to be considered a nonresident for the state income tax is still considered a resident of a school district with respect to a school district income tax, to the extent the individual lives in and maintains a permanent place of abode in the school district. However, for purposes of computing the school tax, the individual is considered to have earned and received only the amount of income arrived at by multiplying his AGI allocated to Ohio for the purpose of computing the nonresident taxpayer credit by a fraction, the numerator of which is the number of contact periods he has in the school district during the taxable year and the denominator of which is the number of contact periods he has in Ohio during the taxable year. The individual is prohibited from challenging his status as a resident of the school district or the district's taxation of the prescribed portion of his AGI.

The act authorizes individuals to make an election to be considered a nonresident taxpayer for taxable years ending on and after its effective date. An individual may make the election

for the taxable year in which the act takes effect at any time within 30 days after the effective date. The individual can revoke the election for that taxable year only by applying to the Tax Commissioner and presenting clear and convincing evidence showing good cause that the election should be revoked.

Taxation of estates

Under continuing law concerning the taxation of estates, a "resident" estate means the estate of an individual who at the time of his death was domiciled in Ohio. The act's domicile tests for individuals and any election made by an individual to be considered a nonresident taxpayer are not controlling for purposes of determining the residency status of an estate.

Other income tax changes

Under continuing law concerning the determination of various credits allowed against the state income tax, the definition of "income tax" includes both a tax on income and a tax measured by income. The act revises this definition, so that an income tax includes both a tax on net income and a tax measured by net income. The act also specifies that "adjusted gross income" and "Ohio adjusted gross income" are synonymous terms under the state Income Tax Law.

Secs. 5747.01, 5747.05, 5747.24, 5747.25, and 5748.01.

* * *

GENERAL LAWS

of the

One Hundred Twenty-Sixth General Assembly

2006 H 699 Continued from PART IV

(126th General Assembly)
(Substitute House Bill Number 73)

AN ACT

To amend sections 5747.01, 5747.24, and 5748.01, and to repeal sections 5747.25 and 5748.011 of the Revised Code to increase the amount of time an individual may spend in Ohio before being presumed to be a resident for income tax purposes and to exempt from taxation military pay and allowances.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5747.01, 5747.24, and 5748.01 of the Revised Code be amended to read as follows:

Sec. 5747.01. Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter that is not otherwise defined in this section has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes or if not used in a comparable context in those laws, has the same meaning as in section 5733.40 of the Revised Code. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

As used in this chapter:

(A) "Adjusted gross income" or "Ohio adjusted gross income" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:

(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.

(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.

(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from

related interests, five per cent or more of the ownership or equity interests. The trustee shall notify the tax commissioner in writing of the election on or before April 15, 2006. The election, if timely made, shall be effective on and after January 1, 2006, and shall apply for all tax periods and tax years until revoked by the trustee of the trust.

(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements:

(a) The document or instrument creating the trust was executed by the grantor before January 1, 1972;

(b) The trust became irrevocable upon the creation of the trust; and

(c) The grantor was domiciled in this state at the time the trust was created.

Sec. 5747.24. This section is to be used applied solely for the purposes of Chapters 5747. and 5748. of the Revised Code.

~~(A)(1) As used in this section and section 5747.25 of the Revised Code:~~

~~(a) Except as otherwise provided in division (A)(2) of this section, an~~
 (1) An individual "has one contact period in this state" if the individual is away overnight from the individual's abode located outside this state and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in this state.

~~(b)(2) An individual is considered to be "away overnight from the individual's abode located outside this state" if the individual is away from the individual's abode located outside this state for a continuous period of time, however minimal, beginning at any time on one day and ending at any time on the next day.~~

~~(c) "Medical hardship" includes circumstances under which the individual or a member of the individual's immediate or extended family is admitted as a patient into a hospital located in this state, examined in this state by a medical professional, admitted into a nursing home in this state, receiving nursing care in this state while staying in a dwelling located in this state, or otherwise receiving ongoing, necessary medical care in this state. "Medical hardship" includes receiving treatment or care for acute or chronic illness or obstetric treatment or care.~~

~~(d) "Medical professional" means a person licensed under Chapter 4715., 4723., 4725., 4729., 4730., 4731., 4732., 4734., 4753., 4755., 4757., 4759., 4760., 4761., 4762., or 4773. of the Revised Code.~~

~~(e) "Immediate or extended family" of an individual means the individual's spouse, children, grandchildren, parents, grandparents, siblings, in-laws, or any of the individual's dependents.~~

~~(2) Up to thirty periods that would otherwise constitute contact periods~~

~~under division (A)(1)(a) of this section shall not be considered contact periods during a taxable year if the individual spends any portion of either day of each such contact period for one or more of the following purposes:~~

~~(a) To provide services for no consideration or to raise funds for an organization described in section 501(c)(3) of the Internal Revenue Code. "Consideration" does not include any reimbursement of the individual's actual expenses directly or indirectly related to such activity.~~

~~(b) To attend to a medical hardship involving the individual or a member of the individual's immediate or extended family or to attend a funeral involving a member of the individual's immediate or extended family.~~

~~(B) An (1) Except as provided in division (B)(2) of this section, an individual who during a taxable year has no more than one hundred ~~twenty~~ eighty-two contact periods in this state, which need not be consecutive, and who during the entire taxable year has at least one abode outside this state, is presumed to be not domiciled in this state during the taxable year. ~~The if, on or before the fifteenth day of the fourth month following the close of the taxable year, the individual files with the tax commissioner, in writing and by personal service or certified mail, return receipt requested, may request on the form prescribed by the commissioner, a statement from an the individual verifying that the individual was not domiciled in this state under this division during the taxable year. The commissioner shall not make such a request after the expiration of the period, if any, within which the commissioner may make an assessment under section 5747.13 of the Revised Code against the individual for the taxable year. Within sixty days after receiving the commissioner's request In the statement, the individual shall submit a written statement to the commissioner stating verify both of the following:~~~~

~~(1)(a) During the entire taxable year, the individual was not domiciled in this state;~~

~~(2)(b) During the entire taxable year, the individual had at least one abode outside this state. The individual shall specify in the statement the location of each such abode outside this state.~~

The presumption that the individual was not domiciled in this state is irrefutable unless the individual fails to submit timely file the statement as required or makes a false statement. If the individual fails to submit file the statement as required or makes a false statement, the individual is presumed under division (C) of this section to have been domiciled in this state the entire taxable year.

In the case of an individual who dies before the statement would

otherwise be due, the personal representative of the estate of the deceased individual may comply with this division by making to the best of the representative's knowledge and belief the statement under ~~this division~~ (B)(1) of this section with respect to the deceased individual, and ~~submitting filing~~ the statement ~~to with~~ the commissioner within the later of the date the statement would otherwise be due or sixty days after receiving the commissioner's request for it the date of the individual's death.

An individual or personal representative of an estate who knowingly makes a false statement under ~~this division~~ (B)(1) of this section is guilty of perjury under section 2921.11 of the Revised Code.

(2) Division (B) of this section does not apply to an individual changing domicile from or to this state during the taxable year. Such an individual is domiciled in this state for that portion of the taxable year before or after the change, as applicable.

(C) An individual who during a taxable year has ~~less~~ fewer than one hundred eighty-three contact periods in this state, which need not be consecutive, and who is not irrebuttably presumed under division (B) of this section to be not domiciled in this state with respect to that taxable year, is presumed to be domiciled in this state for the entire taxable year, except as provided in division (B)(2) of this section. An individual can rebut this presumption for any portion of the taxable year only with a preponderance of the evidence to the contrary. An individual who rebuts the presumption under this division for any portion of the taxable year is presumed to be domiciled in this state for the remainder of the taxable year for which the individual does not provide a preponderance of the evidence to the contrary.

(D) An individual who during a taxable year has at least one hundred eighty-three contact periods in this state, which need not be consecutive, is presumed to be domiciled in this state for the entire taxable year, except as provided in division (B)(2) of this section. An individual can rebut this presumption for any portion of the taxable year only with clear and convincing evidence to the contrary. An individual who rebuts the presumption under this division for any portion of the taxable year is presumed to be domiciled in this state for the remainder of the taxable year for which the individual does not provide clear and convincing evidence to the contrary.

(E) If the tax commissioner challenges the number of contact periods an individual claims to have in this state during a taxable year, the individual bears the burden of proof to verify such number, by a preponderance of the evidence. An individual challenged by the commissioner is presumed to have a contact period in this state for any period for which ~~he~~ the individual

does not prove by a preponderance of the evidence that the individual had no such contact period.

Sec. 5748.01. As used in this chapter:

(A) "School district income tax" means an income tax adopted under one of the following:

(1) Former section 5748.03 of the Revised Code as it existed prior to its repeal by Amended Substitute House Bill No. 291 of the 115th general assembly;

(2) Section 5748.03 of the Revised Code as enacted in Substitute Senate Bill No. 28 of the 118th general assembly;

(3) Section 5748.08 of the Revised Code as enacted in Amended Substitute Senate Bill No. 17 of the 122nd general assembly.

(B) "Individual" means an individual subject to the tax levied by section 5747.02 of the Revised Code.

(C) "Estate" means an estate subject to the tax levied by section 5747.02 of the Revised Code.

(D) "Taxable year" means a taxable year as defined in division (M) of section 5747.01 of the Revised Code.

(E) "Taxable income" means:

(1) In the case of an individual, one of the following, as specified in the resolution imposing the tax:

(a) Ohio adjusted gross income for the taxable year as defined in division (A) of section 5747.01 of the Revised Code, less the exemptions provided by section 5747.02 of the Revised Code, ~~and less military pay and allowances the deduction of which has been authorized pursuant to section 5748.011 of the Revised Code;~~

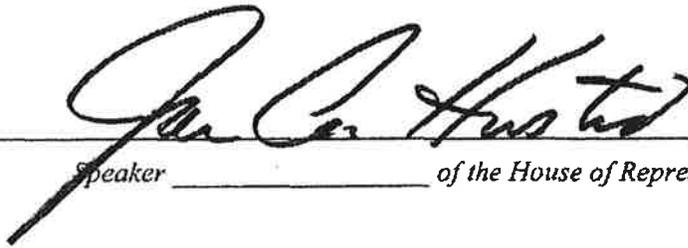
(b) Wages, salaries, tips, and other employee compensation to the extent included in Ohio adjusted gross income as defined in section 5747.01 of the Revised Code, ~~less military pay and allowances the deduction of which has been authorized pursuant to section 5748.011 of the Revised Code;~~ and net earnings from self-employment, as defined in section 1402(a) of the Internal Revenue Code, to the extent included in Ohio adjusted gross income.

(2) In the case of an estate, taxable income for the taxable year as defined in division (S) of section 5747.01 of the Revised Code.

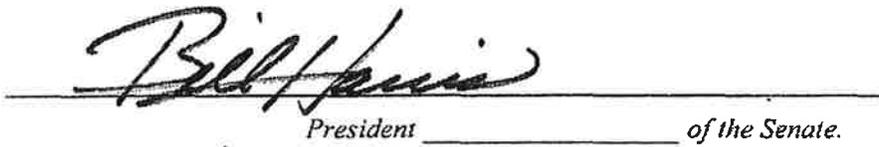
(F) ~~Except as provided in section 5747.25 of the Revised Code,~~ "resident" "Resident" of the school district means:

(1) An individual who is a resident of this state as defined in division (I) of section 5747.01 of the Revised Code during all or a portion of the taxable year and who, during all or a portion of such period of state residency, is domiciled in the school district or lives in and maintains a permanent place

SECTION 3. Sections 1 and 2 of this act apply to taxable years beginning on or after January 1, 2007.



Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed December 14, 2006

Approved JANUARY 2, 2007

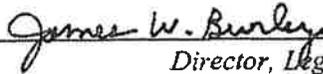


Governor.

Sub. H. B. No. 73

9468

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.



Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
3rd day of January, A. D. 2007.



Secretary of State.

File No. 175

Effective Date 04/04/07



Sub. H.B. 73

126th General Assembly

(As Passed by the General Assembly)

Reps. Trakas, Kilbane, Latta, Gibbs, Blessing, Collier, Schaffer, Blasdel, Hagan, Brinkman, Gilb, Ujvagi, Taylor, Chandler, Combs, Domenick, C. Evans, D. Evans, Hartnett, Koziura, Oelslager, T. Patton, Peterson, Redfern, Reidelbach, Setzer, G. Smith

Sens. Fingerhut, Goodman, Schuler, Austria, Amstutz, Spada, Dann, Cates, Clancy, Coughlin, Grendell, Hottinger, Jacobson, Jordan, Mumper, Niehaus, Prentiss, Spada, Stivers, Harris, Armbruster, Kearney, Schuring

Effective date: *

ACT SUMMARY

- Increases the amount of time an individual may spend in Ohio before being presumed to be an Ohio resident for income tax purposes.
- Requires taxpayers to file a statement of nonresidency with the Tax Commissioner for the presumption to be irrefutable.
- Exempts active-duty military pay and allowances from the state income tax regardless of whether the serviceperson is serving in a declared combat zone.
- Forbids taxpayers from applying the exemption to pay and allowances received for active duty service while stationed in Ohio.
- Permits taxpayers to apply the exemption to school district income taxes using the same tax base as the state income tax.

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

CONTENT AND OPERATION

Prior residency tests

Significance of residency

Determining an individual's residency is important when the individual earns income that is taxable under both Ohio law and the law of another state; the individual's residency affects the calculation of the individual's Ohio income tax. Specifically, residency determines which of certain credits are available to the individual. Under continuing law, if an individual is an Ohio resident, the individual may claim a credit for taxes paid to another state (up to the amount of the Ohio tax on the same income). If the individual is a nonresident, the individual may claim a credit for the amount of Ohio income tax on the portion of the nonresident's Ohio adjusted gross income that is not allocable to Ohio.

"Bright line" residency test

(R.C. 5747.01(G) and (H)(1), 5747.24, and 5747.25 (repealed))

For income tax purposes, a "resident" is an individual who is domiciled in Ohio. Domicile is a common-law concept. Its essence is captured in the following legal definition: **A person's true, fixed, and permanent home and principal establishment, to which that person intends to return and remain even though he or she may for a time reside elsewhere.** Black's Law Dictionary, 523-524 (8th ed.). Under continuing law, whether an individual is presumed to be domiciled in Ohio depends in part upon the number of "contact periods" the individual has in Ohio during the taxable year. An individual has one contact period in Ohio if the individual spends at least some portion, however minimal, of each of two consecutive days in Ohio while away overnight from an abode located outside Ohio.

Under prior law, the number of contact periods was divided into three levels: 0 - 120; 121 - 182; and 183 or more. If the individual had 120 or fewer contact periods in Ohio during the taxable year and had at least one abode outside Ohio during the entire taxable year, the individual was presumed to be *not* domiciled in Ohio during the taxable year. This presumption was conclusive unless the Tax Commissioner requested a statement from the individual verifying the number of contact periods and the non-Ohio abode and the individual failed to furnish the statement. If the individual did not furnish the statement, the individual was presumed to have been domiciled in Ohio for the entire taxable year. The individual could rebut the presumption, however, by presenting sufficient evidence the individual was domiciled elsewhere. The evidentiary standard was a preponderance of evidence.



If the individual had between 121 and 182 contact periods in Ohio during the taxable year, the individual was presumed to be domiciled in Ohio. This presumption also applied if the individual had fewer than 121 contact periods but did not have an abode outside Ohio throughout the year. The individual could rebut the presumption of Ohio domicile for any portion of the taxable year by presenting evidence the individual was domiciled elsewhere. The evidentiary standard was preponderance of the evidence. If the individual overcame the presumption for a portion of the taxable year, but not the entire year, the individual was presumed to be *not* domiciled in Ohio only for that portion.

If the individual had 183 contact periods or more, the individual was presumed to be domiciled in Ohio. To overcome this presumption, the individual had to present evidence to the contrary satisfying the clear and convincing evidence standard. Again, if the individual overcame the presumption for a portion of the taxable year, but not the entire year, the individual was presumed to be *not* domiciled in Ohio only for that portion.¹

Exempted contacts

(R.C. 5747.24(A)(2))

Prior law allowed an individual to have up to 30 contact periods in Ohio per year without the periods counting toward the residency test, but only if some part of the contact period was spent to attend to a medical hardship involving the individual or a member of the individual's family, to attend a funeral for a member of the individual's family, or to provide uncompensated service to, or to raise funds for, a charitable, educational, religious, scientific, or other kind of organization exempted from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

Nonresident election

(R.C. 5747.25)

Under prior law, an individual who was presumed to be a resident of Ohio under the residency tests could elect to be treated as a nonresident in return for a reduction in the amount of the nonresident credit. An individual who made the election for any taxable year was considered to be a nonresident for the entire taxable year.

¹ *An administrative rule sets forth criteria for determining whether an individual has rebutted the presumption of domicile in Ohio with a preponderance of the evidence or with clear and convincing evidence. (Ohio Admin. Code 5703-7-16.)*

When an individual made the election, the number of contact periods the individual had in excess of 120 was used to calculate the amount of Ohio adjusted gross income allocable to Ohio for purposes of calculating the nonresident credit. The more contact periods an individual had in excess of 120, the larger the portion of income allocable to Ohio and, accordingly, the smaller the amount of the nonresident credit the individual could claim.

Changes to residency test

Basic test

The act increases the number of contact periods an individual may have before being presumed to be domiciled in Ohio from 120 to 182. In effect, the middle level of contact periods under prior law (121 - 182) has been eliminated, and the first level (0 - 120) has been expanded to 0 - 182. The act, however, requires the individual to file a statement with the Tax Commissioner, without request by the Commissioner, verifying that during the entire taxable year the individual was not domiciled in Ohio and had at least one abode outside Ohio. The individual must specify in the statement the location of each abode located outside Ohio. The statement must be filed by April 15 or, if the individual's taxable year does not coincide with the calendar year, by the 15th day of the fourth month after the end of the taxable year. If the individual satisfies each of these criteria--i.e., the individual has 182 contact periods or fewer, has an abode outside Ohio, and has timely filed the statement--the individual is conclusively presumed to be *not* domiciled in Ohio. This presumption does not apply to an individual changing domicile from or to Ohio during the taxable year. Such an individual is domiciled in Ohio for that portion of the taxable year before or after the change, as applicable. (R.C. 5747.24(B).)

An individual who has fewer than 183 contact periods in Ohio during the taxable year, but who either does not timely file the statement or does not have an abode outside Ohio, is presumed to be a resident unless the individual rebuts the presumption with a preponderance of the evidence to the contrary. An individual who has 183 or more contact periods is presumed to be a resident unless the individual rebuts the presumption with clear and convincing evidence to the contrary. (R.C. 5747.24(C) and (D).)

The act retains the provision authorizing the Tax Commissioner to challenge an individual's number of contact periods and requiring the individual to prove the number of contact periods by a preponderance of the evidence. (R.C. 5747.24(E).)

Exempted contacts eliminated

The act eliminates the 30-contact period exemption for time spent in Ohio to attend to a medical hardship, to attend a funeral, or to provide service to, or raise funds for, a section 501(c)(3) organization. (R.C. 5747.24(A)(2).)

Nonresident election eliminated

The act eliminates the law allowing an individual who is presumed to be a resident to elect nonresidency status in return for a reduction in the otherwise allowable nonresident credit. (R.C. 5747.25.)

Expansion of income tax exemption of military pay

(R.C. 5747.01(A)(22), 5747.011 (repealed), and 5748.01)

Under prior law, the pay and allowances of persons serving in a branch of the military, including the reserves and National Guard, were subject to state and school district income taxes, unless the pay and allowances were earned for service in a declared combat zone. The combat zone exclusion applies to the entire pay and allowances of enlisted personnel, noncommissioned officers, and warrant officers and to the highest enlisted-pay equivalent of other commissioned officers. Continuing law exempts deceased military servicepersons completely from state and school district income taxes (for the year of their death) if they died as a result of injuries or disease incurred in a combat zone or in a military or terroristic event in a foreign country. (R.C. 5747.023 and 5747.024.) All military pay and allowances currently are exempted from municipal income taxes. (R.C. 718.01(F)(1).)

The act expands the military pay and allowance exemption to include pay and allowances received by any person serving on active duty in the Army, Air Force, Navy, Marines, or Coast Guard, reserve components of those branches, or the National Guard, regardless of whether the service is performed in a declared combat zone. The exemption does not apply to pay and allowances for active duty service while the individual is stationed in Ohio. In addition to expanding the exemption to include all non-Ohio active duty pay and allowances, the expansion also permits commissioned officers, whose current exclusion is capped at the highest enlisted pay level (plus hostile fire and imminent danger pay supplements), to exclude pay and allowances in excess of the cap.

The expanded exemption applies as well to school district income taxes that are computed on the same basis as the state income tax base. Recent legislation, H.B. 530, authorized school districts to allow individuals to deduct from taxable



income military pay and allowances received while stationed outside Ohio. The act repeals that section so that the act's new exemption applies instead.

Effective date

(Section 3)

The act's changes to the residency test, its elimination of the exemption for certain contacts and of the nonresident election, and its exemption of active-duty military pay from the income tax apply to taxable years beginning on or after January 1, 2007.

HISTORY

ACTION	DATE
Introduced	02-22-05
Reported, H. Ways & Means	02-14-06
Re-referred to H. Ways & Means	02-16-06
Re-reported, H. Ways & Means	02-28-06
Passed House (80-15)	03-21-06
Reported, S. Ways & Means & Economic Development	12-12-06
Passed Senate (32-0)	12-13-06
House concurred in Senate amendments (95-0)	12-14-06

06-hb73-126.doc/kl

AN ACT

To amend sections 133.01, 715.70, 715.71, 715.74, 4301.80, 4303.181, 4504.08, 4504.09, 5747.24, 5747.331, and 5751.52, to enact sections 4504.22 and 5595.01 to 5595.13 of the Revised Code, to amend Section 9 of Am. Sub. H.B. 386 of the 129th General Assembly, as subsequently amended, to amend Section 363.487 of Am. Sub. H.B. 59 of the 130th General Assembly, and to amend Section 363.10 of Am. Sub. H.B. 59 of the 130th General Assembly, as subsequently amended, to authorize counties to undertake regional transportation improvement projects funded by the issuance of securities and by revenue pledges from the state and political subdivisions and taxing districts located within the cooperating counties, to increase the amount of time a person may spend in Ohio before being presumed to be a resident for state income tax purposes, to authorize taxpayers eligible to claim a tax credit for qualified research and development loan payments to claim the credit, retroactive to taxable years beginning in 2008, against the income tax, to authorize municipal corporations and townships to create a community entertainment district as part of a joint economic development district contract, to make changes to video lottery terminal facilities, and to make an appropriation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 133.01, 715.70, 715.71, 715.74, 4301.80, 4303.181, 4504.08, 4504.09, 5747.24, 5747.331, and 5751.52 be amended

income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the state.

Sec. 5595.12. The governing board of a regional transportation improvement project shall not use any amount pledged or allocated to the board under this chapter for administrative expenses of the board without prior approval of the director of transportation. The director may approve expenses individually by line item or may approve an aggregate amount to be allocated for administrative expenses over a period of time not exceeding twelve months. The director may prescribe rules pursuant to Chapter 119. of the Revised Code necessary to implement this section.

Sec. 5595.13. Upon completion of the transportation improvements listed in the cooperative agreement, fulfillment of all contractual duties assumed by the governing board, and repayment of all bonds issued by the governing board, the regional transportation improvement project and the governing board shall dissolve by operation of law. Upon dissolution of the regional transportation improvement project, the boards of county commissioners that created the regional transportation improvement project shall assume title to all real and personal property acquired by the board in the fulfillment of its duties under this chapter. The property shall be divided and distributed in accordance with the cooperative agreement. Unless otherwise provided by contract, pledges of revenue to the governing board from the state or a political subdivision or taxing unit shall terminate by operation of law upon the dissolution of the regional transportation improvement project.

Sec. 5747.24. This section is to be applied solely for the purposes of Chapters 5747. and 5748. of the Revised Code.

(A) As used in this section:

(1) An individual "has one contact period in this state" if the individual is away overnight from the individual's abode located outside this state and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in this state.

(2) An individual is considered to be "away overnight from the individual's abode located outside this state" if the individual is away from the individual's abode located outside this state for a continuous period of time, however minimal, beginning at any time on one day and ending at any time on the next day.

(B)(1) Except as provided in division (B)(2) of this section, an individual who during a taxable year has no more than ~~one hundred eighty-two~~ two hundred twelve contact periods in this state, which need not be consecutive, and who during the entire taxable year has at least one

abode outside this state, is presumed to be not domiciled in this state during the taxable year if, on or before the fifteenth day of the fourth month following the close of the taxable year, the individual files with the tax commissioner, on the form prescribed by the commissioner, a statement from the individual verifying that the individual was not domiciled in this state under this division during the taxable year. In the statement, the individual shall verify both of the following:

(a) During the entire taxable year, the individual was not domiciled in this state;

(b) During the entire taxable year, the individual had at least one abode outside this state. The individual shall specify in the statement the location of each such abode outside this state.

The presumption that the individual was not domiciled in this state is irrebuttable unless the individual fails to timely file the statement as required or makes a false statement. If the individual fails to file the statement as required or makes a false statement, the individual is presumed under division (C) of this section to have been domiciled in this state the entire taxable year.

In the case of an individual who dies before the statement would otherwise be due, the personal representative of the estate of the deceased individual may comply with this division by making to the best of the representative's knowledge and belief the statement under division (B)(1) of this section with respect to the deceased individual, and filing the statement with the commissioner within the later of the date the statement would otherwise be due or sixty days after the date of the individual's death.

An individual or personal representative of an estate who knowingly makes a false statement under division (B)(1) of this section is guilty of perjury under section 2921.11 of the Revised Code.

(2) Division (B) of this section does not apply to an individual changing domicile from or to this state during the taxable year. Such an individual is domiciled in this state for that portion of the taxable year before or after the change, as applicable.

(C) An individual who during a taxable year has fewer than ~~one hundred eighty-three~~ two hundred thirteen contact periods in this state, which need not be consecutive, and who is not irrebuttably presumed under division (B) of this section to be not domiciled in this state with respect to that taxable year, is presumed to be domiciled in this state for the entire taxable year, except as provided in division (B)(2) of this section. An individual can rebut this presumption for any portion of the taxable year only with a preponderance of the evidence to the contrary. An individual who rebuts the

presumption under this division for any portion of the taxable year is presumed to be domiciled in this state for the remainder of the taxable year for which the individual does not provide a preponderance of the evidence to the contrary.

(D) An individual who during a taxable year has at least ~~one hundred eighty-three~~ two hundred thirteen contact periods in this state, which need not be consecutive, is presumed to be domiciled in this state for the entire taxable year, except as provided in division (B)(2) of this section. An individual can rebut this presumption for any portion of the taxable year only with clear and convincing evidence to the contrary. An individual who rebuts the presumption under this division for any portion of the taxable year is presumed to be domiciled in this state for the remainder of the taxable year for which the individual does not provide clear and convincing evidence to the contrary.

(E) If the tax commissioner challenges the number of contact periods an individual claims to have in this state during a taxable year, the individual bears the burden of proof to verify such number, by a preponderance of the evidence. An individual challenged by the commissioner is presumed to have a contact period in this state for any period for which the individual does not prove by a preponderance of the evidence that the individual had no such contact period.

Sec. 5747.331. (A) As used in this section:

(1) "Borrower" means any person that receives a loan from the director of development under section 166.21 of the Revised Code, regardless of whether the borrower is subject to the tax imposed by section 5747.02 of the Revised Code.

(2) "Related member" has the same meaning as in section 5733.042 of the Revised Code.

(3) "Qualified research and development loan payments" has the same meaning as in ~~division (D)~~ of section 166.21 of the Revised Code.

(B) ~~Beginning with taxable year 2003 and ending with taxable years beginning in 2007~~ 2003, a nonrefundable credit is allowed against the tax imposed by section 5747.02 of the Revised Code equal to a borrower's qualified research and development loan payments made during the calendar year that includes the last day of the taxable year for which the credit is claimed. The amount of the credit for a taxable year shall not exceed one hundred fifty thousand dollars. No taxpayer is entitled to claim a credit under this section unless it has obtained a certificate issued by the director of development under division (D) of section 166.21 of the Revised Code and submits a copy of the certificate with its report for the taxable year. Failure



Ohio Legislative Service Commission

Final Analysis

Joe McDaniels and
Amber Hardesty

Am. Sub. H.B. 494 130th General Assembly (As Passed by the General Assembly)

Reps. Schuring, C. Hagan, Slesnick, Slaby, Amstutz, Landis, Barborak, Blair, Boose, Brown, Burkley, Damschroder, Grossman, Hackett, Hill, Maag, Young, R. Adams, Hottinger, Williams, Rogers, J. Adams, Anielski, Antonio, Beck, Blessing, Green, Huffman, Johnson, McClain, Milkovich, Patterson, Romanchuk, Ruhl, Scherer, Sheehy, Terhar, Thompson

Sens. Beagle, Burke, Cafaro, Eklund, Lehner, Patton, Peterson, Schiavoni, Seitz

Effective date: March 20, 2015; appropriation effective December 19, 2014; one item vetoed

ACT SUMMARY

Regional Transportation Improvement Projects

- Authorizes the boards of county commissioners of two or more counties, upon approval of the Director of Transportation, to enter into a cooperative agreement that creates a regional transportation improvement project (RTIP) for the purpose of funding and completing transportation improvements.
- Requires that the cooperative agreement include a description or analysis of the deficiencies of the transportation system in the cooperating counties, a list of the transportation improvements to be undertaken in the project, the number of years the RTIP is effective, and directives on the operations and reporting requirements of the governing board.
- Requires the boards of county commissioners to hold public hearings on the cooperative agreement before adopting it.
- Requires that the RTIP and the cooperative agreement be administered by a governing board consisting of one county commissioner and the county engineer of each participating county.
- Specifies that the board and its members are subject to state sunshine laws.

- Authorizes the RTIP governing board to issue securities and to solicit and receive pledges of revenue from the state, participating counties, and political subdivisions and taxing districts located within the participating counties.
- Authorizes the RTIP governing board to request that the participating counties levy a motor vehicle license tax, subject to voter approval, to fund the transportation improvements specified in the cooperative agreement and other supplemental transportation improvements.
- Stipulates that a license tax levied on request of an RTIP governing board shall not apply to commercial trailers and semitrailers.
- Requires the RTIP governing board to appoint and obtain the approval of a transportation advisory council before requesting a license tax that applies to commercial trucks.
- Requires that the license tax be levied at a uniform rate of up to \$25 per vehicle across all counties participating in the RTIP.
- Authorizes the Department of Transportation (ODOT) to make its resources available to the governing board of an RTIP upon the board's request so long as the board reimburses ODOT for the board's agreed-upon share of the expenses.
- Stipulates that the RTIP and its governing board dissolve by operation of law upon completion of the transportation improvements listed in the cooperative agreement, fulfillment of all contractual duties, and repayment of all bonds.

Tax provisions

- Increases, by 30 days, the maximum amount of time a person may spend in Ohio before being presumed to be a resident for Ohio income tax purposes.
- Allows businesses entitled to a commercial activity tax credit for repaying state research and development loans to apply the credit instead against the income tax, including retroactively to closed tax periods.

Liquor law designation of JEDD-related entertainment districts

- Authorizes municipal corporations and townships to create a community entertainment district – a special designation under the liquor control law – as part of a joint economic development district (JEDD) contract.



administrative expenses. The Director may approve such expenses individually by line item or as an aggregate amount to be allocated over a period of time, up to 12 months. The Director may adopt rules prescribing procedures for approving the administrative expenses of RTIP governing boards.¹⁵

Assistance from ODOT

The act authorizes an RTIP governing board to submit a written request to the Director of Transportation for the assistance of the Department of Transportation (ODOT) in completing the transportation improvements prescribed by the cooperative agreement. After receiving such a request, the Director is authorized to make ODOT resources available to the governing board as necessary to fulfill the request. After receiving a request for assistance, the Director may require the governing board to submit documentation to substantiate that the board has sufficient resources to fund the board's share of the project. If the Director provides ODOT assistance, the act requires the governing board to pay its share of the expenses in accordance with the agreement with ODOT.¹⁶

Dissolution

The act requires that the RTIP and its governing board dissolve upon completion of the transportation improvements listed in the cooperative agreement, fulfillment of all contractual duties assumed by the governing board, and repayment of all bonds issued by the governing board. After the RTIP dissolves, the boards of county commissioners that created the RTIP assume title to all real and personal property acquired by the RTIP's governing board in fulfillment of its duties. Such property must be distributed among the counties in accordance with the cooperative agreement. Unless otherwise provided by contract, pledges of revenue to the governing board of the RTIP from the state, a political subdivision, or a taxing unit terminate upon the dissolution of the RTIP.¹⁷

Income tax residency test

The act modifies the test for determining an individual's state income tax residency by allowing an individual to spend more time in Ohio before being presumed to be a resident. Generally, the act permits a person to spend up to 30 additional days in Ohio – 212 in all – without being presumed to be a resident.

¹⁵ R.C. 5595.13.

¹⁶ R.C. 5595.07.

¹⁷ R.C. 5595.13.



Ohio's income tax applies to residents, and applies to nonresidents who have income that is attributable to Ohio under income apportionment and allocation rules set forth by law (e.g., wages from working in Ohio or income 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 credit for 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.

The residency test 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 that includes midnight. Law changed in part by the act establishes presumptions about residency that depend on the number of contact periods and whether a person has an "abode" outside Ohio. The presumptions are as follows:

- If a person has at least 183 contact periods, the person is presumed to be a full-year Ohio resident for income tax purposes. The presumption can be rebutted only with clear and convincing evidence and only for as much of the year as such evidence is provided.¹⁸
- If a person has less than 183 contact periods, the person 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 verifying that the person was not domiciled in Ohio during the entire year and had a full-year abode outside Ohio.¹⁹

If a person files such a statement and makes the required verifications, the person's nonresident status is not rebuttable by the state unless the person is not able to prove the number of contact periods. If a person does not file the statement, the person is presumed to be an Ohio resident but can rebut that presumption by providing a preponderance of evidence to the contrary.²⁰ The presumption can be rebutted for all or part of the year. 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

¹⁸ R.C. 5747.24(D).

¹⁹ R.C. 5747.24(B).

²⁰ R.C. 5747.24(C).



political contributees are located.²¹ The rule also states that the number of contact periods and a person's activities during other years may be considered, as well as any other relevant factor other than those that specifically may not be considered.

The act increases the number of contact periods used in the presumptions from 183 to 213.

R&D loan repayment tax credit

The act authorizes entities that are receiving a tax credit for repaying state loans for research and development to begin claiming the credit against the personal income tax.²² Prior law required that all such credits be claimed against the commercial activity tax (CAT). Between 2003 and 2007, the R&D loan repayment credit could be claimed against the personal income tax or the corporation franchise tax, depending on which tax applied to the taxpayer. Beginning in 2008, the credit could be claimed only against the CAT. (The corporation franchise tax was repealed for nonfinancial corporations in 2009.) Taxpayers that were claiming the credit before 2008 and that could continue to claim credit carryovers in 2008 and later had to start applying any remaining credit balance against the CAT.

The CAT is levied on entities, not their individual owners, so prior law allowed the credit to be claimed only by the business entity that was repaying the loan. By allowing the credit to be claimed against the income tax, the act allows a credit held by a pass-through entity to be allocated among and claimed by each of the entity's individual owners.

The act states that its changes to the credit are "remedial" and apply retroactively to all tax periods beginning in or after 2008 (when the credit became available only against the CAT). It authorizes taxpayers to claim refunds that would be payable on the basis of the credit for those tax periods notwithstanding a limit in continuing law disallowing tax refund claims more than four years after tax is overpaid. However, the four-year limit continues to apply if a taxpayer does not file for the refund within one year after the act's 90-day effective date. The act also permits the Tax Commissioner to examine the records of a taxpayer and issue an assessment against a taxpayer that retroactively applies the credit beyond the existing four-year statute of limitation on examinations and assessments.

The R&D loan repayment credit is available to taxpayers that have borrowed money under the state's R&D loan program (R.C. 166.17 to 166.21), which provides

²¹ Ohio Administrative Code sec. 5703-07.

²² R.C. 5747.331 and 5751.52.

