

Mass.Gov

# Department of Revenue

Home > Individuals and Families > Personal Income Tax > Personal Income Tax FAQs >

## Frequently Asked Questions and General Information for Nonresidents and Part-Year Residents

### General Information

Massachusetts tax law distinguishes between residents and nonresidents. Residents are generally taxed on all of their income; nonresidents are only taxed on their Massachusetts source income. As a Massachusetts resident or part-year resident, you are required to file an income tax return if your gross income from all sources (received inside and/or outside of Massachusetts) exceeds the filing requirement threshold of \$8,000. As a nonresident, you are required to file an income tax return with Massachusetts if your [Massachusetts source income](#) exceeds the smaller of \$8,000 or your prorated personal exemption (the amount of your personal exemption multiplied by the ratio of your Massachusetts income to your total income).

If you recently moved to or from Massachusetts or are a nonresident who works in Massachusetts, you may find the following information useful when filing your taxes.

Please note that all forms and many publications are in **PDF** format and require the [Adobe Acrobat Reader](#).

[Return to top of page](#)

### Frequently Asked Questions

1. [Which filing options are available to nonresidents and part-year residents?](#)
2. [How do I determine my residency status?](#)
3. [What is Massachusetts source income for nonresidents?](#)
4. [Are there any recent changes for nonresident taxpayers?](#)
5. [Am I engaged in a trade, business or employment in Massachusetts as a nonresident?](#)
6. [As a part-year resident or nonresident, can I qualify for No Tax Status or the Limited Income Credit?](#)
7. [Who can file a composite return?](#)
8. [Am I subject to tax in Massachusetts on income that is covered by a tax treaty?](#)
9. [If I am not a resident, are my scholarships and/or grants subject to tax in Massachusetts?](#)
10. [How do I retrieve Massachusetts state income tax withheld by my employer in error?](#)
11. [Does the type of visa I hold determine my residency in Massachusetts?](#)
12. [I am a nonresident who works both inside and outside of Massachusetts. However, my W-2 statement shows the entire income that I earned throughout the year as Massachusetts wages. How do I determine and report my Massachusetts wages?](#)
13. [How do I calculate deductions and exemptions?](#)
14. [How do I compute credit for taxes paid to another jurisdiction on income I earned while a part-year resident of Massachusetts?](#)
15. [How do I avoid common errors on Form 1-NR/PY?](#)

### Additional Links

- [A Guide to the Massachusetts Department of Revenue: Your Taxpayer Bill of Rights](#)
- [Massachusetts Nonresident Regulation](#)
- [Technical Information Release \(TIR\) 03-13: Taxation of Income Earned by Nonresidents](#)
- [Technical Information Release \(TIR\) 95-7: Change in the Definition of "Resident" for Massachusetts Income Tax Purposes](#)
- [Directive \(DD\) 03-12: Taxation of Income Earned by Non-Residents after St. 2003, C. 4, Section 7](#)

#### 1. Which filing options are available to nonresidents and part-year residents?

Filing your taxes electronically means faster refunds. You have the following filing options:

- you can use a DOR approved tax filing website or software and file your return online;
- you may also file your return electronically through a Massachusetts approved paid preparer.

If you prefer to use computer generated forms, for faster processing, consider using a product that incorporates 2-D barcodes which contain all the information on the return in an encoded format.

Otherwise, you may still submit a paper [Form 1-NR/PY](#).

## 2. How do I determine my residency status?

Massachusetts tax law defines residency status as follows:

You are a Full-year Resident if your legal residence (domicile) was in Massachusetts for the entire taxable year or if you maintained a permanent place of abode in Massachusetts **and** spent in the aggregate more than 183 days of the taxable year in Massachusetts, including days spent partially in and partially out of Massachusetts. **Note:** A day in Massachusetts while on active duty in the United States Armed Forces is not counted. If you fit this description, you should file Form 1, Massachusetts Resident Income Tax Return. For more information, please see [TIR 95-7](#).

You are a nonresident if you are **not** a resident or inhabitant of Massachusetts as defined above. If you received Massachusetts source income during the taxable year (e.g., from a job in Massachusetts), you must report such income by filing Form 1-NR/PY, Massachusetts Nonresident/Part-year Resident Income Tax Return.

You are a Part-year Resident if you moved to Massachusetts during the taxable year and became a resident, or you terminated your status as a Massachusetts resident during the taxable year to establish a residence outside the state. Part-year residents must file Form 1-NR/PY, Massachusetts Nonresident/Part-year Resident Income Tax Return.

If you were both a Massachusetts resident for part of the year and a nonresident with Massachusetts source income for another part of the year, you must file Form 1-NR/PY and complete Schedule R/NR to calculate the portion of income earned while a part-year resident and the portion of income earned while a nonresident.

Married couples who do not have the same period of residency during the tax year cannot file a joint return.

A more in-depth explanation is available in the [Residency Status](#) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

## 3. What is Massachusetts source income for nonresidents?

The term "Massachusetts source income" is used to describe the types of income which are taxable to nonresidents. A nonresident is only subject to tax on items of income derived from or effectively connected with:

- any trade or business, including any employment carried on by the taxpayer in Massachusetts, regardless of the year in which that income is actually received by the taxpayer and regardless of the taxpayer's residence or domicile in the year it is received;
- the participation in any lottery or wagering transaction in Massachusetts; or
- the ownership of any interest in real or tangible personal property located in Massachusetts.

Some examples of the types of income taxable to a nonresident include:

- compensation for personal services performed in Massachusetts, including but not limited to wages, salaries, tips, bonuses, commissions, fees, and other compensation which relate to activities carried on in Massachusetts, regardless of where the compensation is paid;
- business income including investment income, derived from or effectively connected with the carrying on of a trade or business within Massachusetts. This includes profit from a partnership or S corporation conducted in Massachusetts;
- deferred compensation derived from or effectively connected with a Massachusetts trade or business or employment. This includes compensation for services which is paid or made available to a nonresident in any taxable year following the taxable year in which the services were performed, but does not include qualified pension income;
- unemployment compensation or disability income derived from employment in Massachusetts. A nonresident's disability income is subject to Massachusetts income taxation if the disability is incurred or arises during Massachusetts employment;
- rents and royalties from real and tangible personal property located in Massachusetts or from other business activities in Massachusetts;
- gain from the sale of real or tangible personal property located in Massachusetts;
- interest and dividends, only if derived from or connected with Massachusetts business activity, or the ownership of Massachusetts real estate or tangible personal property;
- income from lottery, gambling or wagering transactions within Massachusetts; and
- all other types of income falling within the definition of Massachusetts source income.

Income from Massachusetts sources which is not taxed to residents is not taxed to nonresidents, e.g., interest on debt obligations of the U.S. and amounts received as Social Security and worker's compensation.

In general, the same deductions and exemptions allowed to residents are available to nonresidents to determine taxable income. These items are allowed, however, only to the extent that the deductions and exemptions relate to, or are allocable to, Massachusetts source income.

A more in-depth explanation for Massachusetts source income included is available in the [Nonresidents](#) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

## 4. Are there any recent changes for nonresident taxpayers?

The term "Massachusetts source income" means:

Massachusetts source income includes any trade of business, including any employment carried on by the taxpayer in Massachusetts, regardless of the year in which that income is actually received by the taxpayer and regardless of the taxpayer's residence or domicile in the year it is received. See [TIR 03-13: Taxation of Income Earned by Nonresidents](#) and [DD 03-12: Taxation of Income Earned by Non-Residents after St. 2003, C. 4, Section 7](#).

Nonresident taxpayers that receive military compensation and file Massachusetts Form 1-NR/PY should **not** include such military compensation when determining whether they qualify for "no tax status" or the "limited income credit." See [TIR 04-06: Effect of the Federal Servicemembers Civil Relief Act \(P.L. 108-189\) on Massachusetts Nonresidents with Military Compensation](#)

Additional information is available in the Form 1-NR/PY [Instructions PDF](#).

A more in-depth explanation and the TIR mentioned above regarding Massachusetts source income are available in the [Nonresidents](#) section of a [Guide to Taxes](#).

A more in-depth explanation and the TIR mentioned above regarding military compensation exclusion from NTS and LIC calculation are available in the [No Tax Status and Limited Income Credit](#) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

### **5. Am I engaged in a trade, business or employment in Massachusetts as a nonresident?**

A nonresident generally is not engaged in a trade or business, including any employment carried on in Massachusetts if the nonresident's presence for business in Massachusetts is casual, isolated and inconsequential. A nonresident's presence will be considered casual, isolated and inconsequential if it meets the Ancillary Activity Test (AAT).

Under the AAT, a nonresident's presence for business in Massachusetts is ancillary to his/her primary business or employment duties performed at a base of operations outside Massachusetts if the nonresident's occasional presence in Massachusetts for management reporting or planning, training, attendance at conferences or symposia, and other similar activities is secondary to his primary out-of-state duties.

A more in-depth explanation is available in the [Nonresidents](#) (Trade or Business, Including Employment Carried on in Massachusetts) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

### **6. As a part-year resident or nonresident, can I qualify for No Tax Status or the Limited Income Credit?**

For nonresidents and part-year residents, Massachusetts General Laws require that Massachusetts Adjusted Gross Income must be computed as if you had been a Massachusetts resident for the entire taxable year. In determining whether or not you qualify for No Tax Status or the Limited Income Credit, you must consider all of your income, including that which is not taxable in Massachusetts.

Nonresident taxpayers that receive military compensation and file Massachusetts Form 1-NR/PY should **not** include such military compensation when determining whether they qualify for "no tax status" or the "limited income credit." See [TIR 04-6: Effect of the Federal Servicemembers Civil Relief Act \(P.L. 108-189\) on Massachusetts Nonresidents with Military Compensation](#).

Additional information is available in the Form 1-NR/PY [Instructions PDF](#).

A more in-depth explanation and the TIR mentioned above are available in the [No Tax Status and Limited Income Credit](#) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

### **7. Who can file a composite return?**

Massachusetts allows a partnership, an S corporation, or a trust or estate to file an electronic composite return on Form MA NRCR and make estimated tax payments as an agent on behalf of two or more qualified electing nonresident members. (Professional athletic teams who may file a return on behalf of two or more qualified electing nonresident team members must file a composite return on the Form 1-NR/PY, not the Form MA NRCR.)

#### **Eligible members of a composite return must meet the following requirements:**

- must be an individual or the estate or trust of a deceased non resident member;
- must be nonresidents for the entire taxable year;
- must elect to be included in the composite return by signing a statement;
- must agree to be subject to Massachusetts tax jurisdiction; and
- must waive the right to claim deductions, exemptions and credits allowable under Ch. 62, secs. 3, 5 and 6.

The composite return is filed on Massachusetts Form MA NRCR along with Schedules B, D, and E as needed. The total Massachusetts gross income reported on the composite Form MA NRCR must be the sum of all the qualified electing nonresident members' Massachusetts source income from the filing entity and any other upper-tier entities that are included in the return.

The filing entity must file an electronic 2K-1, 3K-1, or SK-1 on behalf of each nonresident member electing to participate in this composite return. In a tiered structure, if the filing entity is filing on behalf of members of an upper-tier entity, it should issue the 2K-1, 3K-1, or SK-1 to that upper-tier entity, which will in turn file the appropriate K-

I on behalf of its members reflecting estimated payments made by the lower-tier entity. Each entity in the tiered structure will issue the appropriate K-1 to each of its members showing estimated payments allocated to that member that were made by lower-tier entities in the tiered structure.

A tiered structure is a pass-through entity that has a pass-through entity as a member. As between two entities, the pass-through entity that is a member is the upper-tier entity, and the entity of which it is a member is the lower-tier entity. A tiered pass-through entity arrangement may have two or more tiers; in such cases, a single entity can be both a lower-tier and an upper-tier entity.

See Massachusetts [Form MA NRCR](#).

Additional information is available in the Form 1-NR/PY [Instructions](#).

A more in-depth explanation is available in the [Nonresidents](#) (Composite Returns for Nonresident Partners/Shareholders) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

#### **8. Am I subject to tax in Massachusetts on income that is covered by a tax treaty?**

If the United States has a tax treaty with another country, Massachusetts will recognize the treaty and will exclude income to the extent it is excluded federally. Most treaty provisions are reciprocal; if an item of income is not taxable to a U.S. resident who is working in a country overseas, it will not be taxable to a nonresident alien from that country who is working in the U.S.

However, the income received must be included in your Massachusetts gross income and reported as "wages", and if the amount is deductible from Massachusetts gross income, it is claimed as a Schedule Y deduction. you may still need to file a return if your income exceeds the threshold requirement for filing a tax return, which is currently \$8,000 or for nonresidents, the smaller of \$8,000 or the prorated exemption.

Additional information is available in the Form 1-NR/PY [Instructions](#).

A more in-depth explanation is available in the [Residency Status](#) (U.S. Tax Treaties, Income Exclusion - Schedule Y Deduction) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

#### **9. If I am not a resident, are my scholarships and/or grants subject to tax in Massachusetts?**

Massachusetts has the same requirements as the Internal Revenue Service: qualified scholarships and grants are exempt from taxation in Massachusetts and not reportable on your tax return. Furthermore, Massachusetts does not impose tax on the portion designated as living expenses if received by nonresidents. Please see [DOR Directive 95-9](#): "Tax Treatment of Scholarships and Grants for Residents and Nonresidents of Massachusetts"

A more in-depth explanation is available in the [Other Items Specifically Excluded](#) (Scholarships and Grants) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

#### **10. How do I retrieve Massachusetts state income tax withheld in error by my employer?**

If your employer withheld Massachusetts income tax in error, you need to file a Massachusetts Nonresident/Part-Year resident return, Form 1 NR/PY, to request a refund. You must submit a letter from your employer along with the return, which verifies that you did not work in Massachusetts.

A more in-depth explanation is available in the [Wages, Salaries, Tips and Other Employee Compensation](#) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

#### **11. Does the type of visa I hold determine my residency status in Massachusetts?**

Your Massachusetts tax treatment is based on your residency status and not the type of visa you hold. Please see [TIR 95-7](#), Change in Definition of "Resident" for Massachusetts Income Tax Purposes.

A more in-depth explanation is available in the [Residency Status](#) (Vistas) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

#### **12. I am a nonresident who works both inside and outside of Massachusetts. However, my W-2 statement shows the entire income that I earned throughout the year as Massachusetts wages. How do I determine and report my Massachusetts wages?**

Since a W-2 form is a formal statement from your employer reflecting your earnings, any adjustment should be supported by the issuance of a corrected Wage and Tax Statement W-2C or a letter from your employer. You may also be able to determine the income earned in Massachusetts by using the Apportionment methods listed in the Form 1 NR/PY booklet along with a letter from your employer.

A more in-depth explanation is available in the [Wages, Salaries, Tips and Other Employee Compensation](#) section of a [Guide to Taxes](#).

[Return to Frequently Asked Questions](#)

#### **13. How do I calculate deductions and exemptions?**

Massachusetts requires that deductions claimed by nonresidents and part-year residents either be prorated or related to income reported and taxed on Form 1-NR/PY. Deductions such as: FICA and medicare as reported on line 15 of Form 1-NR/PY or employee business expenses, moving expenses, penalty on early savings withdrawal, excluded income deductions on lines 4 and 13 of schedule Y need to be related to income taxed on [Form 1-NR/PY](#).

Otherwise, the remaining deductions should be prorated as follows:

- Part-year residents will use the ratio listed on line 2 of Form 1-NR/PY.
- Nonresidents will use the ratio computed on line 14g of Form 1-NR/PY.

A more in-depth explanation is available in the [Nonresidents](#) section of a [Guide to Taxes](#) with respect to deductions directly related or prorated

A more in-depth explanation is available in the Guide with respect to [Nonresident Deduction and Exemption Ratio](#) on Massachusetts Form 1-NR/PY, Line 14g.

[Return to Frequently Asked Questions](#)

#### **14. How do I compute credit for taxes paid to another jurisdiction on income I earned while a part-year resident of Massachusetts?**

A Massachusetts full year and/or part-year resident is entitled to claim a credit for incomes taxes paid to other states on income reported and taxed in Massachusetts. No credit is allowed for city, local, property, excise taxes as well as for taxes paid to the federal government. The credit is, however, allowed for income taxes paid to the following jurisdictions:

- Any territory or dependency of the U.S including Puerto Rico, the Virgin Islands, Guam, the District of Columbia; and
- The Dominion of Canada.

The credit is the smaller of the apportioned Massachusetts tax and the tax paid on such income to the other jurisdictions.

**Note:** A part-year resident is only allowed credit for taxes paid on income earned and/or received during the Massachusetts residency period; nonresidents are not eligible for this credit.

Worksheets are available in the Form 1 and Form 1-NR/PY [Instructions](#).

A more in-depth explanation and examples for filling out the worksheets are available in the [Taxes Paid to Other Jurisdictions Credit](#) section of a [Guide for Taxes](#).

[Return to Frequently Asked Questions](#)

#### **15. How do I avoid common errors on Form 1-NR/PY?**

- Make sure your W-2 reflects the correct amount of your Massachusetts wages. Otherwise, submit a corrected W-2 or a letter from your employer verifying the wages you are reporting or the apportionment method you are using.
- If the amount on line 14f exceeds the total income on line 3 by more than 10%, you should enclose a statement explaining the difference (refer to page 14 of the Form 1-NR/PY [instructions](#)).
- Be aware that the deductions you are claiming on line 19 of Form 1-NR/PY as well as the deductions on schedule Y for employee business expenses, penalty paid on early savings withdrawal, income received while injured in the line of duty, income exempt under U.S. Tax treaty, moving expenses, self-employed health insurance deductions, miscellaneous deductions such as jury duty pay and qualified contributory pension from another state have to be related to income reported on your return.
- If you are a full year nonresident of Massachusetts, you are not entitled to credit for taxes paid to another state on the income reported on the Massachusetts return.
- If you are a full year nonresident of Massachusetts, you cannot report losses from sources out of Massachusetts.

[Return to Frequently Asked Questions](#)

# Residency Status

---

- [Legal Status:](#)
  - [Domicile](#)
  - [Minor](#)
  - [Mentally Incompetent](#)
  - [Change in Domicile](#)
  - [Detailed Information Required](#)
- [Residency Status for Filing Tax Return:](#)
  - [Full-Year Resident](#)
  - [Part-Year Resident](#)
  - [Nonresident](#)
  - [Permanent Place of Abode](#)
- [Which Tax Return to File](#)
- Residency Status for Certain Taxpayers:
  - [Military Personnel](#)
  - [Native Americans Living within Indian Country](#)
  - [Residents Working Overseas](#)
  - [Resident or Nonresident Alien— Residency Status for Federal Purposes](#)
  - [Students Temporarily Residing in Massachusetts](#)
  - [Teachers Temporarily Residing in Massachusetts](#)
- [Visas](#)
- [U.S. Tax Treaties](#)
  - [U.S. Tax Treaty Income Exclusion](#)
  - [U.S. Tax Treaties, Resident/Nonresident Aliens—Tax Return To File](#)
- [Documentation to Submit with Abatement/Amended Tax Return](#)
- [Massachusetts and Federal References](#)

---

## Legal Status

An individual's domicile, or legal residence, depends upon all the facts and circumstances in each case, including the good faith of the individual.

An individual may have multiple residences at one time, but only one domicile. The legal residence or domicile is the one an individual regards as his true home or principal residence. An individual cannot choose to make his home one place for the general purposes of life and in another for tax purposes. One's legal residence is usually the place where an individual maintains the most important family, social, economic, political and religious ties.

Example: Linda and Paul consider their domicile to be in Massachusetts. They own a home in Massachusetts in which they reside for half of April, May, and September through December each year. Linda and Paul have driver's licenses, bank accounts, and credit card accounts in Massachusetts. Their children and grandchildren, as well as most of their friends live in Massachusetts. Linda and Paul also have a summer home on the coast of Maine which they live in during the months of June through August. Linda and Paul spend the rest of the year in their condominium in Florida. Linda and Paul are residents of Massachusetts for tax purposes, even though they do not spend more than 183 days per year in the state, because they are domiciled in Massachusetts.

The basic rules to be applied in determining the domicile or a change of domicile are:

- each individual has a domicile. It may be a domicile of origin (birth), a domicile by operation of law or a domicile of choice (accomplished by a change of residence);
- each individual retains his or her present domicile until he or she establishes a new domicile at another place;

- a new domicile may be acquired only by (a) abandoning the present domicile, (b) establishing a residence at a new place and (c) intending to make the new residence one's home permanently or for an indefinite time, with no certain, present intention to return to the previous home;
- the burden of proving that a taxpayer has changed his or her domicile lies with the party asserting the change.

A minor's domicile follows that of the parent or guardian who has lawful custody of the child.

The domicile of a mentally incompetent person under guardianship may be changed by the intent of the guardian or the intent of the incompetent if he or she has sufficient mental capacity to select a new home, (by the guardian within the jurisdiction of the appointing court; by the incompetent, if there is sufficient mental capacity to make a choice).

#### Change in Domicile from Massachusetts — Contesting Domicile Audit

A change in domicile will not be accomplished by a temporary or protracted absence from Massachusetts. A taxpayer must not intend to return. To change domicile, a taxpayer must demonstrate that he has taken affirmative steps consistent with his declaration. A taxpayer's declaration of his intent will be subject to close scrutiny. One who asserts that domicile has changed has the burden of proving that fact. A number of factors will be considered in determining whether a taxpayer has changed his domicile.

Factors to be considered, the taxpayer has:

- purchased or leased a new home or an apartment in the new location;
- moved his personal property to the new location;
- obtained permanent employment in the new location;
- canceled Massachusetts bank accounts and opened new accounts in the new location;
- sold real property in Massachusetts or canceled leases;
- issued address change notices;
- changed voter registration;
- obtained a driver's license and automobile registration in the new location
- changed membership in churches and clubs;
- in general, the taxpayer is involved in the new community.

#### Detailed Information Required:

- Have the taxpayer and spouse had different addresses at any point during the past five years? list any;
- When in Massachusetts, where does taxpayer live and for how many months per year?
- When in the state where legal residence is claimed, where does taxpayer live and for how many months per year?
- List property owned in Massachusetts;
- List property owned in other states;
- List dates physically present in Massachusetts over the past five years;
- List dates physically present in other states over the past five years;
- State portion of the year expected to be in Massachusetts in future years;
- State portion of the year expected to be in other states in future years;
- List years eligible to vote in Massachusetts;
- List years eligible to vote in other states;
- List years assessed real estate tax in Massachusetts;
- List organizations in Massachusetts, and in other states, in following categories:
  - church/religious,
  - civic/political,
  - fraternal organizations,
  - clubs.
- List bank accounts and safe deposit boxes noting location and dates opened/closed;
- List automobiles owned and where registered in the past five years;
- Give address listed on passport if obtained within the past five years;
- State which IRS office the federal tax returns were filed in over the past five years;
- State where any dependents attend school.

#### Residency Status

An individual is a full-year resident if:

- his or her legal residence (domicile) is in Massachusetts for the entire taxable year; or
- his or her legal residence (domicile) is not in Massachusetts for the entire taxable year but who:

1. maintains a permanent place of abode in Massachusetts; and
2. spends in the aggregate more than 183 days of the taxable year in Massachusetts, including days spent partially in and partially out of Massachusetts.

Note: A day in Massachusetts while on active duty in the United States Armed Forces is not counted.

An individual is a part-year resident if he or she either:

- moves to Massachusetts during the taxable year and becomes a resident; or
- terminates his or her status as a Massachusetts resident during the taxable year and establishes a residence outside the state.

An individual is a nonresident if he or she is not a resident or inhabitant of Massachusetts as defined above.

#### Permanent Place of Abode:

Whether a person maintains a permanent place of abode in Massachusetts is a factual determination. The Department of Revenue interprets a "permanent place of abode" to mean a dwelling place continually maintained by a person, whether or not owned by such person, and will include a dwelling place owned or leased by a person's spouse.

A permanent place of abode generally will not include the following:

- a camp, military barracks and housing, dormitory room, hospital room or room in any other similar temporary institutional setting;
- a university owned studio apartment available only to a university affiliated student, faculty and staff ;
- a dwelling place completely lacking both kitchen and bathing facilities, or a dwelling place that is not winterized;
- a hotel or motel room, but a determination will be made based on the facts and circumstances of each individual's situation;
- a dwelling place owned by an individual who, during the term of a lease leases it: 1) to others not related to the owner or his or her spouse by blood or marriage, 2) for a period of at least one year, 3) where the individual has no right to occupy any portion of the premises and who does not use such premises as his or her mailing address during the term of the lease;
- a dwelling place that is maintained only during a temporary stay in Massachusetts for the accomplishment of a particular documented purpose. A temporary stay is defined as a predetermined period of time not to exceed one year.

#### Permanent Place of Abode Examples

Example 1: Charles is domiciled in New Jersey. He is transferred to his employer's Massachusetts office for an assignment from February 1 to October 31, 2005, after which he returns to New Jersey. If Charles takes an apartment in Massachusetts during this period, he will not be considered a resident, even though he spends more than 183 days of the taxable year in Massachusetts, because his place of abode is not permanent. Instead, Charles will be subject to tax as a nonresident on his income from Massachusetts sources, including any salary or other compensation for services performed in Massachusetts.

Example 2: Terri, a consultant, is domiciled in Pennsylvania. She comes to Massachusetts for a consultation project from August 1, 2004 to July 29, 2005. If Terri takes an apartment in Massachusetts during this period, she will not be considered a resident, even though she spends more than 183 days of the taxable year in Massachusetts, because her place of abode is not permanent.

However, Terri's project is extended and she stays in Massachusetts until December 31, 2005. Terri's stay in Massachusetts is no longer considered temporary. As a result, for the taxable year ending December 31, 2004, Terri is considered a nonresident and, as such, will be subject to tax only on her income from Massachusetts sources, including any salary or other compensation for services performed in Massachusetts. For the taxable year ending December 31, 2005, however, Terri is considered a Massachusetts resident because she maintained a permanent place of abode and was present in Massachusetts for more than 183 days.

Even if Terri is an employee and her employer transfers her to Massachusetts and pays for her Massachusetts apartment and all expenses for the period August 1, 2004 through December 31, 2005, the result is the same. She is still not domiciled in Mass, but she has met the 183 and permanent place of abode test. Normally, DOR would require that she file as a resident for taxable year ending December 31, 2005.

Example 3: Donna is an out-of-state student attending a university in Massachusetts. She lives in a room in one of the dormitories on the university campus. She shares her room with another student. Donna lives at the dormitory for the entire school year, which runs from late August 2004 through May 2005. When the school year ends, Donna moves out of the dormitory and resides out-of-state. Donna returns to the university in August 2005 to begin her junior year and again resides in a dormitory room on campus. Although Donna is present in Massachusetts for more than 183 days in 2005, her dormitory room is not considered a permanent place of abode. Therefore, Donna is not considered a resident of Massachusetts for 2005.

Example 4: Frank is a student at a university in Massachusetts. He lives in an off-campus apartment near the university with three other individuals. All four roommates share living expenses. Frank first moved into the apartment in September, 2004. He lived there for all of 2005. Frank lives in the apartment for more than 183 days in 2005. Since Frank is present in Massachusetts for more than 183 days and is maintaining a permanent place of abode, Frank is considered a resident of Massachusetts for 2005, even if his domicile is elsewhere and he intends to leave Massachusetts upon his future graduation.

Example 5: Serge is currently renting a university-owned studio apartment, consisting of one room plus bathroom and kitchen. He pays rent for this apartment on a one-year lease through his term bill. This studio apartment is available only to university affiliated student/faculty/staff and is not open for rent to the general public. Even though Serge was present in Massachusetts for more than 183 days in 2008, he is not considered a Resident of Massachusetts because the apartment is not a "permanent place of abode" as the accommodations in the building are limited to university students, faculty and staff, and the rent for the studio is paid directly to the university as part of the term bill for classes. The studio apartment is closer in type to a dormitory room or suite than to an off-campus apartment without university affiliation and open to the general public.

#### Presence in Massachusetts Examples:

Example 1: Alice owns a house in northern New Hampshire and rents an apartment in Boston, where she works 4 days a week. Alice spends 3 nights and 4 days in Massachusetts each week. The remaining time she spends in her home in New Hampshire. Alice considers her domicile to be New Hampshire and most of her social, political, economic, and familial ties are connected to that state. Alice takes three weeks vacation a year, or 12 days, all of which she

spends outside of Massachusetts. She receives 10 paid holidays from her employer each year and spends the holidays outside of Massachusetts. For the year from January 1st to December 31st, Alice has spent 186 days in Massachusetts and 179 in New Hampshire and elsewhere. Even though her domicile may be located in New Hampshire, Alice is subject to tax as a Massachusetts resident for the year since she spent more than 183 days in Massachusetts and maintained a permanent place of abode here. As a resident, Alice must file Form 1 by April 15th of the following year.

Which Tax Return to File

Legal Residence (Domicile)	Return to File
legal residence (domicile) is in Massachusetts for entire year	Form 1
legal residence (domicile) is not in Massachusetts for entire year but individual maintains permanent place of abode in Massachusetts and spends in the aggregate more than 183 days of the taxable year in Massachusetts	Form 1
legal residence (domicile) is not in Massachusetts for entire year but nonresident has Mass source income	Form 1-NR/PY
during the taxable year, individual either moves to Massachusetts and becomes a resident, or terminates Massachusetts resident status and establishes a residence outside the state. For nonresident period, individual does not have Mass source income	Form 1-NR/PY
during the taxable year, individual either moves to Massachusetts and becomes a resident, or terminates Massachusetts resident status and establishes a residence outside the state. For nonresident period, individual does have Mass source income	Form 1-NR/PY and Schedule R/NR

Military Personnel

Taxpayers enlisted in the service as Massachusetts residents, who have not established legal residence (new domicile) elsewhere, are still Massachusetts residents. This applies even though the taxpayer may be stationed outside of Massachusetts. If a taxpayer's gross income is more than \$8,000, he or she is required to file as a Massachusetts resident.

Nonresident Military Personnel Stationed in Massachusetts:

Nonresident military personnel who have not established legal residence (new domicile) in Massachusetts and who are stationed in Massachusetts may meet the 183 days test but will usually not meet the permanent place of abode test since army barracks are not considered a permanent place of abode.

Note: A nonresident, however, may be required to report Massachusetts source income earned other than from military sources.

---

## Residents Working Overseas

### Federal Treatment for U.S. Citizen Working Overseas:

A qualifying individual who works abroad and receives earned income from foreign sources may elect to exclude foreign earned income attributable to the period of residence in a foreign country.

### Qualifying Individual:

In order to qualify for the foreign earned income exclusion, a U.S. citizen working abroad must make a tax home in a foreign country and meet either the:

- Bona fide residence test; or
- Physical presence test.

A U.S. resident alien working abroad can qualify for this exclusion provided he or she meets the physical presence test.

### Foreign Income Includes:

- Salaries, wages, etc.;
- Allowance for housing;
- Business profits, rent and royalties;
- Value of fringe benefits.

### Massachusetts Treatment For Massachusetts Residents Working Overseas:

Pursuant to the provisions of M.G.L. Chapter 62, Section 2(a)(1)(C), Massachusetts does not allow the foreign earned income exclusion. However, Massachusetts residents who are taxed on income earned in Canada or in any of its provinces are entitled to claim credit for such taxes after accounting for any federal credit. [See Income Tax Paid to Other Jurisdiction.](#)

---

## Residents and Nonresident Aliens

### For Federal Income Tax Purposes:

For federal tax purposes, an alien is an individual who is not a U.S. citizen. Aliens are classified as either nonresident or resident:

- Resident aliens do not benefit from income tax treaties and are generally taxed on their worldwide income in the same manner as U.S. citizens. Resident aliens file Form 1040, U.S. Individual Income Tax Return;
- Nonresident aliens are taxed only on their income from sources within the United States and on certain income connected with the conduct of a trade or business in the United States. Nonresident aliens file Form 1040 NR, U. S. Nonresident Alien Income Tax Return.

### Resident Alien:

Generally, individuals are considered resident aliens if they meet one of the following criteria:

- Green Card Test:  
Aliens are residents for tax purposes if they are lawful permanent residents of the United States at any time during the calendar year. Aliens are lawful permanent residents of the U.S. at any time if they have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. Aliens have this status if the Immigration and Naturalization Service (INS) has issued them an alien registration card, also known as a "green card;" or
- Substantial Presence Test:  
Aliens are considered U.S. residents for income tax purposes if they are physically present in the United States at least:
  - 31 days during the current year, and
  - 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
    - all the days present in the current year,
    - and 1/3 of the days present in the first year before the current year,
    - and 1/6 of the days present in the second year before the current year.

### Example #1:

Taxpayer is physically present in the United States on 33 days in 2004 and 300 days each of the years 2002 and 2003. Taxpayer meets the physical presence test for 2004 since the total days present in the U.S. for the 3-year period is 183 days calculated as follows:

2004 = 33 days;

2003 = 100 days (1/3 of 300 days)

2002 = 50 days (1/6 of 300 days)

183 days

#### Example #2:

Taxpayer is physically present in the United States on 120 days in each of the years 2002, 2003, and 2004. Taxpayer does not meet the physical presence test for 2004 since the total days present in the U.S. for the 3-year period is 180 days calculated as follows:

2004 = 120 days;

2003 = 40 days (1/3 or 120 days)

2002 = 20 days (1/6 of 120 days)

180 days

If the taxpayer had been physically present in 2004 for 183 days, he/she would have met the substantial presence test.

Note: there are certain exceptions to the substantial presence test for those individuals referred to as exempt individuals and for individuals with a "closer connection to a foreign country." For further details, see I.R.S. Publication 519.

#### Nonresident Alien:

A nonresident alien is an individual who does not qualify as a resident alien.

#### For Massachusetts Income Tax Purposes:

Regardless of taxpayer's residency status for federal purposes, Massachusetts relies on its own law in determining whether or not a taxpayer is a [resident, nonresident or part-year resident](#)

---

#### Visas

Visa status of a resident or nonresident alien does not determine his/her tax status. One's tax status is determined by the existence of tax treaties between the U.S. and another country.

The most common types of visas are:

- F-1 student visas are generally given to those who come to the U.S. as students to pursue a course of study at an established institution of learning; and
- H-1 work visas are generally given to those who come to the U.S. to work.
- J-1 teaching visas are generally given to those who come to the U.S. as exchange visitors to participate in authorized programs as teachers, scholars, research assistants, trainers, etc.;
- M-1 visas are generally given to those who come to the U.S. as vocational or other nonacademic students;
- Q-1 visas are generally given to those who come to the U.S. as international cultural exchange visitors.

For a complete listing of visas, see IRS Immigration classifications and Visa Categories

---

#### U.S. Tax Treaties

##### Federal Treatment of Income Sources within the United States:

The United States has income tax treaties with a number of foreign countries most of which are reciprocal; if an item of income is exempt to U.S. residents who are working in a country overseas, that same item of income will be exempt to residents of foreign countries "[nonresident aliens](#)" who are working in the U.S. Under these treaties, nonresident aliens are taxed either at a reduced rate, or are exempt from U.S. income taxes on certain items of income they receive from sources within the United States. Each treaty is different and may specify that either all income is exempt, or only certain types of income are exempt.

##### Income That Is Required to Be Reported:

- In cases where a treaty does not cover a particular type of income, the taxpayer must report such income and pay tax on Form 1040 NR, U. S. Nonresident Alien Income Tax Return; or
- If there is no treaty between taxpayer's country and the United States, the taxpayer must report and pay tax on income from all sources within the United States on Form 1040 NR, U. S. Nonresident Alien Income Tax Return.

Note: Resident aliens do not benefit from income tax treaties.

##### Massachusetts Treatment of Massachusetts Source Income:

Massachusetts source income received by a [nonresident, as defined by Massachusetts law](#), is excluded for Massachusetts purposes if:

1. the nonresident is a citizen of a foreign country; and

2. the income is excluded from federal gross income under an income tax treaty or convention to which the United States is a party.

Income That is Required to Be Reported:

- In cases where a treaty does not cover a particular type of income, which is Massachusetts sourced, the taxpayer must report such income and pay tax on Form 1-NR/PY, Nonresident or Part -Year Resident Income Tax Return; or
- If there is no treaty between taxpayer's country and the United States, then the taxpayer must report and pay tax on income from Massachusetts sources on Form 1-NR/PY, Nonresident or Part -Year Resident Income Tax Return.

U.S. Tax Treaties, Income Exclusion - Schedule Y Deduction:

To the extent that income is excluded federally per a tax treaty, the income must still be reported for Massachusetts purposes if such income exceeds the [threshold requirement for filing a tax return](#). The income is included in the employee's Massachusetts gross income and reported as "wages." The amount is then claimed as a Schedule Y deduction.

No Tax Status and Limited Income Credit Calculation:

This deduction impacts the calculation of No Tax Status and the Limited Income Credit as it is treated as an adjustment to arrive at Massachusetts adjusted gross income on the Massachusetts AGI Worksheet and Schedule NTS-L-NR/PY.

Massachusetts State Tax Withholding:

Massachusetts state tax must be withheld unless an exemption under a tax treaty applies. This will be shown on U.S. Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. Where income is exempt by a tax treaty but taxes have been withheld by an employer, a nonresident may claim a refund of the amounts withheld by filing Form 1-NR, Massachusetts Nonresident Income Tax Return. The state copy of the W-2 Form indicating that taxes have been withheld as well as documentation of the treaty exemption should be attached to the return.

**U.S. Tax Treaties, Resident/Nonresident Aliens - Tax Return to File**

For tax reporting purposes, federal resident aliens who meet the Massachusetts residency test should file Massachusetts Form 1; federal nonresident or resident aliens who meet the Massachusetts nonresidency test, with Massachusetts source income should file Massachusetts Form 1-NR/PY.

- Taxpayers who are resident aliens for federal purposes can be nonresidents for Massachusetts purposes if they do not meet the [permanent place of abode \(PPA\) test and the 183 days test](#), i.e. they live in another state; and
- Taxpayers who are nonresident aliens for federal purposes are generally nonresidents for Massachusetts purposes since the [Substantial Presence Test](#) for federal resident alien status has the same threshold as the 183 days of physical presence in Massachusetts for Massachusetts resident status.

Federal

Massachusetts

Federal Status	Income Excluded per Treaty w/Foreign Country?	Income Excluded or Included on 1040?	PPA and 183 Day Residency Test is Met	MA Status	Is Fed Gross Income Included in MASS?
Resident Alien	N/A	included - 1040	meets test	resident	included - Form 1
Resident Alien	N/A	included - 1040	does not meet test	nonresident	MA source included - Form 1-NR/PY
Nonresident Alien	yes	excluded	does not meet test	nonresident	excluded

Nonresident Alien	no	included - 1040NR	does not meet test	nonresident	MA source included - Form 1-NR/PY
-------------------	----	-------------------	--------------------	-------------	-----------------------------------

---

#### Students Temporarily Residing in Massachusetts

##### Legal Residence:

Students attending school or college in Massachusetts have not established legal residence (new domicile) in Massachusetts. They may, however, be required to file as residents if they meet the permanent place of abode and 183 days test.

##### Nonresident Alien Students - Federal Treatment:

Nonresident aliens admitted to the United States as students are generally not permitted to work for a wage or salary or to engage in business while they are in the United States. In some cases, students admitted to the United States in "F-1," "J-1," or "M-1" statuses are granted permission to work.

Students may work on-campus in "F-1" status if they do not displace U.S. residents. On-campus work means work performed on the school's premises including work performed at an off-campus location that is educationally affiliated with the school. On-campus work under the terms of a scholarship, fellowship, or assistantship is considered part of the academic program of a student taking a full course of study and is permitted by the INS.

Employment due to severe economic necessity and for optional practical training is sometimes permitted for students in "F-1" status.

Students in "M-1" status who have completed a course of study can accept employment or practical training for up to six months.

In all other cases, any services performed by a nonresident alien student are not considered as performed to carry out the purpose for which the student was admitted to the United States.

##### U.S. Treaties:

Students are exempt under most treaties on amounts received for study, research, etc. Certain treaties exempt grants and awards; if the treaty does not specify exempt status for these grants and awards, such amounts are taxable under the same rules that exist for any other taxpayer.

##### Students, Apprentices and Trainees - Treaty Provisions

##### Federal Treatment:

- **Scholarship and Grant Remittances:**  
Under many income tax treaties, nonresident alien students, apprentices and trainees are exempt from tax on remittances (including scholarships and fellowship grants) received from a foreign country for study and maintenance. Also, under some treaties, a limited amount of compensation received may be exempt from tax.
- **Personal Services Performed:**  
Under many income tax treaties, pay (as contrasted with remittances, allowances, or other forms of scholarships or fellowship grants) received for personal services performed while nonresident aliens are temporarily in the United States as students, apprentices or trainees, or while acquiring technical, professional, or business experience is exempt from tax.

---

#### Teachers and Professors Temporarily in the United States - Treaty Provisions

##### Federal Treatment:

Under many income tax treaties, nonresident alien teachers and professors who temporarily visit the United States for the primary purpose of teaching at a university or other accredited educational institution are not subject to U.S. income tax on compensation received for teaching for the first 2 or 3 years after their arrival in the United States. Many treaties also provide exemption for engaging in research. Pay for teaching includes payments to a nonresident alien professor, teacher, or researcher by a U.S. university or other accredited educational institution for teaching or research work at the institution.

---

#### Documentation to Submit with Abatement/Amended Tax Return:

- Statement to support a change in domicile. The statement must include detailed information regarding the domicile change.
- Copy of the income tax return filed with any other state if required to be filed;
- Copy of Form 1040 - U.S. Individual Income Tax Return, or Form 1040 NR - U.S. Nonresident Alien Income Tax Return or 1040NR - EZ - U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents.

#### For income excluded by a Tax Treaty

- The amount of income subject to Mass tax must be reported on Mass. Form 1, Line 3 or Form 1-NR/PY, Line 5 as wages and is then excluded on Schedule Y, Line 4. Fill in the appropriate oval..
- Copy of U.S. Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, relative to any tax treaty provision (if applicable).

- Country of origin, income code number, and/or treaty article citation from U.S. Publication 901.
- 

Massachusetts References:

- M.G.L. Chapter 62 Sections 1 as amended by St. 1995, c.38, s.65; 1(f); 2(a)(1)(C); 5A(a)
- M.G.L. Chapter 62B, Section 2
- Horvitz v. Commissioner, 51 Mass. App. Ct. 386, 2001
- [830 CMR 62.5A.1\(5\): Non-Resident Income Tax](#)
- [TIR 95-7: Change In The Definition Of "Resident" For Massachusetts Income Tax Purposes](#)
- [Letter Ruling 09-5: Residency](#)
- [LR 08-11: Taxpayer Domiciled in New York, Resident in Massachusetts](#)
- [DD 87-4: Nonresidents from Other Countries; Effect of Tax Treaty](#)

Federal References:

- I.R.C. § § 894(a); § 911; 1441(c)
  - U.S. Publication 54: Tax Guide for U.S. Citizens and Resident Aliens Abroad
  - U.S. Publication 519: U.S. Tax Guide for Aliens
  - U.S. Publication 901: U.S. Tax Treaties
- 

[Return to Personal Income Tax Issues](#)

# TIR 95-7: Change in the Definition of "Resident" for Massachusetts Income Tax Purposes

---

## I. Introduction

The Massachusetts Legislature recently enacted Chapter 38 of the Acts of 1995 which, among other things, modifies the definition of "resident" found in General Laws Chapter 62, section 1(f). The purpose of this Technical Information Release ("TIR") is to explain the changes made by St. 1995, c. 38, s. 65. The new language reads as follows:

(f) "Resident" or "inhabitant", (1) any natural person domiciled in the commonwealth, or (2) any natural person who is not domiciled in the commonwealth but who maintains a permanent place of abode in the commonwealth and spends in the aggregate more than one hundred and eighty-three days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth. For purposes of clause (2), a day spent in the commonwealth while on active duty in the armed forces of the United States shall not be counted as a day in the commonwealth. The word "non-resident" shall mean any natural person who is not a resident or inhabitant.

These changes are effective for tax years ending on or after July 1, 1995. For tax returns due for the taxable year ending on December 31, 1995, all days in the 1995 calendar year count in calculating the number of days spent in Massachusetts.

## II. Discussion

### A. General

For Massachusetts income tax purposes, the determination of an individual's status as a resident or non-resident is essential. Under G.L. c. 62, § 2, a resident's entire income is subject to tax, notwithstanding a resident's ability to make use of various credits, deductions, and exemptions to offset tax liability. This includes the credit under G.L. c. 62, § 6(a), for taxes paid to other states. A non-resident, however, is taxed only on income derived from or connected to sources in Massachusetts. G.L. c. 62, § 5A.

Examples of such taxable income include income connected with any trade or business, including any employment, carried on in the commonwealth, any lottery or wagering transactions, or the ownership of any interest in real or tangible personal property in Massachusetts. [Id.](#)

### B. Determining Domicile

A person who is domiciled in Massachusetts is considered a resident of Massachusetts. In the absence of a statutory definition of domicile, the Department looks to common law concepts in fashioning a definition. See *Commonwealth v. Davis*, 284 Mass. 41 (1933). Domicile is "the place which is an individual's true, fixed and permanent home, determined by established common law principles and the facts and circumstances in each case." 830 CMR 62.5A.1(2), Non-resident Income Tax. A domicile determination is largely a factual determination that takes into consideration many factors relating to a person's social, economic and political life.

A person's intent to make a place his permanent home is also significant when determining domicile. *Davis*, 284 Mass. at 50. It must be noted, however, that a person's domicile is different from his or her residence. A person can have only one domicile, but can have many places of residence. See *Doyle v. Goldberg*, 294 Mass. 105, 108 (1936) and cases cited therein; *Bailey and Van Dorn*, Massachusetts Practice, Vol. 4 § 492 (1986).

Example. Linda and Paul consider their domicile to be in Massachusetts. They own a home in Massachusetts in which they reside for half of April, May, and September through December each year. Linda and Paul have driver's licenses, bank accounts, and credit card accounts in Massachusetts. Their children and grandchildren live in Massachusetts, as well as most of their friends. Linda and Paul also have a summer home on the coast of Maine which they live in during the months of June through August. Linda and Paul spend the rest of the year in their condominium in Florida. Linda and Paul are residents of Massachusetts for tax purposes, even though they do not spend more than 183 days per year in the state, because they are domiciled in Massachusetts.

### C. Permanent Place of Abode and Presence in Massachusetts

#### 1. Permanent Place of Abode

The new definition of resident provides that a person can be considered a resident even if that person is not domiciled in Massachusetts. A resident is a person who maintains a permanent place of abode in Massachusetts and spends more than 183 days of the taxable year in Massachusetts.

Whether a person maintains a permanent place of abode in Massachusetts is a factual determination. The Department of Revenue interprets a "permanent place of abode" to mean a dwelling place continually maintained by a person, whether or not owned by such person, and will include a dwelling place owned or leased by a person's spouse.

A permanent place of abode generally will not include the following:

- during the term of a lease, a dwelling place owned by an individual who leases it to others, not related to the owner or his or her spouse by blood or marriage, for a period of at least one year, where the individual has no right to occupy any portion of the premises and who does not use such premises as his or her mailing address during the term of the lease;
- a camp, military barracks, dormitory room, hospital room or room in any other similar temporary institutional setting;
- a hotel or motel room, but a determination will be made based on the facts and circumstances of each individual's situation;
- a dwelling place completely lacking both kitchen and bathing facilities, or a dwelling place that is not winterized;
- a dwelling place that is maintained only during a temporary stay in Massachusetts for the accomplishment of a particular documented purpose. A temporary stay is defined as a predetermined period of time not to exceed one year.

The following examples illustrate the meaning of permanent place of abode.

Example. Charles is domiciled in New Jersey. He is transferred to his employer's Massachusetts office for an assignment from February 1 to October 31, 1995, after which he returns to New Jersey. If Charles takes an apartment in Massachusetts during this period, he will not be deemed a resident, even though he spends more than 183 days of the taxable year in Massachusetts, because his place of abode is not permanent. Instead, Charles will be subject to tax as a non-resident on his income from Massachusetts sources, including any salary or other compensation for services performed in Massachusetts.

Example. Terri is domiciled in Pennsylvania. She is transferred to her employer's Massachusetts office for an assignment from August 1, 1995 to August 1, 1996. If Terri takes an apartment in Massachusetts during this period, she will not be deemed a resident, even though she spends more than 183 days of the taxable year in Massachusetts, because her place of abode is not permanent.

However, Terri's assignment is extended and she stays in Massachusetts until December 1, 1996. Terri's stay in Massachusetts is no longer considered temporary. As a result, for the taxable year ending December 31, 1995, Terri is considered a non-resident and, as such, will be subject to tax only on her income from Massachusetts sources, including any salary or other compensation for services performed in Massachusetts. For the taxable year ending December 31, 1996, however, Terri is considered a Massachusetts resident because she maintained a permanent place of abode and was present in Massachusetts for more than 183 days.

Example. Donna is an out-of-state student attending a university in Massachusetts. She lives in a room in one of the dormitories on the university campus. She shares her room with another student. Donna also shares bathing facilities with other students who live on the same floor. Donna lives at the dormitory for the entire school year, which runs from late August 1994 through May 1995. When the school year ends, Donna moves out of the dormitory and resides out-of-state. Donna returns to the university in August 1995 to begin her junior year and again resides in a dormitory room on campus. Although Donna is present in Massachusetts for more than 183 days in 1995, her dormitory room is not considered a permanent place of abode. Therefore, Donna is not considered a resident of Massachusetts for 1995.

Example. Frank is a student at a university in Massachusetts. He lives in an off-campus apartment near the university with three other individuals. All four roommates share living expenses, including expenses for utilities, phone and cable television service. Frank lives in the apartment for more than 183 days in 1995. Since Frank is present in Massachusetts for more than 183 days and is maintaining a permanent place of abode, Frank is considered a resident of Massachusetts for 1995, even if his domicile is elsewhere and he intends to leave Massachusetts upon his future graduation.

## 2. Presence in Massachusetts

Not only must a person maintain a permanent place of abode in Massachusetts, but a person must also spend more than 183 days in Massachusetts to meet the definition of a resident. For purposes of determining presence in Massachusetts, a day is defined as any part of a day spent in Massachusetts for whatever reason. However, for members of the United States Armed Forces, days spent in Massachusetts while on active duty will not be considered days spent in Massachusetts for purposes of establishing whether the member is a resident of Massachusetts.

Example. Alice owns a house in northern New Hampshire and rents an apartment in Boston, where she works 4 days a week. Alice spends 3 nights and 4 days in Massachusetts each week. The remaining time she spends in her home in New Hampshire. Alice considers her domicile to be New Hampshire and most of her social, political, economic, and familial ties are connected to that state. Alice takes three weeks vacation a year, or 12 days, all of which she spends outside of Massachusetts. She receives 10 paid holidays from her employer each year and spends the holidays outside of Massachusetts. For the year from January 1st to December 31st, Alice has spent 186 days in Massachusetts and 179 in New Hampshire and elsewhere. Even though her domicile may be located in New Hampshire, Alice is subject to tax as a Massachusetts resident for the year since she spent more than 183 days in Massachusetts and maintained a permanent place of abode here. As a resident, Alice must file Form 1 by April 15th of the following year.

## D. Rules for Part-year Residents

A part-year resident for Massachusetts income tax purposes is a person who either moves to Massachusetts during the taxable year and becomes a resident or a person who terminates his Massachusetts residency during the taxable year to establish a residence outside the state. A determination of whether a person is a part-year resident and when residency commences or terminates depends on facts and circumstances relevant to each person's situation. For the period of time that a person is a resident of Massachusetts, all income earned during this time is subject to tax under G.L. c. 62, § 2. For the period of time that a person is not considered a resident, only that income that is derived from sources in Massachusetts, as detailed in G.L. c. 62, § 5A, is subject to tax. For additional information concerning tax reporting and return filing for part-year residents, see Form 1-NR/PY and its instructions.

Example. Ben has lived in an apartment in Massachusetts for the past ten years. On August 15, 1995, Ben terminated his lease and moved to California. He had no intention of returning to Massachusetts and from that point on made California his permanent home. On October 1st of the same year, Ben realized a capital gain not connected to Massachusetts source income. For the period January 1 to August 14, 1995, Ben is considered a resident of Massachusetts. As a resident, any income he earned during this period, from whatever source, is subject to Massachusetts income tax. From August 15 to December 31, 1995, however, Ben is considered a non-resident of Massachusetts. As a non-resident, Ben will be subject to tax only on income that is connected to or derived from sources in Massachusetts. The capital gain he realized on October 1st will not be subject to Massachusetts tax because he was not a resident when he realized the gain and because it was not connected to sources in Massachusetts.

Example. Kelly and Jim have lived in Massachusetts for the past five years. They are homeowners and calendar year taxpayers. Kelly receives notice from her employer that she is being transferred to the company's office in Connecticut. On September 1, 1995, Kelly and Jim move to Connecticut. They put their house in Massachusetts on the market for sale with a local real estate office but leave it furnished. Thus, the house remains available for their immediate occupancy. An offer is made for the house on October 1, 1995. At that time, Kelly and Jim arrange to have the furniture shipped to their home in Connecticut. The house is sold on December 1, 1995. Under the facts of this example, Kelly and Jim are part-year residents for 1995. For the period from January 1 through October 1, 1995, they are considered residents because they have spent more than 183 days of their taxable year in the state and they maintained a permanent place of abode in Massachusetts during this period. As residents, any income they received during this period, from whatever source, is subject to Massachusetts personal income tax. For the period from October 2 through December 31, 1995, however, Kelly and Jim are considered non-residents because they no longer "maintain" a permanent place of abode in Massachusetts and only income they receive

(such as any gain on the sale of their Massachusetts home) that is connected to or derived from sources in Massachusetts will be subject to tax.

Mitchell Adams  
Commissioner of Revenue

TIR 95-7

January 10, 1996