

## Who Must File

Every Ohio resident and every part-year resident is subject to the Ohio income tax. Every nonresident having Ohio-sourced income must also file. Examples of Ohio-sourced income include, but are not limited to, the following:

- Wages earned in Ohio (note: see "Exception," below),
- Ohio lottery winnings,
- Income or gain from Ohio property,
- Income or gain from a sole proprietorship doing business in Ohio; and
- Income or gain from a pass-through entity doing business in Ohio.

### Exception

A full-year nonresident living in a border state does not have to file if the nonresident's only Ohio-sourced income is wages received from an unrelated employer.

**Generally, you do not have to file an Ohio return if you have no Ohio income tax withheld AND if...**

- you are single AND your federal adjusted gross income is less than or equal to \$11,550 AND you have no Schedule A adjustments.
- you are married, filing jointly AND your federal adjusted gross income is less than or equal to \$13,100 AND you have no Schedule A adjustments.
- your only source of income is retirement income that is eligible for the retirement income credit (line 48) AND the credit is the same or larger than your tax before credits (line 6).
- your personal exemption and dependent exemption amount on line 4 is the same as or more than your Ohio adjusted gross income (line 3).

## Residency Status

- **Resident.** You were a resident of Ohio if you lived in Ohio for the entire year. If you were away temporarily, you were still a resident of Ohio.
- **Nonresident.** You were domiciled outside of Ohio all year.
- **Part-year resident.** You moved into or out of Ohio during 2009, not counting being away temporarily.

**Caution: Part-year residents should use the nonresident credit Schedule D (as explained in the [2009 Income Tax Filing Instructions](#)) for income earned while a resident of another state. Individuals who earn or receive income within Ohio will be able to claim the nonresident credit with respect to all items of income not earned and not received in Ohio.**

If you are unsure of your state of residency, Ohio law provides that you will be considered a full-year nonresident of Ohio **only** if you meet all five of the following requirements:

- During the entire taxable year you had at least one abode outside of Ohio,
- You spent no more than 182 contact periods in Ohio during the taxable year,
- You were not a part-year resident of Ohio during the taxable year,
- By June 1st of the immediately succeeding calendar year you file the affidavit of non-Ohio domicile (below),
- The affidavit does **NOT** contain any false statements.

[Affidavit of non-Ohio Domicile for Taxable Year 2009 - Military](#) <sup>(PDF)</sup>

[Affidavit of non-Ohio Domicile for Taxable Year 2009 - Nonmilitary](#) <sup>(PDF)</sup>

It is important that individuals submitting one of these affidavits appreciate the complete ramifications of submitting this statement. Other state agencies such as the Ohio Board of Regents, the Ohio Bureau of Motor Vehicles, and the Ohio Elections Division of the Ohio Secretary of State may no longer recognize you as a resident of Ohio if you submit either of these affidavits to the Ohio Department of Taxation.

## **IT 2007-08 — Personal Income Tax: Residency Guidelines - Tax Imposed on Resident and Nonresident Individuals for Post-2006 Taxable Years — Issued December 2007; Revised July 2008**

This information release discusses how Ohio personal income tax is imposed on resident and nonresident individuals for taxable years beginning after December 31, 2006. This information release does not apply to taxable years beginning before January 1, 2007.(1)

### *Who is subject to the Ohio personal income tax?*

Ohio imposes personal income tax on individuals(2) residing in this state, earning or receiving income in this state, or earning or receiving certain lottery winnings, prizes, or awards from the Ohio Lottery Commission. Each such individual (or married couple who file a joint federal return) with federal adjusted gross income exceeding the amounts specified in the instructions for the Ohio individual income tax return, form IT 1040, must file an Ohio income tax return. This filing requirement also applies to each nonresident individual whose federal adjusted gross income includes any income earned or received in Ohio by a pass-through entity unless the entity files a composite Ohio return on behalf of its nonresident owners. The filing requirement applies even if an individual is allowed a nonresident or resident credit under Ohio Revised Code section (“R.C.”) 5747.05(A) or (B), respectively, that eliminates most or all Ohio individual income tax.

### *Who is a resident?*

R.C. 5747.01(I) defines a “resident” of Ohio for purposes of the Ohio income tax. A “resident” is an individual who is domiciled in this state, subject to R.C. 5747.24. A “nonresident” is an individual that is not a resident. While the tax law does not specifically define who is domiciled in this state, there is substantial case law on the determination of “domicile” for tax and other purposes. However, Ohio Adm. Code 5703-7-16 does provide some factors that the Tax Commissioner cannot consider in making a determination of domicile.(3)

As the case law shows, an individual can have only one domicile at any given point in time. Most individuals retain their domicile throughout the taxable year, even if they spend all or a substantial portion of the year away from that domicile during the year.(4) For example, an individual who regularly spends spring and summer in Ohio and autumn and winter in Florida may be domiciled either in Ohio or Florida for the entire year, depending on what the relevant facts demonstrate, and would be away from that domicile while in the other state. The contact period test of R.C. 5747.24, discussed below, applies for purposes of determining whether or not that individual was a resident of Ohio for the taxable year. That individual has not switched domiciles back and forth between states during the year and is not a part-year resident of Ohio, but remains either a full-year resident or nonresident under the contact period test of

R.C. 5747.24.

In contrast, there are situations where an individual changes domicile during the taxable year. For example, an individual domiciled in Ohio may retire and move to another state, or an individual domiciled in another state may move to Ohio for employment. R.C. 5747.01(J) provides in pertinent part: “An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year.” Such an individual is a part-year resident.

*Why is residency important?*

Ohio imposes income tax on all income of resident individuals but only imposes tax on the income of nonresident individuals that is earned or received in Ohio. While residents receive a credit under R.C. 5747.05(B) for income subjected to tax in another state, the credit cannot exceed the tax paid to the other state on that income. In contrast, nonresidents receive a credit under R.C. 5747.05(A) to eliminate tax on income not earned or received in Ohio. So, for example, if the income is from a state that imposes no tax, a resident will get no credit but a nonresident will. However, if the income is from Ohio, both the resident and the nonresident will be subject to Ohio tax.

*The contact period test*

R.C. 5747.24 contains a contact period test for determining whether an individual is a resident of Ohio for purposes of the Ohio personal income tax. The test examines an individual’s “contact periods” in Ohio during the taxable year to arrive at a presumption of whether or not that individual is an Ohio resident for that taxable year. Since the test is based on contact periods (not days) during the entire year to arrive at a presumption for that entire year, it does not apply to part-year residents as previously noted. An individual has a contact period with the state when the individual is away overnight from the individual’s abode located outside this state<sup>(5)</sup> and while away overnight from that abode spends at least some portion, however minimal, of two consecutive days in this state. [R.C. 5747.24(A)(1)(a)].

For example, an individual spending any portion of two consecutive days in Ohio (e.g., portions of Monday and Tuesday) has one contact period in Ohio, but an individual spending any portion of each of two nonconsecutive days in Ohio, (e.g., Monday and Wednesday, but not Tuesday) has no contact period in Ohio for those two days.

The presumptions under the contact period test depend on the number of contact periods in Ohio during the taxable year. If the Tax Commissioner challenges number of contact periods an individual claims to have in Ohio during the taxable year, the individual must verify the number claimed by a preponderance of the evidence. The individual is presumed to have a contact period for any period the individual does not prove was not a contact period. R.C. 5747.24(E).

*Individuals presumed not to be domiciled in Ohio<sup>(6)</sup>*

An individual is irrebutably presumed not to be domiciled in Ohio for any portion of the taxable year ***if the individual meets all five of the following criteria:***

- (i) The individual has less than 183 contact periods in Ohio during the taxable year,
- (ii) The individual has at least one abode outside this state during the entire taxable year (the law does not define “abode”),

- (iii) The individual did not change domicile from or to Ohio during the taxable year (referred to as a part-year resident in the instructions to the form IT 1040),
- (iv) By May 30 of the immediately succeeding calendar year the individual files the affidavit of non-Ohio domicile,(7) and
- (v) The affidavit does not contain any false statements.

If the individual did not change domicile from or to Ohio during the taxable year (*i.e.*, the individual was not a part-year resident of Ohio) and does not meet criteria (i), (ii), (iv) and (v) above, the individual is presumed to be a full-year Ohio domiciliary.

*Who should file the affidavit?*

- Any taxpayer who during the previous taxable year filed an Ohio income tax return as a resident or part-year resident and for the current year is claiming to be a nonresident/nondomiciliary, and, for the current taxable year has no income situated to Ohio under Ohio Revised Code sections 5747.20 - 5747.231.
- Any taxpayer who for the taxable year has no intent to file an Ohio income tax return and has (i) an abode in Ohio,(ii) a contact period in Ohio, and/or (iii) nexus with Ohio to the extent that the tax commissioner would have cause to question the taxpayer's non-filing.

*Individuals presumed to be full-year Ohio domiciliaries*

**Fewer than 183 contact periods.**(8) An individual who has fewer than 183 contact periods in Ohio during the taxable year and is not a part-year resident, but does not meet criteria (ii), (iv), and (v) set forth above, is presumed to be a full-year Ohio domiciliary. Such an individual may rebut the presumption of full-year Ohio domicile by proving by a preponderance of the evidence that the individual was not domiciled in Ohio for all or part of the year.

**At least 183 contact periods.**(9) An individual who has at least 183 contact periods in Ohio during the taxable year and is not a part-year resident is presumed to be a full-year Ohio domiciliary. Such an individual may rebut the presumption of full-year Ohio domicile by proving by clear and convincing evidence that the individual was not domiciled in Ohio for all or part of the year.

*Questions*

If you have any questions concerning this release, you may e-mail them to us either by going to our Web site at [tax.ohio.gov](http://tax.ohio.gov) and clicking on "Contact Us" or by calling us at (800) 282-1780.

OHIO RELAY SERVICES FOR  
THE HEARING OR SPEECH IMPAIRED  
Phone: (800) 750-0750.

FOOTNOTES:

(1) For a discussion of the law applicable to pre-2007 taxable years see information release # IT 2007-01.

(2) The tax also applies to estates and trusts, which are not addressed in this information release.

(3) For example, the location of an individual's financial accounts, the location at which the taxpayer receives professional services such as a doctor's visit, the location where the individual was married, etc.

(4) In *Maple v. Tracy* (Sep. 3, 1999), BTA Nos. 98-T-268 and 98-T-312, unreported, the Board of Tax Appeals took the opportunity to review the basic legal concepts of domicile:

“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. 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.”

Domicile has been defined as a place where an individual has his “true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.” *Sturgeon v. Korte* (1878), 34 Ohio St. 525. As held by the United States Supreme Court in *Williams v. N. Carolina* (1944), 325 U.S. 226, “Domicile implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance.” Abandonment of one's domicile is effected only when a person chooses a new domicile, establishes actual residence in the place chosen and shows a clear intent that it be the principal and permanent residence. *E. Cleveland v. Landingham* (1994), 97 Ohio App.3d 385.

(5) “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.” R.C. 5747.24(A)(1)(b). There is no definition of “abode” in Ohio Revised Code Title 57.

(6) R.C. 5747.24(B) provides as follows:

(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 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.

(7) See form [ITDA - NM \(affidavit for nonmilitary\)](#), which is available on the department's Web site. Note that under R.C. 5747.24(B)(1) the affidavit is due on April 15. The second paragraph of R. C. 5703.35 authorizes the Tax Commissioner to extend for up to forty-five days, the due date for any report required by law to be filed with the Commissioner. Based upon this provision, the Commissioner has extended until May 30 the due date for filing the yearly affidavit, form ITDA-M or ITDA-NM.

(8) R.C. 5747.24(C) provides as follows:

(C) An individual who during a taxable year has 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.

(9) R.C. 5747.24(D) provides as follows:

(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.



## Affidavit of Non-Ohio Residency/Domicile for Taxable Year 2009 – Nonmilitary

This form is for use only by any nonmilitary individual who is claiming to be a full-year nonresident for Ohio income tax purposes.

**Due date:** May 31, 2010. See Ohio Revised Code section 5747.24.

**Who must file:** Please see instructions.

Filing this affidavit does **not** exempt you from timely filing your Ohio income tax return for 2009 and paying any tax due.

First name	M.I.	Last name	Social Security number
Address			County
City, state, ZIP code			

Under penalties of perjury, I declare all of the following to be true:

1. I was not domiciled in Ohio at any time during taxable year 2009. I was domiciled in \_\_\_\_\_ (name of state(s) where domiciled).
2. I had at least one abode (place where I lived) outside of Ohio for the entire taxable year. Name of city (or cities), state(s) (if within the U.S.) and country (if not within the U.S.) where I lived if different from statement 1, above.  
\_\_\_\_\_
3. I had no more than 182 contact periods\* in Ohio during the taxable year.
4. I  shall  shall not be filing a year 2009 Ohio individual income tax return.

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements on this affidavit are true, correct and complete.

\_\_\_\_\_  
Signature Date

\*Ohio Revised Code section 5747.24(A)(1) states that an individual "has one contact period in this state" if the individual is away overnight from his/her 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.

### Federal Privacy Act Notice

Because we require you to provide us with a Social Security number, the *Federal Privacy Act of 1974* requires us to inform you that providing us with your Social Security number is mandatory. Ohio Revised Code sections 5703.05, 5703.057 and 5747.08 authorize us to request this information. We need your Social Security number in order to administer this tax. Your failure to supply any information requested on this affidavit will result in our inability to process this document.

**Please do not attach to, or enclose with, your Ohio income tax return.**

Mail to: Ohio Department of Taxation, Attn: Tax Technical  
4485 Northland Ridge Blvd., Columbus, OH 43229-5404

**Questions? Call us toll-free at 1-800-282-1780.**

# IT DA-NM Instructions

## Who Should File This Affidavit?

You must file this yearly affidavit if you are **not** in the military and you meet either of the following criteria:

- During the previous taxable year (2008) you filed an Ohio income tax return as a resident or part-year resident, and for the current taxable year (2009) you are claiming to be a nonresident/nondomiciliary, and for the current taxable year you have no income situated to Ohio under Ohio Revised Code sections 5747.20-5747.231.
- For the current taxable year (2009) you have no intent to file an Ohio income tax return and you have (i) an abode in Ohio, (ii) a contact period in Ohio and/or (iii) nexus with Ohio to the extent that the tax commissioner would have cause to question your nonfiling.

If you meet either of the criteria set forth above, but you do not file this affidavit by May 31, 2010, under Ohio law you are presumed to be a full-year domiciliary.

## Why Should I File This Affidavit?

R.C.section 5747.24 requires that, in order to preserve the presumption of full-year non-Ohio residency, the taxpayer must file this affidavit by the 15th day of the fourth month following the last day of the taxable year. However, R.C. section 5703.35 allows the tax commissioner to extend for 45 days the due date for any report. As such, you must file this tax return by May 31, 2010. The tax commissioner has no authority to extend beyond May 31, 2010 the due date for filing the year 2009 affidavit.

## What Is the Due Date for Filing This Affidavit?

The due date is May 31, 2010.

## Do I Need To File This Affidavit if I Have Not Earned or Received Any Income in Ohio?

Even if you have no income that you earned or received in Ohio, you must timely file this affidavit by May 31, 2010 if you want to preserve the presumption of full-year non-Ohio residency.

## If I Timely File Ohio Form ITDA-NM, Do I Also Have To File Ohio Form IT 10, Information Notice of No Tax Due?

No taxpayer is required to file Ohio form IT 10. However, by filing Ohio form IT 10, you are indicating that you have no Ohio income tax liability. If you have not earned or received any income in Ohio, you may want to consider filing both this affidavit and Ohio form IT 10. Please do **not** mail the affidavit and notice together since there is a different address for the affidavit and for the notice.

## Where Do I Mail This Affidavit?

Please mail this affidavit to the Ohio Department of Taxation, Attn: Tax Technical, 4485 Northland Ridge Blvd., Columbus, OH 43229-5404. The postmark date must be no later than May 31, 2010. Please do **not** attach this affidavit to, or enclose with, your Ohio individual income tax return.

## Whom Do I Contact if I Have Additional Questions About This Affidavit?

For faster service you can visit our Web site at **tax.ohio.gov**, click on "Contact Us" and electronically send us your question(s) or you can call 1-800-282-1780.

## What Is the "Bright Line" Test Under Ohio Revised Code Section 5747.24?

This portion of Ohio law provides for a "bright line" test under which an individual is presumed to be a full-year nonresident if all of the following circumstances are present:

- The individual has at least one abode outside Ohio for the entire year (the law does not define "abode"),
- The individual has no more than 182 contact periods in Ohio, and
- The individual timely submits to the Ohio Department of Taxation this affidavit, **and** the affidavit is not false.

## What Is a "Contact Period" in Ohio?

An individual has one contact period in this state if the individual is away overnight from the individual's abode located outside the state and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in this state. Note that the individual does not have to spend the night in Ohio.

For example: An individual who claims to be domiciled in Florida has an abode in Florida for the entire year. On Jan. 2 of the taxable year the individual flies from Florida to Toledo. Later on Jan. 2 the individual drives to Michigan and spends the night in Michigan. On Jan. 3 the individual drives from Michigan back to Ohio. Late in the day on Jan. 3 the individual flies from Toledo back to the individual's abode in Florida.

The individual has one contact period in Ohio because the individual spent some portion of two consecutive days (Jan. 2 and Jan. 3) in Ohio and was away overnight (from sometime on Jan. 2 until sometime on Jan. 3) from the individual's abode in Florida.