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Issued: October 17, 2008

Revised: November 2009

Reissued: January 23, 2019

Income Tax - Information Release*

IT 2008-02 – Ohio Taxable Income and Deductions for Servicemembers and Civilian Spouses

Introduction

This information release addresses the applicability of Ohio's income and school district income taxes to servicemembers and their civilian spouses based on factors such as domicile, source and character of income, and active duty vs. retired military status.

The full text of the current version of R.C. 5747.01 can be found at: <http://codes.ohio.gov/orc/5747.01>

The full text of the current version of R.C. 5747.023 can be found at: <http://codes.ohio.gov/orc/5747.023>

The full text of the current version of R.C. 5747.024 can be found at: <http://codes.ohio.gov/orc/5747.024>

The full text of the current version of R.C. 5747.026 can be found at: <http://codes.ohio.gov/orc/5747.026>

The full text of 50 U.S.C. §501- 597b (i.e., the Servicemembers Civil Relief Act) can be found [here](#).

Federal Tax information for servicemembers can be found at: <https://www.irs.gov/individuals/military>

Observation/ Law

Ohio Law- General. Ohio levies an income tax on every individual "residing in or earning or receiving income in this state...." R.C. 5747.02(A). If an individual, regardless of his or her state of residence, is compensated for goods sold or services performed in Ohio, then that individual is subject to Ohio income tax. An individual is a resident of Ohio for tax purposes if the individual "is domiciled in this state, subject to section 5747.24 of the Revised Code." R.C. 5747.01(I). An individual is "earning or receiving" income in Ohio if such income is allocable or apportionable to Ohio. *See generally*, R.C. 5747.20 and 5747.21.

Additionally, certain school districts levy an income tax on the portion of the taxpayer's "taxable income" earned while the taxpayer was a "resident" of the school district. R.C. 5748.01(G). Taxable income is measured by either the "traditional" base or "earned income" base. The traditional base is Ohio adjusted gross income ("OAGI"), less exemptions and plus the taxpayer's business income deduction. R.C. 5748.01(E)(1)(a). The earned income base is compensation (e.g., wages, salaries, and tips), and net earnings from self-employment, to the extent included in OAGI. A taxpayer is a "resident" of the school district if the taxpayer is a resident of Ohio (defined above) and during his/her Ohio residency, "is domiciled in the school district or lives in and maintains a permanent place of abode in the school district." R.C. 5748.01(F)(1).

* An information release does not create legal obligations by its own force. Only an administrative rule can "confer the force of law on a requirement." *See Progressive Plastics, Inc. v. Testa*, 133 Ohio St.3d 490, 2012-Ohio-4759.

Generally, the filing of an income tax return, and the payment of any tax due, for both Ohio and school district income taxes, is required to be submitted on or before April 15th of each tax year. R.C. 5747.08(G).

Ohio Law- Servicemember Deductions. The starting point for Ohio's income tax is federal adjusted gross income ("FAGI"). FAGI is then adjusted via various additions to and deductions from income, found in R.C. 5747.01(A), to arrive at OAGI. OAGI is then further reduced by exemptions before being subjected to Ohio's progressive income tax rates. R.C. 5747.02(A)(3). In determining OAGI, there are five deductions that are specifically applicable to servicemembers.

1. Division (A)(22) of R.C. 5747.01 allows a taxpayer to deduct any reimbursement, received from the Ohio adjutant general, for payment of group life insurance, if:
 - The amount is included in the taxpayer's FAGI;
 - The taxpayer was a member of the Ohio National Guard and purchased group life insurance pursuant to the "Servicemembers' Group Life Insurance Act"; **and**
 - The taxpayer was on active duty in the Ohio National Guard for the month for which the premium was paid.
2. Division (A)(23) of R.C. 5747.01 allows a taxpayer to deduct death benefits paid by the Ohio adjutant general, if:
 - The amount is included in the taxpayer's FAGI; and
 - The taxpayer died while performing active duty in the Ohio National Guard.
3. Division (A)(24) of R.C. 5747.01 allows a taxpayer to deduct military pay and allowances, if:
 - The amount is included in the taxpayer's FAGI;
 - The taxpayer was in active duty service in the United States army, air force, navy, marine corps, or coast guard or reserve components thereof, or the national guard; **and**
 - The taxpayer does not receive the amount while **stationed** in Ohio.

The term "stationed" refers to the servicemember's permanent duty station. A servicemember's "permanent duty station" is the military installation where the active duty servicemember (e.g., an Ohio resident servicemember in the National Guard or military reserve forces) "is currently assigned and is physically located under competent orders that do not specify the duty as temporary." See R.C. 5103.20, Article II, (U).

"Stationed" does not include periods of training in which a servicemember, either individually or as part of a unit, departs from his/her permanent place of duty and then returns following the completion of the training. However, periods of active duty outside Ohio for purposes other than training, or periods of training greater than 30 days outside Ohio, do qualify as being stationed outside Ohio.

4. Division (A)(26) of R.C. 5747.01 allows a taxpayer to deduct retired personnel pay, if:
 - The amount is included in the taxpayer's FAGI;
 - The amount **was not** used to claim the Ohio retirement income, lump-sum retirement, or lump-sum distribution credit; and **either**
 - The amount is related to the taxpayer's service in the uniformed services or reserve components thereof, or the national guard; **or**
 - The amount is received by the taxpayer's surviving spouse or former spouse under the survivor benefit plan because of the taxpayer's death.

Division (A)(26) of R.C. 5747.01 also allows a deduction for the portion of income from a retirement program established and maintained for retired employees of the United States government (e.g., the federal civil service retirement system or the federal employees retirement system), if:

- The amount is included in the taxpayer's FAGI;
- The amount is not otherwise deducted in computing OAGI;
- The amount is attributable to the taxpayer's uniformed service; **and**
- The amount is based, in whole or in part, on credit for the taxpayer's uniformed service.

The term "uniformed services" includes the Army, Navy, Air Force, Marine Corps, and Coast Guard; and the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service. R.C. 5747.01(GG).

5. Division (A)(27) of R.C. 5747.01 allows a taxpayer to deduct amounts received from the Ohio "military injury relief fund," if the amount is included in the taxpayer's FAGI.

Ohio Law- Death During Active Service or Terroristic/ Military Action. As an exception to the general tax provisions, and notwithstanding any of the previously listed deductions, any active duty servicemember who dies in a combat zone, or as a result of wounds from service in a combat zone, is exempt from Ohio income and school district income taxes, including interest and penalties, for the taxable year in which s/he dies, and for all future taxable years, provided the individual is likewise exempt from federal income taxes under 26 U.S.C. §692(a)(1) for those years. R.C. 5747.023(A)(1) and (2).

Additionally, an individual is exempt from Ohio income and school district income taxes, including interest and penalties, for the taxable year if the individual dies from "wounds or injury incurred while the individual was a military or civilian employee of the United States and also incurred outside the United States in a terroristic or military action," again provided the individual is also exempt from federal income taxes under 26 U.S.C. §692(c) for such taxable year. R.C. 5747.023(B).

These exclusions apply whether the deceased servicemember's estate files a single return, or the deceased servicemember is included on a joint return. In the event of inclusion on a joint return, such exempt income, to the extent it is included in FAGI, should be deducted on Ohio Schedule A. R.C. 5747.023(C).

Ohio Law- Exclusion from Adjusted Gross Income. Military pay and allowances received by members of the armed forces of the United States that are not included in FAGI are, by definition, not included in OAGI. R.C. 5747.024. Accordingly, nothing in Ohio law permits a deduction for amounts already excluded from FAGI.

Ohio Law- Filing & Payment Extensions for Active Duty Servicemembers. In addition to the general extension allowed under Ohio Adm.Code 5703-7-05, R.C. 5747.026 provides active duty servicemembers a special extension of time to **both file** Ohio income tax and school district income tax returns and to **pay** said taxes. This extension includes the servicemember's entire duty service time, plus 60 additional days after its completion. To obtain the extension, qualifying servicemembers **must file an application** on or before the 60th day after their duty ends. The servicemember may need to provide documentation to verify eligibility for the extension.

Upon verification that the servicemember is entitled to the extension, the tax commissioner will enter into a contract, containing terms the commissioner deems appropriate, with the servicemember-applicant. R.C. 5747.026(B). The contract will, among other things:

- Extend the due date for the servicemember to file his/her Ohio and school district income tax returns

to the 61st day after the applicant's active duty terminates;

- Allow for the payment of Ohio and school district income tax in installments that begin on the 61st day after the applicant's active duty terminates; and
- Will suspend the imposition of interest, penalties, and the interest penalty for those servicemembers who timely make payments as set forth in the contract.

If the amount owed is \$2,400 or less, the contract terms relating to tax payments cannot exceed 12 months; if the amount owed is more than \$2,400, the contract terms relating to tax payments cannot exceed 24 months.

Alternatively, a servicemember who receives a filing and payment extension for his/her federal income tax return is also entitled to a corresponding Ohio extension, equal the amount of time granted by the IRS, for filing and payment relating to his/her Ohio and school district income taxes. The taxpayer will not incur any interest, penalties, or interest penalties, during the extension period. R.C. 5747.026(C).

The extensions under R.C. 5747.026 apply to the civilian spouse of a servicemember, provided the servicemember and spouse file a joint tax return for that year. See R.C. 5747.026(D) and 5747.08(E).

Federal Law- Servicemember Civil Relief Act. Sections 501- 597b of 50 U.S.C., better known as the Servicemembers Civil Relief Act (the "SCRA"), serves to ease the legal and financial burdens on servicemembers, and their families, brought on by the demands of active duty in the Armed Forces. Of note, the SCRA contains domicile determinations and tax preemptions, regarding both servicemembers as well as their civilian spouses, that are applicable to all 50 states and the District of Columbia.

Federal Law- Servicemembers. Under §571(b) of the SCRA, each state and local tax agency are required to exclude from taxable income a servicemember's military service compensation if the servicemember is **not domiciled in the taxing jurisdiction in which the servicemember is serving.**

Underlying the concept of domicile is a servicemember's "state of legal residence." A servicemember's state of legal residence is where the servicemember considers his/her permanent home. The state of legal residence does not change because the servicemember is assigned to a specific location. Section §571(a)(1) of the SCRA makes it clear that "[a] service member shall neither lose nor acquire a residence or domicile for purposes of taxation" on income, "by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders."

Instead, the state of legal residence remains constant unless the servicemember takes affirmative steps to change his/her state of legal residence. These steps include actions to change both: 1) the servicemember's military records (i.e. filing the proper paperwork with the military) **and** 2) the servicemember's manifested intent to call a specific place home (e.g., physically moving, changing the delivery address for mail, registering to vote, registering vehicles, obtaining a driver's license or state ID). "State of legal residence" is not necessarily the same as a servicemember's "home of record", which is the address listed on the servicemember's DD 2058 on the enlistment date.

Federal Law- Civilian Spouse of Servicemember. In 2009, Congress amended SCRA to extend the principle of domicile applied to a servicemember to the servicemember's civilian spouse. Therefore, a servicemember's civilian spouse who both:

- Resides in a taxing jurisdiction solely due to the military orders of his/her servicemember-spouse, and
- Is domiciled in a taxing jurisdiction different from where s/he resides,

is only **subject to tax where the spouse is domiciled**. 50 U.S.C. §571(c). The civilian spouse is not subject to tax in the jurisdiction in which the spouse resides, even on income earned or received for work performed in the jurisdiction. In lieu of this, the civilian spouse is subject to tax in the jurisdiction in which s/he is domiciled.

As with servicemembers, a civilian spouse's domicile is governed by his/her "state of legal residence." The servicemember's spouse's state of legal residence does not change simply because s/he moves due to the servicemember's military orders. Section 571(a)(2)(A) of the SCRA states that a servicemember's civilian spouse can "neither lose nor acquire a residence or domicile for the purposes of taxation" if the spouse is "absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders" **provided that the servicemember and the spouse have the same residence or domicile**. Again, the civilian spouse's state of legal residence, and thus domicile, remains constant unless the spouse takes affirmative steps to change his/her state of legal residence.

Additionally, effective for tax years 2018 and forward, the civilian spouse can elect to have the same state of legal residence as the servicemember. 50 U.S.C. §571(a)(2)(B). This includes the tax year in which the couple was married, as well as any subsequent tax year during the marriage.

Guidance

Resident Servicemember.[†] A servicemember whose state of legal residence is Ohio is considered to be domiciled in Ohio, and thus a "resident" for Ohio income and school district income tax purposes. Ohio-domiciled servicemembers **stationed in Ohio** are taxed the same as any Ohio resident. The servicemember's Ohio-sourced income, military or otherwise, is subject to Ohio's income tax. The servicemember's non-Ohio sourced, non-military income is also taxed to Ohio, but is eligible for Ohio's resident credit if the servicemember was subject to, and paid tax on, the non-Ohio income in another state. R.C. 5747.05(B). If the servicemember resides in a taxing school district, then his/her income is also subject to school district income tax.

However, a servicemember who is domiciled in Ohio but earns military income for duties while stationed outside Ohio is entitled to the deduction under R.C. 5747.01(A)(24). Thus, the Ohio-domiciled servicemember **stationed outside Ohio** is **not liable** for either Ohio income tax or school district income tax on those amounts.

Nonresident Servicemember.[†] A servicemember whose state of legal residence is a state other than Ohio is considered to be domiciled in that state, and thus is a "nonresident" for Ohio income and school district income tax purposes. Based on the SCRA, a nonresident servicemember cannot be taxed by Ohio on his/her **military income**, regardless of whether it is earned for service in Ohio or not. These amounts are fully deductible in the computation of OAGI. Additionally, a nonresident servicemember is entitled to a nonresident credit for any non-military income earned outside Ohio during the taxable year (e.g., bank interest from a savings account or personal investment income). R.C. 5747.05(A).

However, a nonresident servicemember **must pay Ohio tax** on any non-military income that is based on activities or services in Ohio (e.g. income earned from an Ohio-based weekend business). These amounts are neither deductible under the SCRA nor eligible for Ohio's nonresident credit.

[†] The general taxability of income for servicemembers and servicemembers' civilian spouses is summarized in the flowcharts included at the end of this information release.

A nonresident servicemember is never liable for school district income tax.

Special Circumstances for Servicemembers. The above sections discuss the general ability of Ohio to tax resident and nonresident servicemembers. However, there are exceptions to these general rules. Ohio law provides special deductions for payments made from the “military injury relief fund” and for death benefits paid by the Ohio adjutant general. See R.C. 5747.01(A)(23) and (27). Ohio law also grants a blanket exemption to those servicemembers who died while in active service, and for those military or civilian employees who died from injury incurred outside the U.S. in a terroristic or military action. R.C. 5747.023.

Civilian Spouse of Servicemember.[†] An Ohio-domiciled civilian spouse of a servicemember who resides in Ohio is, like their servicemember-spouse, liable for Ohio income tax. This includes a civilian spouse who elects to use Ohio as his/her residence for tax purposes. 50 U.S.C. §571(a)(2)(B). The civilian spouse’s non-Ohio sourced income is also taxed to Ohio, but is eligible for Ohio’s resident credit if the spouse was subject to, and paid tax on, the non-Ohio income in another state. R.C. 5747.05(B). Remember, however, that another state is **prohibited** from taxing the civilian spouse on income earned or received for work performed in that state if s/he is domiciled in Ohio and resides in the other state because of his/her servicemember-spouse’s military orders. As such, that income is typically ineligible for Ohio’s resident credit, since it is not taxed in another state. Finally, if the civilian spouse is a resident of a taxing school district, then his/her income is also subject to school district income tax.

A nonresident civilian spouse is entitled to a nonresident credit for **non-Ohio** income that the spouse earns during the taxable year (e.g., bank interest from a savings account or personal investment income). R.C. 5747.05(A). The taxability of a nonresident civilian spouse’s **Ohio-sourced income** depends on if the spouse and servicemember have **the same** state of legal residence (i.e. domicile), or **different** states of legal residence.

Under the SCRA, a nonresident civilian spouse **cannot be taxed** on his/her income, regardless of whether it is earned for service in Ohio or not, if:

- The spouse and the servicemember either have or elect to have the same state of legal residence outside Ohio, and
- The servicemember and spouse are in Ohio because of military orders.

However, the nonresident civilian spouse **must pay Ohio tax** if s/he earns income that is based on activities or services in Ohio (e.g., income earned from an Ohio-based weekend business), **and** his/her state of legal residence is different from the servicemember-spouse’s state of legal residence.

A nonresident civilian spouse is never liable for school district income tax.

Ohio Withholding. An Ohio employer is generally required to withhold from each employee an amount that reasonably estimates the employee’s Ohio income and school district income tax liability based on his/her compensation. R.C. 5747.06(A). Thus, servicemembers eligible for the deduction under R.C. 5747.01(A)(24) or exempt from Ohio income tax under federal law, may request that the military exempt them from Ohio withholding by submitting Ohio form IT 4 MIL to their military finance office. Likewise, the civilian spouse of a servicemember, who is exempt from Ohio income tax under federal law, may request an exemption from Ohio withholding from his/her employer by submitting Ohio form IT MIL-SP to said employer. These respective exemptions are only for the income earned for which the servicemember, or the servicemember’s civilian spouse, would **not** be liable for Ohio and/or school district income tax.

Retired Servicemember. Retired servicemembers are entitled to deduct “retired personnel pay” provided it is related to service in the uniformed services or reserve components thereof, or the national guard. R.C. 5747.01(A)(26). If the retired personnel pay is tied to a plan such as the federal civil service retirement system or the federal employee’s retirement system, the portion of that income that is based on the retired servicemember’s time in the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, and/or the Public Health Service is eligible for the Ohio income tax deduction. See R.C. 5747.01(A)(26).

Each taxpayer eligible for the limited deduction should refer to his/her federal civil service retirement benefit handbook to determine his/her number of years of military service. To calculate the deductible portion of the taxpayer’s federal retired personnel pay, the taxpayer should 1) divide the number of years of military service by the total number of years of combined military service and civilian employment with the U.S. government, and 2) multiply that amount by the amount of federal civil service pension included in FAGI for the tax year.

Example: Joe Servicemember served in the Army for 10 years and then worked for the U.S. National Parks Service for an additional 20 years before retiring; a total of 30 years of federal service time. Joe’s total federal pension is \$100,000, \$90,000 of which is included in his FAGI. In calculating his Ohio deduction, Joe should divide 10 by 30, and then multiply that amount by \$90,000, or $\$90,000 \times (10/30)$. Thus, Joe can exclude \$30,000, or 1/3 of the portion of his retired personnel pay included in FAGI, under R.C. 5747.01(A)(26).

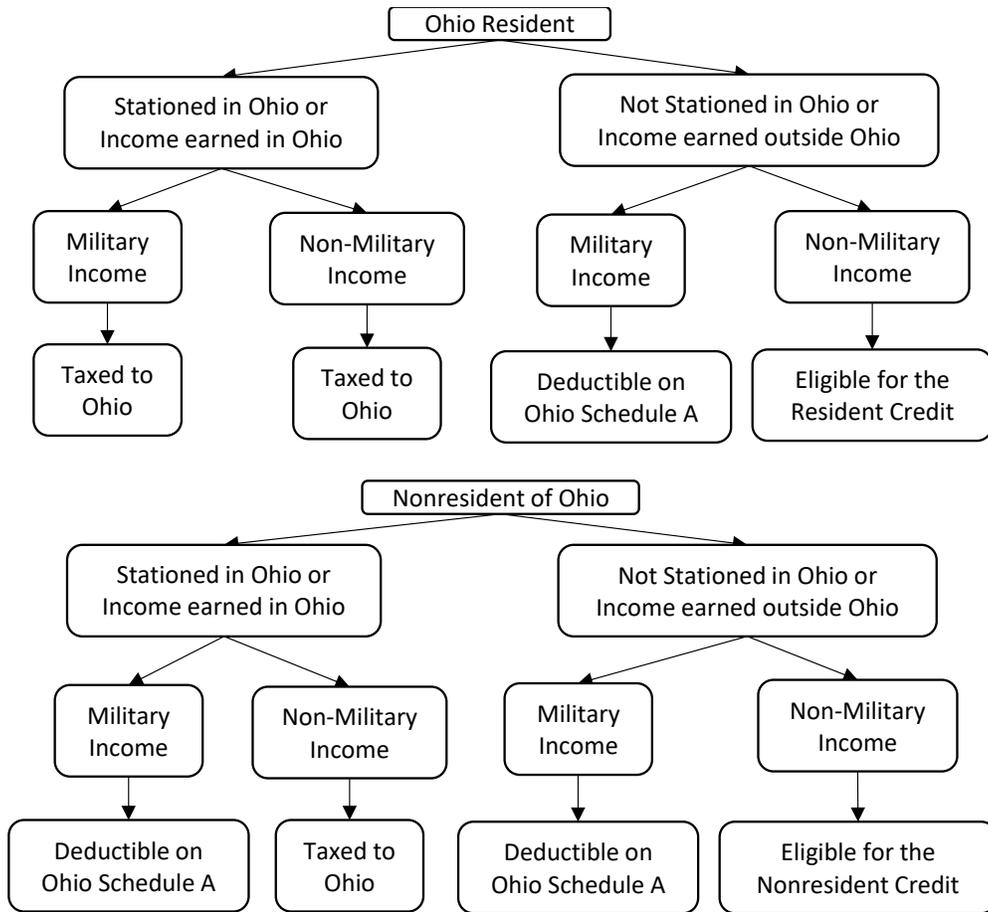
Finally, if a servicemember’s surviving spouse and/or former spouse are collecting payments under a “survivor benefit plan” on account of the servicemember’s death, then this income received by the surviving spouse and/or former spouse from the survivor benefit plan is deductible if it is included in his/her federal adjusted gross income.

Questions?

The Department of Taxation recommends that taxpayers first check out the answers to frequently asked questions by reviewing the “Military” FAQ category at <https://www.tax.ohio.gov/faq.aspx>.

Taxpayers may visit www.tax.ohio.gov. Questions may be submitted by clicking on the “Contact” link found at the top right of the page and then choosing the “Email Us” option. Taxpayers with additional questions regarding this subject may contact Individual Income Taxpayer Services at 1-800-282-1780, or at 1-800-750-0750 for the hearing impaired.

Taxability of a Servicemember's Income



Taxability of a Servicemember's Civilian Spouse's Income

