

Information Release

IT 2008-02

Military Taxpayer Guide to Taxable Income and Deductions – Issued Oct. 17, 2008

The purpose of this information release is to discuss the various Ohio income tax benefits available for (i) servicemembers (and retired servicemembers) domiciled in Ohio and (ii) servicemembers (and retired servicemembers) not domiciled in Ohio.¹

Ohio-domiciled servicemembers who are stationed inside this state are liable for state income tax, as well as for school district income tax at their place of domicile if their domicile is within a taxing school district.

This information release addresses the following topics:

- An overview of "domicile" and "residency" for Ohio income tax purposes,
- Extended due dates and payment dates available to certain servicemembers,
- Special deductions available to certain servicemembers, and
- Full exemption from Ohio income tax and from school district income tax for certain servicemembers (and for certain civilians).

"Domicile" and "Residency"²

A military servicemember who is a legal resident³ of Ohio is presumed to be domiciled in Ohio and is thus a "resident taxpayer." As explained in the succeeding paragraphs, the legal residence of a military servicemember is the place where the servicemember was residing at the time the servicemember entered the military, unless the servicemember (i) takes action to change in the servicemember's military records her/his residence and (ii) manifests an intent to change her/his residence.

Under Ohio's income tax law, a taxpayer is a "resident taxpayer" if the taxpayer is "domiciled" in Ohio. See division (I)(1) of [Ohio Revised Code section 5747.01](#).⁴ An individual who is not a "resident" of Ohio for any portion of the year is a "nonresident," but an individual who is a resident of Ohio for only a portion of the taxable year is a nonresident for the other portion that taxable year. See division (J) of [Ohio Revised Code section 5747.01](#). For ease of reading, the department uses the term "part-year resident" to describe a taxpayer who meets "(I)," below, and either "(II)(a)" or "(II)(b)," below:

(I) The taxpayer is a resident for only a portion of the current taxable year and

(II)(a) For the taxable year immediately preceding the current taxable year the taxpayer was a full-year nonresident, and for the taxable year immediately following the current taxable year the taxpayer will be a full-year resident,

or

(II)(b) For the taxable year immediately preceding the current taxable year the taxpayer was a full-year resident and for the taxable year immediately following the current taxable year will be a full-year nonresident.

Except in rare circumstances no individual can be a part-year resident for more than one consecutive taxable year.⁵ For example, assume an individual resides in Florida from January 1 until March 21 each calendar year. The individual then resides in Ohio from March 21 of each year until immediately before Thanksgiving of each year. From Thanksgiving of each year through the remainder of the year and until March 21 of the immediately succeeding year the individual again resides in Florida. The taxpayer repeats this cycle each year. For Ohio income tax purposes the individual is a full-year “resident” of, and a full-year domiciliary of, Ohio each year; for Ohio income tax purposes this individual is not a “part-year resident” of Ohio for any year.

An individual can be domiciled in Ohio (and in a school district within Ohio) even if the individual spends no time in Ohio during any portion of the year. For example, assume an individual who was "born and raised" in Pickerington, Ohio enlists in the U.S. Armed Forces immediately after graduating from Pickerington High School in June of the taxable year, and her/his duty station(s) is (are) outside Ohio. From the day the individual enlists and continuing for several years, this individual does not return to Ohio.

In this example, as of the date of enlistment the taxpayer no longer resides (lives in) Ohio (because s/he left Ohio), but s/he continues to be domiciled each year in Ohio because the taxpayer's state of legal residence continues to be Ohio. As such, for Ohio and school district income tax purposes this individual continues to be a full-year "resident," and s/he must pay Ohio income tax and Pickerington school district tax as a full-year Ohio “resident” – even though this individual no longer physically resides in Ohio.

[Ohio Revised Code section 5747.24](#) provides that an individual can be "irrebuttably presumed" to be a full-year "nonresident" under the following five circumstances:

- The individual did not change domicile from or to Ohio during the taxable year,
- During the taxable year the individual has no more than 182 contact periods in this state, which need not be consecutive,⁶
- During the entire taxable year the individual has at least one abode outside the state,
- On or before the sixtieth day after the end of the third month⁷ following the close of the taxable year the individual files with the Ohio tax commissioner either form [ITDA-M](#) for servicemembers or [ITDA-NM](#) for civilians, the affidavit which verifies that the individual was not domiciled in this state during the taxable year, and
- The affidavit is not false.

Servicemembers, like civilians, who meet the five requirements set forth above are irrebuttably presumed to be full-year non residents for Ohio income tax purposes. However, if a servicemember's state of legal residence on U.S. Department of Defense Form 2058,

"state of legal residence certificate," or equivalent in the servicemember's military personnel record shows that Ohio is the servicemember's state of legal residence, then the affidavit (Ohio tax department form ITDA-M) contains a false statement, and that servicemember is presumed to be domiciled in this state for the entire taxable year and thus is presumed to be a full-year "resident" for Ohio and school district income tax purposes.⁸ Note: generally, military finance officers withhold state and local income taxes only for the state listed on Department of Defense form DD2058 as the servicemember's home of record.

For additional information regarding "domicile" and "residency," see information release IT 2007-08, [Personal Income Tax: Residency Guidelines – Tax Imposed on Resident and Nonresident Individuals for Post-2006 Taxable Years](#), issued December, 2007 and revised July, 2008.

Extended Due Dates and Extended Payment Dates

General rule – Tax Return Filing Due Date: Unless any of the exceptions discussed below, applies, Ohio and school district income tax returns are due on the same date on which the U.S. individual income tax return is due. So, (i) if the taxpayer has secured from the IRS an extension of time to file her/his U.S. individual income tax return or (ii) if the IRS has announced an extension of time to file the U.S. individual income tax return and if that announcement applies to the taxpayer or (iii) if federal law (generally the Internal Revenue Code) provides for an extension of time to file the U.S. individual income tax return and if that law applies to the taxpayer, then, unless any of the exceptions, discussed below, applies, the due date for filing the Ohio and school district income tax returns, is extended to the same extended due date for filing the U.S. individual income tax return.⁹

General rule – Tax Payment Due Date: An extension of time to file the Ohio income tax return is not an "automatic" extension of time to pay the balance of any Ohio and school district income tax due. As such, unless any of the exceptions, discussed below, applies, each taxpayer to whom a filing extension applies must pay by the unextended due date at least 90% of the total tax (net of credits) imposed for the year and must pay by the extended due date the balance of the tax due. Unless any of the exceptions, discussed below, applies, failure-to-pay-timely penalties will apply to each taxpayer (i) who does not pay by the unextended due date at least 90% of the total tax (net of credits) imposed for the year and (ii) who does not pay by the extended due date the balance of the tax due. Regardless of the percentage to tax (net of credits) the taxpayer pays by the unextended due date, interest will apply to all amounts remaining unpaid as of the unextended due date – unless any of the exceptions, discussed below, applies.¹⁰

Exception for Military Personnel Serving in a Combat Zone: The Ohio Department of Taxation announced in Information Release [IT 2002-01](#), dated Feb. 1, 2002, the following provisions apply (unless more liberal provisions, discussed later in this information release, apply):

- The due date for making Ohio and school district estimated income tax payments, Ohio and school district income tax return payments, and Ohio and school district income tax return filings is extended for 180 days beyond the period of service in the combat zone, plus time in missing-in-action status and time in continuous hospitalization outside the U.S. and up to five years of hospitalization within the U.S. resulting from injuries received in the combat zone.
- The Tax Commissioner has waived all related interest penalties, failure-to-pay penalties, and failure-to-file penalties otherwise due during the suspension period.
- The taxpayer must pay interest with respect to Ohio and school district income tax return payments made after the fifteenth day of April of each year following the last day of the taxable year.
- The Department will not pay interest on refunds issued within ninety days after the taxpayer files the return.

Filing and payment exception for certain members of the National Guard and for certain members of a reserve component of the armed forces.

[Ohio Revised Code section 5747.026](#) provides that for taxable years beginning on or after Jan. 1, 2002 each member of the national guard in any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the president of the United States or an act of the congress of the United States may apply to the tax commissioner for both an extension of time for filing of Ohio income tax and school district income tax return and an extension of time for payment of the related taxes. This extension period includes the period of the member's duty service and for sixty days thereafter.

Taxpayers who qualify for this extension provision must file the application on or before the sixtieth day after the taxpayer's duty terminates. The tax commissioner may ask for documentation showing that the applicant qualifies for the extension provided by [Ohio Revised Code section 5747.026](#).

If the tax commissioner ascertains that an applicant is qualified for an extension under this law, the tax commissioner will enter into a contract with the applicant for the payment of the tax in installments that begin on the sixty-first day after the applicant's active duty terminates. The law provides that the tax commissioner may prescribe such contract terms as the tax commissioner considers appropriate. If the amount owed is two thousand four hundred dollars or less, the contract shall be for not longer than twelve months, and if the amount owed is more than two thousand four hundred dollars, the contract shall be for not longer than twenty-four months.

Qualifying taxpayers need not file their Ohio and school district income tax returns until the sixty-first day after the applicant's active duty terminates. In addition, these taxpayers who timely make payments as set forth in the contract will not owe penalties, interest penalties, or interest in connection with those taxes for the extension period.

This law further provides that each qualifying taxpayer who is eligible for an extension of time to file her/his U. S. income tax return, IRS form 1040, under the Internal Revenue Code has both the same extension of time in which to file her/his Ohio income tax and school district income tax returns and the same an extension of time to pay the related taxes without incurring any penalties, interest penalties, or interest in connection with those taxes for the extension period.

All the extension provisions discussed immediately above apply to the spouse of the qualifying taxpayer if the filing status is married filing jointly for that year.

Special Deductions Available to Certain Servicemembers

Combat Zone Pay

Division (A) of Ohio Revised Code section 5747.01 defines "Ohio adjusted gross income," which is the tax base for Ohio and school district income tax. In deriving Ohio adjusted gross income, the "starting point" is adjusted gross income as defined in the Internal Revenue Code (we often refer to this starting point as "federal adjusted gross income"). Division (A) sets forth various adjustments to federal adjusted gross income. These adjustments do not include adding to federal adjusted gross income any portion of combat zone pay (income) which is excluded from federal adjusted gross income. As such, combat zone pay is not included in Ohio adjusted gross income and is not subject to Ohio or school district income tax.

Military Service Compensation Received in Ohio by Servicemembers Not Domiciled in Ohio

Sections 511(b) and 511(d) of the federal [Servicemembers Civil Relief Act](#) require each state and local tax agency to exclude from taxable income military service compensation of each servicemember if the servicemember is not domiciled in the taxing jurisdiction in which the servicemember is serving.¹¹ To comply with this law, we provide a line item adjustment deduction on the Ohio income tax return, form [IT 1040](#): see page 3, Schedule A, line 36.

Post-2006 Military Service Compensation Received Outside Ohio by Servicemembers Domiciled in Ohio.

Division (A)(24) of [Ohio Revised Code section 5747.01](#) provides that for taxable years beginning after December 31, 2006 each Ohio domiciled military servicemember, while stationed outside Ohio can exclude from Ohio adjusted gross income (and thus pay no Ohio or school district income tax on) "military pay and allowances received by the taxpayer during the taxable year for active duty service in the United States army, air

force, navy, marine corps, or coast guard or reserve components thereof or the national guard” if the pay and allowances are included in federal adjusted gross income. This exclusion is not available for pre-2007 taxable years. For taxable years prior to 2007 the income is not excludable and must be included in Ohio adjusted gross income. Furthermore, – for any and all years – pay for service in a combat zone is not eligible for this exclusion if that pay is already excluded from federal adjusted gross income.

The term “stationed” refers to an Ohio resident servicemember’s permanent place of military duty. A servicemember is not stationed outside her/his permanent place of duty state for any period(s) during which the servicemember, either individually or as part of a unit, departs his/her permanent place of duty state for training and then, following the completion of the training, returns to her/his permanent place of duty state.

Examples of military pay and allowances which do qualify for this deduction include the following:

- Military pay and allowances received while a member of the Active Component of the U.S. Armed Forces and assigned to a permanent duty station outside Ohio.
- Military pay and allowances received while a member of the National Guard or the Reserve Components of the U.S. Armed Forces in an active duty status, other than training status not described below, outside Ohio.
- Military pay and allowances received while a member of a unit of the National Guard or the Reserve Components of the U.S. Armed Forces under federal mobilization orders in which the unit mobilizes for training at a non-Ohio location followed by an operational deployment to any non-Ohio location.
- Military pay and allowances received by cadets at the U.S. service academies – the Military Academy, the Naval Academy, the Air Force Academy and the Coast Guard Academy. Cadets are serving on active duty under the provisions of 38 United States Code section 101 (21) and are eligible for this deduction for the pay they receive while stationed at these facilities to the extent that this pay is included in federal adjusted gross income (line 1 on the Ohio income tax return). However, this deduction is not available for pay received for service in the Reserve Officer Training Corps.

Servicemembers eligible for this deduction may request that the military exempt them from Ohio withholding only during the period of their service outside the state by submitting Ohio form [IT 4 MIL](#) to their military finance office. Military pay and allowances for servicemembers of all military components who are Ohio residents and who are stationed inside Ohio will continue to be subject to Ohio individual income tax and also subject to school district income tax if the servicemember is domiciled in a taxing school district.

Post-2007 Deduction for Military Retirement Pay

Division (A)(26) of [Ohio Revised Code section 5747.01](#) provides that for taxable years beginning after 2007 taxpayers who retired from service in the active or reserve compo-

nents of the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard or national guard (any state) can deduct the pay the taxpayers receive for their military retirement to the extent that pay is not otherwise deducted or excluded in computing Ohio adjusted gross income. Taxpayers who served in the military and receive a federal civil service retirement pension are also eligible for a limited deduction if any portion of their federal retirement pay is based on credit for their military service. These retirees can deduct only the amount of their federal retirement pay that is attributable to their military service.

Each taxpayer eligible for this limited deduction should refer to her/his federal civil service retirement benefit handbook to determine the number of years of military service. 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 (once the taxpayer has calculated the fraction, s/he does not have to recompute it from year to year to claim the tax credit, since the service years and the total years used in the calculation will not change). Take this fraction and multiply it by the amount of your federal civil service pension you have included in federal adjusted gross income (line 1 on the Ohio income tax return, form [IT 1040](#)). The resulting number is the amount of your federal civil service pension that you can deduct (see line 45g on page 3 of the Ohio income tax return, form [IT 1040](#)).

Example: The taxpayer has included in federal adjusted gross income (line 1 of the Ohio income tax return, form IT 1040) \$60,000 which the taxpayer received as a federal civil service pension. The taxpayer has 15 years of military service and 45 years of combined military service and civilian employment with the U.S. government. The fraction is $15/45 = 1/3$. The taxpayer can deduct \$20,000 on line 45g on the year 2008 form IT 1040: $1/3 \times \$60,000$.

This deduction also applies to such amounts received by the surviving spouse or the former spouse of each military retiree who is receiving payments under the survivor benefit plan. Please note that child support receipts, regardless of the source, are not included in federal adjusted gross income; so these amounts are not deductible.

Each taxpayer not having her/his federal civil service retirement handbook may contact the U.S. Office of Personnel Management (OPM) at 1-888-767-6738 or TDD 1-800-878-5707. Taxpayers may also e-mail OPM at retire@opm.gov or use its web site at www.opm.gov/retire to request the booklet. The taxpayer should be sure to specify that s/he wants a REPLACEMENT booklet (there are other types). An OPM customer service representative will tell the taxpayer how much military and total service time the taxpayer has and can land mail to the taxpayer a screen print or short form letter with the information.

Post-2007 Deduction for Certain Military Injury Relief Fund Receipts

Division (A)(27) of [Ohio Revised Code section 5747.01](#) provides that for taxable years beginning after 2007 each taxpayer can deduct (see line 45g on the year 2008 Ohio income tax return, form [IT 1040](#)) military injury relief amounts which the taxpayer has in-

cluded in federal adjusted gross income (line 1 on the Ohio income tax return, form IT 1040). Note: the taxpayer does not have to include in federal adjusted gross income, and the taxpayer cannot deduct on the Ohio income tax return, military injury relief fund amounts that the taxpayer received on account of physical injuries or psychological injuries, such as post-traumatic stress disorder, if such psychological injuries are a direct result of military action.

Deduction for Reimbursement of Certain National Guard Group Life Insurance Premiums

Division (A)(22) of [Ohio Revised Code section 5747.01](#) provides that each taxpayer who has received from the Ohio Adjutant-General any reimbursement for payment of group life insurance can deduct these amounts (see line 42 on the year 2008 Ohio income tax return, form [IT 1040](#)) under the following circumstances:

- Such amounts are included in federal adjusted gross income (line 1 of the Ohio income tax return, form IT 1040),
- The Ohio National Guard member had purchased group life insurance pursuant to the "Servicemembers' Group Life Insurance Act," [38 U.S.C. 1965](#), and
- The Ohio National Guard active duty member paid the premium(s) for each month or part of a month that the member was an active duty member of the Ohio National Guard. See, also, [Ohio Revised Code section 5919.31](#).

Deduction for Certain National Guard Death Benefits

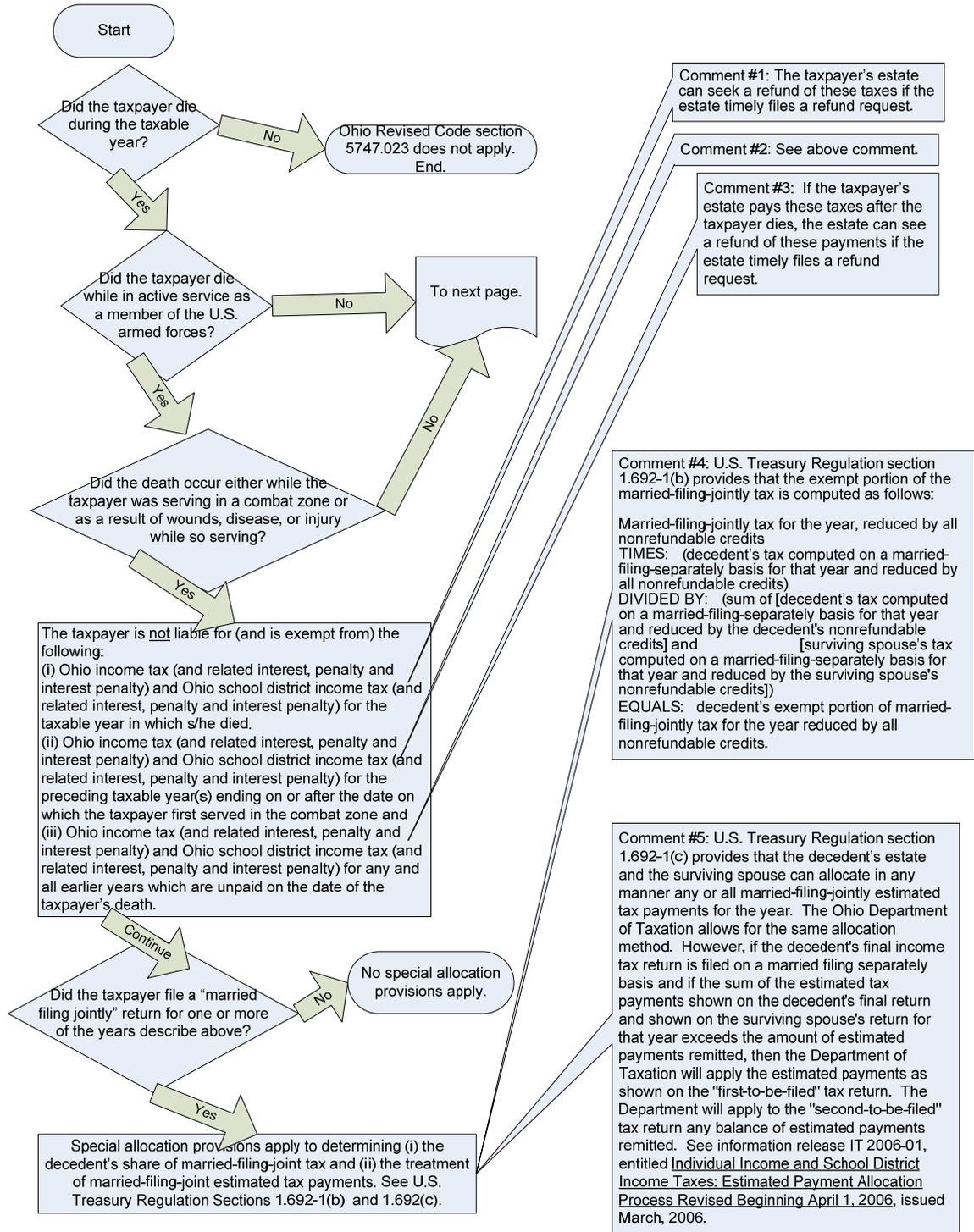
Division (A)(23) of [Ohio Revised Code section 5747.01](#) provides that each taxpayer who has received from the Ohio Adjutant-General death benefits with respect to any active duty member of the Ohio National Guard who died while performing active duty. "Active duty member" means a member of the Ohio National Guard on active duty pursuant to an executive order of the president of the United States pursuant to the "Active October 28, 2004," [32 U.S.C. 901](#), another act of the Congress of the United States, or a proclamation of the governor. However, "active duty member" does not include a member performing full-time Ohio National Guard duty or performing special work active duty under the "Act of October 3, 1964," [32 U.S.C. 502\(f\)](#). See [Ohio Revised Code 5919.33](#).

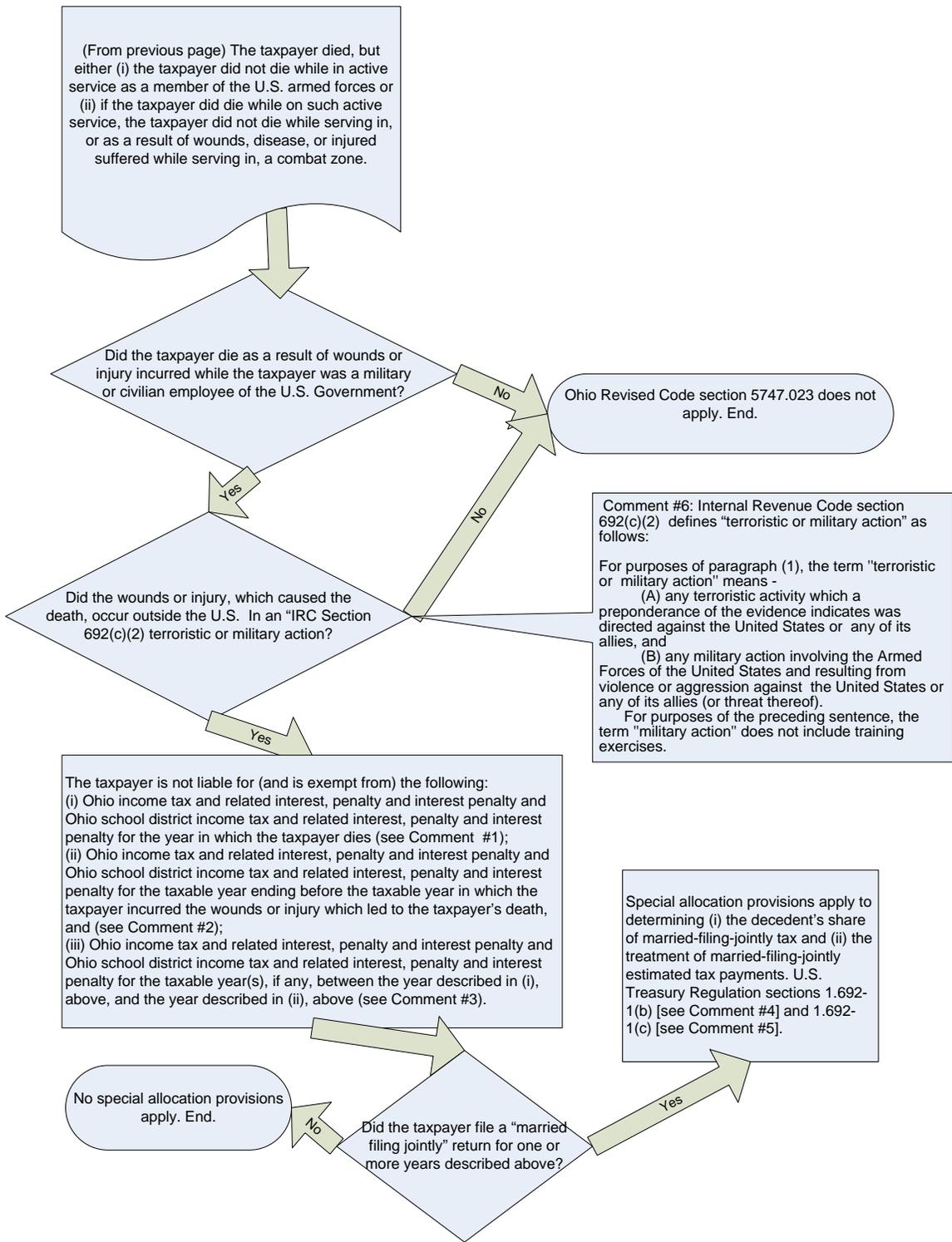
Note: the recipient of such death benefits can claim this deduction only if the death benefit proceeds have been included in federal adjusted gross income (line 1 on the Ohio income tax return, form IT 1040).

Exemption for Servicemembers Who Die as a Result of Combat Zone Service and for Certain Civilian Employees of the U. S. Government Who Die as a Result of Terroristic or Military Action

[Ohio Revised Code section 5747.023](#) provides for a full payment exemption from Ohio individual income tax and from school district income tax for servicemembers who die as

a result of combat zone service. On the next two pages is a flow chart that the reader can use to ascertain if this law applies to a taxpayer.





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If you have any questions regarding this information release, please contact us by sending us an e-mail via our home page at tax.ohio.gov.

Endnotes

¹ Several provisions of the federal [Servicemembers Civil Relief Act](#) also provide state and local tax benefits and protections for all servicemembers -- regardless of the servicemember's post of duty. Other provisions of that act contain provisions that apply only to each servicemember stationed outside the state in which is located as the servicemember's home of record. For example, section 511 of that act provides that each state and local government authority which imposes an income tax must exclude from the state's and from the local government's definition of state or local taxable income the compensation of each servicemember who "is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders."

The Internal Revenue Code also provides significant federal income tax benefits to servicemembers serving in combat zones. For more information see the Internal Revenue Service news article ["Tax Information for Members of the U.S. Armed Forces"](#).

² This portion of this information release addresses only Ohio income tax law with respect to domicile and residency. For the federal law treatment of domicile and residency with respect to a servicemember's stationed outside her/his home of record, the reader may also want to refer to section 511 of the federal [Servicemembers Civil Relief Act](#).

³ See U.S. Department of Defense form [DD 2058](#) which uses the term "legal residence."

⁴ Please note that all internet links set forth in this information release are accurate as of the date of issuance of this information release.

⁵ An example of such a "rare circumstance" where an individual can be a part-year Ohio resident for two consecutive years is the following: For many years an individual was domiciled in, and resided in, State "A." From January 1 of the current taxable year ("20X1") through March 31, 20X1 the individual continued to be domiciled in, and continued to reside in, State "A." On April 1, 20X1 the individual's employer (which is neither owned nor controlled by the individual or by any member of the individual's family) permanently transfers the individual to Ohio. On April 1, 20X1 the individual sells her or his home in State "A" and moves with her/his family to Ohio where the individual purchases a home in Ohio. The individual immediately registers to vote in Ohio. From April 1, 20X1 through and including February 28, 20X2 the individual continues to reside in, and be domiciled in, Ohio. On March 1, 20X2, as a result of the individual's employer's merging with another company (which is neither owned nor controlled by the individual or by any member of the individual's family), the individual is transferred back to State "A." The individual immediately sells her/his Ohio home and moves with her/his family back to State "A." In this unusual situation the individual is a part-year Ohio resident for Ohio income tax purposes for two consecutive taxable years: 20X1 and 20X2: s/he resided in, and was domiciled in, Ohio from April 1, 20X1 through December 31, 20X1 and from January 1, 20x2 through February 28, 20x2.

⁶ Division (A)(1) of [Ohio Revised Code section 5747.24](#) states that an individual "has one contact period in this state" if the individual is away overnight from the individual's abode located outside this state and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in this state.

Division (A)(2) of [Ohio Revised Code section 5747.24](#) states that 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.

⁷ Division (B)(1) of section 5747.24 states that the individual must file the affidavit "on or before the fifteenth day of the fourth month following the close of the taxable year . . .". However, [Ohio Revised Code section 5703.35](#) provides that the tax commissioner may extend for a period, not to exceed forty-five days, the time in which to file any report required by law to be filed. Hence, the affidavit is due sixty-days after

the last day of the third month following the close of the individual's taxable year. Note, also, that [Ohio Revised Code section 1.14](#) provides, in part, the following: “The time within which an act is required by law to be done shall be computed by excluding the first and including the last day; except that, when the last day falls on Sunday or a legal holiday, the act may be done on the next succeeding day that is not Sunday or a legal holiday.”

⁸ See the last sentence in the paragraph immediately following division (B)(1)(b) of [Ohio Revised Code section 5747.24](#): “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.”

⁹ The first paragraph of division (G) of [Ohio Revised Code section 5747.08](#) states that both the Ohio income tax return and the Ohio school district income tax return are due by April 15 of each year. However, the second paragraph of that division authorizes the tax commissioner, “upon good cause shown,” to extend the due date for these two tax returns. Based upon this authority the tax commissioner announced years ago, via the instruction booklet for the Ohio income tax return, the “extended due date” return filing policy discussed above.

¹⁰ See the last sentence in the second paragraph of division (G) of [Ohio Revised Code section 5747.08](#): “Except as provided in section [section 5747.132](#) of the Revised Code, in addition to all other interest charges and penalties, all taxes imposed under this chapter or Chapter 5748 of the Revised Code and remaining unpaid after they become due, except combined amounts due of one dollar or less, bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code until paid or until the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.”

¹¹ This section provides, in part, as follows: “A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.”