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DEPARTMENT OF REVENUE

Information Guide

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Determining Residency Status for Nebraska Individual Income Tax Filing

Overview

This guide will assist you in determining your residency status and tax computations when filing Nebraska individual income tax returns. When reporting Nebraska income taxes and filing Nebraska returns, an individual is a resident, a nonresident, or a partial-year resident.

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This guidance document may change with updated information or added examples. The Department recommends you do not print this document. Instead, sign up for the subscription service at revenue.nebraska.gov to get updates on your topics of interest.

Terms

Domicile. Domicile is the place an individual intends to have as his or her true, fixed, and permanent home. Even if the individual is absent at times, domicile is the place to which the individual intends to return. Actual residence is not necessarily domicile. An individual establishes domicile in Nebraska on the date he or she arrives in the state for other than temporary or transitory purposes. Once domicile is established, it remains the individual's domicile until it is abandoned. Domicile in Nebraska is abandoned when an individual leaves the state with no intention of maintaining his or her true, fixed, and permanent home in Nebraska; and establishes a domicile in another state while present in the other state for other than temporary or transitory purposes.

Partial-Year Resident. A partial-year resident is an individual who is a resident for part of the year, but less than the entire year. To be a partial-year resident, a taxpayer must change domicile during the year, either moving into or out of Nebraska.

Permanent Place of Abode. A permanent place of abode is a dwelling place permanently maintained by the taxpayer, whether or not it is owned by the taxpayer. A dwelling means a house, apartment, room, or other accommodation including those used for vacation purposes, suitable for human occupation. It does not include a vacation rental, or dwelling place occupied only temporarily.

Resident. A resident is an individual whose domicile is Nebraska, or an individual who is physically present in this state and maintains a permanent place of abode within this state for an aggregate of more than six months. Nebraska residence will be determined by Nebraska law. If an individual maintains a permanent place of abode in Nebraska and is present in Nebraska for at least 183 days during the tax year, that individual is a Nebraska resident even if domiciled in another state. For this purpose, Nebraska considers any part of a day spent in Nebraska as a day spent in the state.

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Residents

Residents are taxed on their entire federal adjusted gross income (AGI), even if some of it has been earned for services performed outside Nebraska. A credit is allowed for income tax properly paid to another state. Credit for Tax Paid to Another State, Nebraska Schedule II, of Form 1040N must be completed and attached to the Nebraska Individual Income Tax Return, Form 1040N with a copy of the other state's return (including all schedules) to receive the credit.

> **Example 1.** Cliff and Nancy own a drive-in restaurant in Grand Island, Nebraska. They operate the restaurant from April through October each year. They also own a house in Grand Island and live there during the seven months the restaurant is open. During the months the restaurant is closed, Cliff and Nancy return to their home in Texas. They consider Texas to be their domicile because they both grew up there, maintain many ties there, and have never abandoned their Texas domicile even though they have business interests in other states, including Nebraska. Even though Cliff and Nancy are domiciled in Texas, they are Nebraska residents for Nebraska income tax purposes because they maintain a permanent place of abode and spend at least 183 days in Nebraska.

Residency in Nebraska is terminated when an individual leaves the state with no intention of maintaining his or her true, fixed, and permanent home in Nebraska; and establishes a domicile in another state while present in the other state for other than temporary or transitory purposes.

> **Example 2.** Bob and Jean spent their working years, raised a family, and still own a home in Lincoln, Nebraska. They also own a condominium in Destin, Florida. They spend August through October of each year in Nebraska, and the remainder of the year in Florida. Bob and Jean maintain their true, fixed, and permanent home in Nebraska and their stays in Florida are only temporary. Bob and Jean remain residents of Nebraska for income tax purposes because they have not abandoned their domicile, even though they are in Nebraska for less than 183 days each year.

Note: Individuals who enter a branch of the United States military service while domiciled in Nebraska generally remain Nebraska residents throughout their career in the service. This is regardless of where they may be stationed by the military, unless they take legal steps to change their residency. Please see the Nebraska Information Guide Nebraska Income Tax for U.S. Servicemembers, Their Spouses, and Civilians Working With U.S. Forces for additional information for residents, nonresidents, and spouses.

Nonresidents

Nonresidents who have income derived from or connected with Nebraska sources must file a Form 1040N and Nebraska Schedule III – Computation of Nebraska Tax for Nonresidents and Partial-year Residents Only. Please see the instructions for Nebraska Schedule III for additional information.

Nonresidents must report their total federal AGI from all sources, but are subject to Nebraska income tax only on the income derived from or connected with Nebraska sources, as calculated on Nebraska Schedule III. This includes items of income, gain, loss, and deduction related to Nebraska sources, including items directly associated with:

- Any wages, salaries, or other compensation earned in Nebraska;
- Any distributive share of income or losses and deductions from partnerships, limited liability companies, S corporations, cooperatives, estates, and trusts having Nebraska-source income or losses;
- The ownership or sale of any interest in real or tangible personal property located in Nebraska;
- A business, trade, profession, or occupation carried on in Nebraska;
- The income from intangible personal property including annuities, dividends, interest, payments to boards of directors, and gains from the sale of intangible personal property to the extent that this income is from activity or property used in a business, trade, profession, or occupation carried on in Nebraska;

- ❖ Capital gains/losses and net operating losses, only if they are connected to income, gains, losses, and deductions obtained from Nebraska sources;
- ❖ The income from fiduciary services performed for a resident estate or trust; and
- ❖ Amounts paid to a corporation controlled by a nonresident for personal services performed in Nebraska by the nonresident.

The calculation of income tax for nonresidents and partial-year residents is not a matter of simply determining Nebraska source income and calculating tax based on that income. Nonresidents and partial-year residents must calculate a tentative tax based on their entire income from all sources, and then determine the actual tax liability based on the percentage of Nebraska source income compared to all income. The tax is calculated using Nebraska Schedule III.

Nonresidents may make adjustments to income subject to Nebraska tax on Form 1040N, Nebraska Schedule III. Only adjustments which are related to income received from Nebraska sources are allowed. Refer to the Nebraska Schedule III instructions for a list of allowable adjustments. The credit for personal exemptions is claimed by nonresidents on Form 1040N, Nebraska Schedule III. Do not claim this credit on the Form 1040N.

Nonresident partners, members, shareholders, or beneficiaries, whose only connection with this state is conducting the business activities of a partnership, limited liability company, S corporation, or trust, are not required to file a Nebraska income tax return if the entity has properly withheld and remitted income tax withholding on the nonresident's share of the entity's income. All of the income tax withholding will be retained by Nebraska to satisfy any income tax owed by the nonresident. Any nonresident who files the Nebraska Nonresident Income Tax Agreement, Form 12N to avoid income tax withholding must file a Form 1040N and Nebraska Schedule III. Please see the instructions for Nebraska Schedule III for additional information.

Partial-Year Residents

Partial-year residents of Nebraska who have income derived from or connected with Nebraska sources must file a Form 1040N and Nebraska Schedule III.

Partial-year residents are subject to Nebraska income tax on income included in federal AGI derived from or connected with Nebraska sources. A partial-year resident may make adjustments to income subject to Nebraska income tax on Form 1040N, Nebraska Schedule III. Only adjustments which are related to income received from Nebraska sources are allowed. Refer to the Form 1040N, Schedule III instructions for a list of allowable adjustments.

A partial-year resident may claim any of the following applicable Nebraska income tax credits on Form 1040N, Nebraska Schedule III:

- ❖ Elderly or disabled credit;
- ❖ Nebraska nonrefundable credit for child/dependent care expenses; or
- ❖ Credit for prior year minimum tax (for tax years prior to 2014).

The credit for personal exemptions is claimed on Form 1040N, Nebraska Schedule III. Do not claim this credit on Form 1040N. The earned income credit is calculated on Form 1040N, Nebraska Schedule III, and then entered on Form 1040N. For more information, refer to the specific Form 1040N, Schedule III instructions.

Filing Status

Your Nebraska filing status is the same as your federal filing status.

There is an exception, described in detail below, for married, filing jointly taxpayers where one spouse is a Nebraska resident and the other spouse is a nonresident or partial-year resident of Nebraska. These taxpayers may elect to file either a married, filing jointly return (both spouses are taxed as residents) or married, filing separately returns with Nebraska.

Married, Filing Jointly. A married, filing jointly Nebraska return must be filed when a married, filing jointly federal return has been filed, and:

- **Both spouses are residents** for the entire year; or
- **Both spouses are nonresidents** for the entire year, and one spouse has Nebraska source income.

Joint Return by Election. This election may be made if one taxpayer, for any part of the year, is a Nebraska resident (partial-year or full-year) while the other taxpayer is a nonresident. A married, filing jointly return must have been filed federally. By making this election, both taxpayers are taxed as residents or partial-year residents for the period either taxpayer was a resident.

Revocation of the Election. When one spouse is a resident and the other is not, the election to file a married, filing jointly return and be taxed as residents or partial-year residents may be revoked by both taxpayers at any time during which a claim for refund can be filed (see the section called "Statute of Limitations" at the end of this guide). The election can be changed for other taxable years only if the federal filing status is changed. The revocation of the election is effective only when all the following conditions have been satisfied:

- Both taxpayers file married, filing separately Nebraska returns. The taxpayer whose Social Security number was listed first on the original married, filing jointly return files an Amended Nebraska Individual Income Tax Return, Form 1040XN. The taxpayer whose Social Security number was listed as the spouse's number on the original married, filing jointly Nebraska return files a Nebraska Individual Income Tax Return, Form 1040N;
- A copy of the married, filing jointly federal return actually filed with the IRS is attached to each Nebraska return;
- A copy of a federal return for each taxpayer computed as if married, filing separately federal returns had been filed, is attached to each Nebraska return;
- Each Nebraska return includes the full names and Social Security numbers of both taxpayers; and
- Each Nebraska return is signed by both taxpayers.

Compliance with all of these conditions is an agreement that both taxpayers are jointly and separately liable for any tax due, and that any refund due at the time of filing the Nebraska returns may be paid to both taxpayers jointly, or to either taxpayer.

Married, Filing Separately. Married, filing separately Nebraska returns may be filed when one taxpayer is a resident or partial-year resident while the other taxpayer is a nonresident and, although a married, filing jointly federal return was filed, they did not elect to file a married, filing jointly Nebraska return. The resident taxpayer must file a return when he or she receives any income, regardless of where that income is earned. The nonresident taxpayer must file a return when he or she has Nebraska source income. If both are nonresidents of Nebraska, even if not residents of the same state, married, filing separately Nebraska returns are not allowed if a married, filing jointly federal return was filed.

The married, filing separately Nebraska return must include all income that would be properly included in a married, filing separately federal return. Income from jointly held property is presumed to belong equally to the owners, and when owned by a married couple, one-half of the income from the jointly held property would be reportable by each taxpayer.

The taxpayer claiming dependents as exemptions on a married, filing separately Nebraska return must have earned more than half of the income used to support the family. For example, if a couple has three children, a taxpayer earning one-third of the income cannot claim any of the family's three children. Support payments are presumed to go to all children equally.

Itemized deductions for joint expenses, such as mortgage interest, that are paid out of jointly-owned funds, are presumed to be deductible equally by the taxpayers. The deductions based on income are divided between the taxpayers according to the ratio between each income item and total income.

Deductions that relate to a specific person, such as medical expenses or professional association dues, may only be deducted by the person who incurred the expense.

A taxpayer required to itemize deductions under the federal rules for married, filing separately returns may use the larger of the itemized deductions or the Nebraska standard deduction.

The credit for child and dependent care expenses cannot be taken by a person filing a married, filing separately return, unless the taxpayer's federal return was filed as married, filing separately and the credit was allowed on that return.

Adjustments to income, such as an IRA deduction, can only be taken if they would be allowable for that taxpayer.

Additional information for married, filing separately returns can be obtained by referring to the instructions for the federal return.

Statute of Limitations

A claim for refund must be filed within two years of the time the tax was paid, or within three years of the time the original tax return was filed. The refund is limited to the amount paid during the preceding two or three-year period, respectively. Payments made before the due date of the return are considered to have been made on the due date.

Changing Residency Status

To make a change of legal residence, an individual must have a physical presence in another state, show intent to establish domicile in that state, and abandon his or her Nebraska domicile.

Note: Requirements for establishing residency vary by state. Contact the state where you are establishing residency to determine these requirements.

For any taxpayer, the question of domicile is based on the totality of circumstances. Items considered, but are not limited to:

- Purchasing a home in another state for use as a principal residence;
- Paying taxes as a resident of another state;
- Obtaining a driver's license as a resident of another state;
- Registering a motor vehicle as a resident of another state;
- Voting in another state;
- The number of days you are present in Nebraska;
- The size, value, and nature of your Nebraska residence compared to your out-of-state residence;
- The location of your employment, business connections, and professional licenses;
- The physical location of items that have significant sentimental value to you;
- Your social, community, and family ties in both locations;
- Where your minor children attend school or daycare; and
- Where your doctors, dentists, accountants, attorneys, bankers, and other professionals are located.

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