

## Title 35 Mississippi State Tax Commission

### Part III Income and Franchise Tax

#### Subpart 07 Individuals

#### Chapter 01 Residents

- 100 The term "**resident**" includes natural persons domiciled in this state for other than temporary or transitory purposes or natural persons who maintain a legal or actual residence within this state. All other individuals are nonresidents.
- 101 Domicile is the place where an individual lives and has his permanent home and principal establishment, and to which he has the intention of returning whenever he is absent. Actual residence may or may not necessarily mean domicile, for domicile is the fixed place of abode which in the intention of the taxpayer is permanent rather than transitory. It is the place in which an individual has voluntarily fixed the habitation of himself and his family, not for a special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. A domicile once established continues until a new domicile is established through the intent and purpose of establishing, and the actual establishment, of a new domicile coupled with the abandonment of the old. Every person has one and only one domicile. What constitutes domicile is a question of fact rather than of law, frequently depending on a variety of circumstances. The Commissioner may require of an individual claiming domicile outside the State of Mississippi a statement of information with respect to the particular case.
- 102 An individual who maintains a home, apartment or other place of abode in Mississippi, or who exercises the rights of citizenship in Mississippi by meeting the requirements as a voter or who enjoys the benefits of homestead exemption, is a legal resident of the State of Mississippi and remains a resident although temporarily absent from the state for varying intervals of time. A person may, therefore, be living without Mississippi and still be a legal resident of Mississippi for tax purposes. If an individual establishes the status of a legal resident of Mississippi, he retains that status until such time as such individual takes positive action to establish legal residence in some other state or country and relinquishes his rights and privileges of residency in Mississippi.
- 103 Every natural person who, though not necessarily a legal resident of Mississippi, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner, is defined as an actual resident of this state for income tax purposes.
- 104 If an individual is simply passing through this state on his way to another state or country or is here for a brief rest or vacation or to complete a particular transaction or fulfill a particular engagement, which will require his presence in this state but for a short period of time, he is in this state for temporary or transitory purposes and will not be considered to be a resident or domiciled here by virtue of his presence within the state. If an individual is in this state to improve his health, and his illness is of such character as to require a relatively long or indefinite period to recuperate or is here for business purposes which will require a long or indefinite period to accomplish or is employed in a position that may last permanently or indefinitely or is retired from business and moves to Mississippi with no definite intention of leaving shortly thereafter or

is otherwise physically present in this state for an indefinite period of time, such individual is domiciled in Mississippi, and taxable upon his entire net income, even though such person may retain his legal residence in some other state or country. As to whether an individual is in a temporary or transitory situation will depend to a large extent upon the facts and circumstances of each particular case.

- 105 An actual or legal resident of Mississippi who accepts temporary employment in another state or country or who may travel extensively abroad or who may accept a temporary teaching assignment in another state or foreign country or who may otherwise leave the state with intentions, at the time of departure, of returning to this state, remains a resident of this state during the period of his absence from the state. An individual, however, who moves to another state or to a foreign country with no intentions, at the time of departure, of returning to Mississippi, and who surrenders all rights and privileges as a resident of this state, ceases to be a resident of the state from the date of his departure.
- 106 A resident of Mississippi, who is employed in an occupation that has a periodic work schedule and the work location is outside of the State of Mississippi, is required to file a Mississippi resident return. An example of this is an offshore oilfield worker whose work schedule is seven (7) days on and seven (7) days off. If this individual resides in Mississippi during the seven days off period, he is required to file a Mississippi resident return. If the employer is not required to withhold Mississippi income tax, or does not withhold Mississippi income tax, then the employee would be subject to making estimated income tax payments. See the estimated payments regulation for requirements on who must make estimated payments. If the work location is in another state, then the taxpayer may be allowed to take a tax credit for tax paid to the other state, if the taxpayer filed a return with the other state.
- 107 (Reserved)
- 108 (Reserved)

## **Chapter 02 Part-Year Resident**

- 100 A taxpayer, who is not liable for Mississippi income tax for an entire year because of moving into this state or moving from this state, shall include on his return income received from all sources during the time he is a resident of Mississippi, plus income from all sources within Mississippi for the taxable year while a nonresident of Mississippi.
- 101 Deductions of a personal nature such as authorized individual non-business itemized deductions, the optional standard deduction and the personal and additional exemptions allowed, shall be allowed only in the ratio that reported Mississippi net income bears to the taxpayer's total net income from all sources for the entire year. In the case of married individuals, the term "taxpayer's total net income" means the total net income of both husband and wife.
- 102 Moving expense reimbursement is included both in Mississippi and total income if the taxpayer is moving into Mississippi and is included in total income only if moving outside Mississippi.
- 103 If a taxpayer moves to Mississippi, his payment to an IRA may be deducted from Mississippi income as well as total income (to the extent such payment is deductible for Federal income tax purposes).

104 If a taxpayer moves outside Mississippi, he may deduct an IRA payment from his total income only.

105 (Reserved)

106 (Reserved)

### **Chapter 03 Nonresidents**

100 The term "**nonresident**" includes those natural persons not meeting the requirements of a resident. A nonresident individual shall be allowed the same personal and additional exemptions as are authorized for resident individuals; however, the nonresident individual is entitled only to that proration of the personal and additional exemptions as his adjusted gross income from sources within the State of Mississippi bears to his total or entire adjusted gross income from all sources.

101 A nonresident individual who is married and whose spouse has income from independent sources must declare the joint income of himself and his spouse from sources within and without Mississippi, and claim as a personal exemption that proportion of the authorized and additional exemptions which the total adjusted gross income from Mississippi sources bears to the total adjusted gross income of both spouses from all sources.

102 In the case of married individuals where one (1) spouse is a resident and the other is a nonresident, the personal exemption of the resident individual shall be prorated on the same basis as if both were nonresidents having net income from within and without the State of Mississippi.

103 Nonresidents, foreign corporations, and citizens of foreign countries, shall include as gross income from sources within the state, all income derived from services rendered, business done, or property located within the state.

104 The income of a nonresident who is assigned to a business location in this state or who draws a salary, fee, commission or other income for work performed at or from a Mississippi location and who regularly travels to such location is considered income derived from services rendered in this state and such income shall be allocated to this state.

105 A nonresident of Mississippi may deduct an IRA payment from total income only. In the case of married individuals, if both spouses work and both have an IRA, calculate each spouse's deduction separately.

106 A nonresident individual, who is a member of a partnership owning property or doing business in the State of Mississippi, is taxable on his share of the net income of the partnership, whether distributed or not. If the partnership does business within and without the state, a nonresident partner is taxable on such share of his income, whether distributed or not, as is assignable to Mississippi.

107 Unless a nonresident or foreign taxpayer files with the Commissioner the complete return required of him, then no deductions or exemptions will be allowed to such taxpayer by the Commissioner in computing such taxpayer's taxable income. Supporting schedules are required

for any adjustments, deductions, exemptions, or credit.

108 (Reserved)

109 (Reserved)

## **Chapter 04 Military**

- 100 Section 574 of the Soldiers and Sailors Civil Relief Act provides that military duty pay can be taxed only by the state in which the armed forces member is domiciled or is a legal resident. A Mississippi resident who enters the military service remains a resident of this state during the tenure of military service or until such time as legal and positive action is taken to establish residence in some other state and the personnel records are changed accordingly by executing through his or her command a state of Legal Residence Certificate, Department of Defense Form DD 2058.
- 101 A member of the Armed Forces who claims Mississippi as his or her state of legal residence/domicile is subject to Mississippi income tax on his or her total gross income, regardless of the source of the income and regardless of where the member is stationed in the line of duty. If the spouse of a resident member is also a legal resident of Mississippi, he or she must also report total income to Mississippi, regardless of where earned. A tax credit is allowed for income taxes paid to another state on nonmilitary income earned in another state. Mississippi resident individual income tax return, Form 62-100 must be filed by a resident member on or before April 15, following the close of the calendar year.
- 102 A nonresident member of the Armed Forces stationed in Mississippi who realizes income from nonmilitary sources within the state or whose resident or nonresident spouse realizes income within the state is subject to the requirements of filing a Mississippi nonresident individual income tax return, Form 62-200. A Mississippi nonresident income tax return is also required in the case of a resident member of the Armed Forces whose spouse is a nonresident of Mississippi. In the above cases concerning nonresidents, only the nonmilitary income earned in Mississippi and the total income earned by a Mississippi resident would be reported as Mississippi income; however, the total income of both taxpayers must be reflected on the nonresident form in order to properly prorate the allowable exemptions and deductions.
- 103 The pay of military personnel employed by Non-appropriated Fund Instrumentalities such as post exchanges, military stores, officers' clubs and other such instrumentalities was declared by the Department of Defense to be off-duty or nonmilitary pay taxable and reportable in the same manner as for civilian employees of NAFI's. Military pay of members of the Armed Forces who claim Mississippi as their state of legal residence/domicile and the pay of members from NAFI sources in Mississippi are subject to the requirements of Mississippi income tax withholding.
- 104 Members of the United States Armed Forces generally include in income the same items as civilians. The following list of taxable and nontaxable items of income and deductible items of expense is intended to serve as a guide in answering questions frequently encountered by the taxpayer and is not to be considered as all inclusive.
1. Taxable Items:
    - a. Compensation for service in the Armed Forces:
      - a. Mileage allowance (less expenses for self)

- b. Bonus paid for re-enlistment
  - c. Service pay
  - d. Voluntary allotments
  - e. Interest on G. I. life insurance dividends left on deposit with the Veterans Administration
  - f. Payments received from a former employer
  - g. Retirement pay
2. Not Taxable:
- a. Benefit payments received under federal laws relating to veterans.
  - b. Benefit payments received under the G. I. bills.
  - c. Cash received in lieu of subsistence and quarters.
  - d. Combat pay -- Enlisted members of the Armed Forces may exclude from gross income all pay received for any month during which they served in a combat zone, and officers may exclude up to \$500 per month.
  - e. Commutation of quarters.
  - f. Compensation earned while a prisoner of war, missing in action or detained status.
  - g. Disability pay—Disability pay is excluded unless it is in effect early retirement caused by a disability and is based on the employee's age or length of service. This applies even if the employee's retirement is caused by an occupational injury or sickness.
  - h. Family allowances to spouses or dependents.
  - i. Reimbursement by the government for moving family and household effects on a change of official station for permanent duty.
  - j. Subsistence.
  - k. Allowances for uniforms.
  - l. Widows' pensions received from the Veterans Administration.
3. Deductible Items:
- a. Cap and corp devices, campaign bars aiguilletes, epaulets and chin straps.
  - b. Local transportation expenses of reservists (limited) unreimbursed travel and transportation expenditures in the course of employment.
4. Not Deductible:
- a. Damage to household furnishings in moving
  - b. Dues to officers' club
  - c. Expenses of visiting home
  - d. Living expenses of a naval officer stationed in one locality.
  - e. Lodging and meals on permanent overseas assignment or while permanently assigned to a ship.
  - f. Naval officers' subsistence expenses in excess of the allowance while on permanent duty afloat.
  - g. Uniform expenses where the uniform takes the place of ordinary clothing.

105 **Exclusions from Gross Income**

1. Retirement Income—Armed Forces:
- a. Retirement allowances received by a retired member of the Armed Forces, including the National Guard and Military Reserve, not based on disability, must be included in gross income to the extent of income from retirement pay, annuities and pensions that exceeds the sum of six thousand dollars (\$6,000) for the taxable year. Income from retirement allowances, pensions and annuities up to \$6,000 for

each taxable year may be excluded from gross income.

- b. The amount of reduction in retirement pay of a retired member of the Armed Forces representing contributions to a Retired Serviceman's Family Protection Plan (10 U.S.C. 1431) or a Survivor Benefit Plan (10 U.S.C. 1447) must be included in gross income for the taxable year in which the contribution or reduction is made for Mississippi income tax purposes. The total retirement allowances, annuities or pensions are subject to the \$6,000 exclusion. Mississippi Law does not conform with Section 122, IRC, with respect to the exclusion from gross income of the amount by which the retirement or retainer pay of a member or former member of the uniformed services is reduced in order to provide a survivor benefit.
- c. Upon the death of a member or former member of the uniformed services, where the "consideration for the contract" (cost basis of the annuity) has not been excluded in whole or in part from gross income for Mississippi income tax purposes, the survivor of such member who is receiving an annuity shall exclude from gross income such annuity payments equaling "consideration for the contract" (cost basis of the annuity) not previously excluded from gross income by the member or former member of the uniformed services. The \$6,000 retirement income exclusion is also available to the spouse or other beneficiary at the death of the primary retiree.

2. National Guard and Reserve Pay:

Compensation received by a member of the National Guard or Reserve Forces of the United States for inactive duty training (monthly or special drills or meetings), active duty training (summer camps, special schools, cruises) and for state active duty (emergency duty) must be included in gross income to the extent such pay is in excess of six thousand dollars (\$6,000) for the taxable year. National Guard and Reserve pay up to \$6,000 for each taxable year may be excluded from gross income. The exclusion does not apply to compensation or wages of full-time uniformed employees of the National Guard or Reserve Forces, nor does the exclusion apply to the wages of other employees such as secretaries, clerks, technicians, laborers, equipment operators or staff personnel.

106 (Reserved)

107 (Reserved)