

## RESIDENCY STATUS

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Virginia law imposes individual income tax filing requirements on virtually all Virginia residents, as well as on nonresidents who receive income from Virginia sources. The correct method for filing your income tax return and reporting Virginia taxable income depends on your residency status. Following the brief definitions shown below, each residency status, with corresponding filing requirements, is discussed in detail.

**Resident:** ([#VIRGINIARESIDENTS](#)) -- A person who lives in Virginia, or maintains a place of abode here, for more than 183 days during the year, or who is a legal (domiciliary) resident of the Commonwealth is considered a Virginia resident for income tax purposes. Residents file [Form 760 \(taxforms/Individual/Income%20Tax/currentyear/760.pdf\)](#).

**Part-Year Resident:** ([#PART-YEARRESIDENTS](#)) -- A person who moves into Virginia during the year with the intent of becoming a resident, or a person who moves out of Virginia during the year to become a resident of another state, is a part-year resident for income tax purposes. Part-year residents generally file [Form 760PY \(taxforms/Individual/Income%20Tax/currentyear/760PY.pdf\)](#). ([more](#)) ([#PART-YEARRESIDENTS](#))

**Nonresident:** ([#Nonresidents](#)) -- A person who is not a resident or part-year resident, but who receives taxable income from Virginia sources is a nonresident for income tax purposes. Nonresidents file [Form 763 \(taxforms/Individual/Income%20Tax/currentyear/763.pdf\)](#). ([more, including special filing situations](#)) ([#NONRESIDENTS](#))

### [Q](#) How Residency Requirements Apply to Aliens

Federal law provides for the designation of resident aliens and nonresident aliens as special statuses for tax filing purposes. Virginia law does not make a similar provision. Therefore, a resident or nonresident alien is subject to the same Virginia residency provisions as all other filers. If you are a resident or nonresident alien required to file a federal income tax return, and you meet the definition of a Virginia resident, part-year resident or nonresident and other filing requirements, you must file a Virginia return, unless exempted from the requirement by federal treaty.

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### [Q](#) Virginia Residents

There are two types of Virginia residents: [actual \(#ActualResidents\)](#) and [domiciliary \(#DomiciliaryResidents\)](#).

**[Q](#) Actual Residents:** -- Individuals who are physically present in Virginia, or who maintain a place of abode here for more than 183 days during the taxable year are actual residents. The period of residency does not have to be consecutive days. Most Virginia residents are actual residents of Virginia.

It is possible to be an actual resident of Virginia and a domiciliary resident of another state. For example, dual status commonly occurs when a resident of another state enrolls in a Virginia school and lives here during the school year.

**[Q](#) Domiciliary Residents:** -- Individuals whose state of legal residence in the technical sense is Virginia are domiciliary residents. Most domiciliary residents actually live in Virginia. Examples of individuals who are domiciliary residents but who do not live in Virginia are shown below:

- An individual who enters the military from Virginia (i.e., claims Virginia as his/her home of record) will remain a domiciliary resident of Virginia, unless appropriate steps are taken to abandon Virginia

as the state of domicile.

- A student who attends school in another state, but maintains Virginia as his/her legal state of residence, is a domiciliary resident.
- A resident of Virginia who accepts employment in another country is a domiciliary resident, unless appropriate steps are taken to abandon Virginia as the state of domicile.

[\(\)](#) If you are a Virginia resident, file your income tax return on [Form 760 \(taxforms/Individual/Income%20Tax/currentyear/760.pdf\)](#). Some points you should keep in mind:

- A Virginia resident return must include income from **all** sources.
- No subtractions are allowed for income reported to other states. Income taxes paid to other states are addressed through tax credits.
- Certain limited subtractions are allowed for foreign source income, as defined under Virginia Code Section 58.1-302. No tax credits are allowed for income taxes paid to foreign countries, except on foreign source pension income. In addition, no tax credits or deductions are allowed for taxes paid to any city, county or other local government or to the federal government.
- If you are a resident and your spouse is a nonresident, you may not file a joint return (see [Mixed Residency \(#MixedResidency\)](#)).

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## [\(\)](#) **Part-Year Residents**

An individual who establishes or abandons Virginia as his or her state of legal residence during the taxable year is a part-year resident. The primary factor in determining eligibility for part-year residency status is your intent with respect to establishing or abandoning legal residence. As a general rule, if you move out of Virginia and return to the state within six months, you have not demonstrated intent to establish residency in another state. Other situations in which individuals would not be considered to have abandoned their Virginia domicile include:

- Individuals who enter the military from Virginia and are subsequently assigned to duties outside the state; and
- Virginia residents who accept employment in other countries on a non-permanent basis and who do not take action to abandon Virginia as their state of legal residence.

[\(\)](#) Part-year residents have several options for reporting and computing Virginia taxable income:

- Filing as a part-year resident: A part-year resident usually files as such on [Form 760PY \(taxforms/Individual/Income%20Tax/currentyear/760PY.pdf\)](#). You must prorate your personal exemptions and standard deduction. A subtraction is allowed for non-Virginia income.
- Filing as a resident: If you are a part-year resident, but your entire federal adjusted gross income is from Virginia sources, you can file as a resident on Form 760. Filing as a resident allows you to claim full personal exemption and standard deduction amounts, rather than prorating these items based on length of residency.
- Filing as a nonresident: If you lived in Virginia for 183 days or less during the year, you can file as nonresident on Form 763. The nonresident form allows you to claim the full personal exemption and standard deduction amounts.

When filing Form [760PY \(taxforms/Individual/Income%20Tax/currentyear/760PY.pdf\)](#), keep these points in mind:

- If you are a full-year resident and your spouse is a part-year resident, you can file a joint return on Form [760PY \(taxforms/Individual/Income%20Tax/currentyear/760PY.pdf\)](#).
- Part-year filers are not usually entitled to out-of-state credits, because they have already subtracted other states' income in computing Virginia taxable income. However, there are some instances in which an out-of-state tax credit may be appropriate, such as when an individual

receives income from another state after moving to Virginia. In that case, you should attach a statement to the return, explaining that the income was received during your period of residency in Virginia.

- If you received Virginia source income during the time you lived outside Virginia, and you do not qualify to file as a full-year resident or a nonresident, you must file two returns. Complete a part-year resident return to report the income received during your period of residency here, and a nonresident return to report the other Virginia source income received during the taxable year.

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## Q Nonresidents

A nonresident is a person who is not a domiciliary or actual resident of Virginia, but who received income from Virginia sources during the taxable year.

"Income from Virginia sources" means income derived from labor performed, business conducted, or property held in Virginia, as well as lottery prizes and certain gambling winnings. Examples of Virginia source income include:

- Wages or salaries received for services performed in Virginia;
- Income received from the rental or sale of Virginia real estate;
- Income, including interest, received from a partnership, S corporation or other business that operates in Virginia;
- Prizes paid by the Virginia Lottery, and gambling winnings from wagers placed or paid at a Virginia location.

**NOTE:** Interest received by a nonresident from a personal account held in a Virginia bank and pension or annuity payments made to a nonresident from a Virginia payer are not Virginia source income.

If you are a nonresident who received Virginia source income, file your return on [Form 763 \(taxforms/Individual/Income%20Tax/currentyear/763.pdf\)](#). Some points to keep in mind:

- If you are a resident and your spouse is a nonresident, you may not file a joint return (see [Mixed Residency \(#MixedResidency\)](#)).
- Nonresidents report their income in the same manner as residents, using Virginia [Form 763 \(taxforms/Individual/Income%20Tax/currentyear/763.pdf\)](#). An allocation percentage, based on the ratio of Virginia source income to income from all sources, is then applied to arrive at the individual's net Virginia taxable income.

### Q Special Filing Situations for Nonresidents

Residents of Kentucky, Maryland, the District of Columbia, West Virginia and Pennsylvania are allowed certain exemptions from Virginia filing requirements.

**Kentucky and the District of Columbia:** Residents of these states who commute to a place of employment in Virginia on a daily basis are not required to file a Virginia income tax return if the following conditions are met:

- The individual did not maintain a place of abode in Virginia during the taxable year; and
- Virginia source income received was derived from salaries or wages; and
- The Virginia source income was subject to taxation by the individual's state of residence.

**West Virginia, Maryland and Pennsylvania:** Residents of these states are not required to file a Virginia income tax return if the following conditions are met:

- The individual is not a domiciliary or actual resident of Virginia; and
- The only Virginia source income received during the taxable year was from salaries or wages; and
- The Virginia source income was subject to taxation by the individual's state of residence.

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## Q Spouses Filing Different Returns (Mixed Residency)

In selecting the proper residency status, married couples sometimes find that no one status completely addresses their circumstances. The filing of two returns for the taxable year, using different residency statuses, may be necessary in such cases. Examples are discussed below.

- The most common instance of mixed residency status occurs when one spouse is a Virginia resident and the other is a nonresident who has no liability in Virginia. Married couples frequently encounter this situation when one spouse is in the military, stationed in Virginia, and claims another state as his or her home of record. In a case like this, the resident spouse must file a separate return under Filing Status 3. The resident spouse may not automatically claim all of the exemptions for dependents or all of the itemized deductions reported for federal income tax purposes. Federal rules must be applied to determine the allowable amounts. As a general rule, the spouse claiming an exemption for a dependent must be reporting at least half of the total federal adjusted gross income. In addition, the spouse must be able to support his/her claim of itemized deductions. If the nonresident spouse has any Virginia source income to report, he/she must file a separate return on [Form 763 \(taxforms/Individual/Income%20Tax/currentyear/763.pdf\)](#).
- In a case where one spouse is a full-year resident and the other is a part-year resident, the couple can file a joint or combined return on [Form 760-PY \(taxforms/Individual/Income%20Tax/currentyear/760PY.pdf\)](#). Appropriate residency dates must be entered for each spouse. In this situation, the full-year resident will not be allowed to subtract income from other states, and will not be required to prorate personal exemptions. If the couple chooses to file separate Virginia returns, the full-year resident must file on Form 760. If separate returns are filed, the rules for allocating personal exemptions and itemized deductions discussed above must be applied.

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## Q Members of Congress

The term "resident" does not include any member of the United States Congress who is domiciled in another State. Even if a congressman actually lives in Virginia, he or she will not be considered a resident for tax purposes. Members of Congress are subject to Virginia income tax as nonresidents only on income received from Virginia sources (see [NONRESIDENTS \(#NONRESIDENTS\)](#)). These provisions do not apply to spouses, other family members, or congressional staff members. Those individuals are subject to the same residency and filing requirements as all other persons living in Virginia (see [VIRGINIA RESIDENTS \(#VIRGINIARESIDENTS\)](#), [PART-YEAR RESIDENTS \(#PART-YEARRESIDENTS\)](#) and [NONRESIDENTS \(#NONRESIDENTS\)](#)).

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## Q Members of the Military

Members of the armed forces on active duty are taxed only in their legal states of residence. If you are a member of the armed forces, but you are not a Virginia resident, you are not subject to Virginia income tax on your active duty military pay, even though you are stationed in Virginia. You are liable to pay Virginia income tax as a nonresident on income you earn from any business, trade, profession or occupation in Virginia. To report this income, file Form 763.

The tax exemption provided for members of the armed forces does not apply to spouses for taxable years prior to 2009, or to other family members. For residency information applicable to non-military spouses effective for 2009, see [What's New \(http://www.tax.virginia.gov/site.cfm?alias=IndWhatsNew#MilitarySpouses\)](#). If you are a nonresident and your spouse is a resident of Virginia, you may not file a joint Virginia return, even though you may have filed a joint federal return. Spouses of military personnel are subject to the same residency and filing requirements as all other individuals who are not members of the armed forces. (See the information under [VIRGINIA RESIDENTS \(#VIRGINIARESIDENTS\)](#), [PART-YEAR RESIDENTS \(#PART-YEARRESIDENTS\)](#)) and [NONRESIDENTS \(#NONRESIDENTS\)](#))

For more information useful to members of the military, visit [Military Tax Tips \(site.cfm?alias=MilitaryTaxTips\)](#)

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## Q Individuals Living Abroad

Virginia residents who travel outside the country, or take up temporary or permanent residence abroad, should be aware of the filing provisions discussed below.

### OVERSEAS RULE

If you are residing or traveling outside the United States or Puerto Rico (including persons serving in the military or naval service) on May 1, you are not required to file your return until July 1 of the filing year. You must attach a statement to your return certifying that you were outside the United States or Puerto Rico on the date the return was due.

### RESIDENCY ISSUES FOR PERSONS LIVING ABROAD

If you are a Virginia resident who accepts employment in another country or moves outside the United States for other reasons (including military orders), the fact that you are living abroad does not mean that you are no longer considered a Virginia resident for tax purposes. Unless you have established residency in another state, you will still be considered a domiciliary resident of Virginia, and will be required to file Virginia income tax returns.

A domiciliary resident of Virginia is one whose legal domicile in the technical sense is in Virginia. Unless an individual acquires a legal domicile in another state, he or she is still a Virginia resident. This applies even if the person is residing in another jurisdiction and may have been residing there for a number of years. The fact that a person has been absent from Virginia, whether in the foreign service of the United States or in the exercise of private enterprise, does not in any way cancel out their Virginia citizenship or legal domicile. As a matter of law, he or she is as much liable to income taxation in Virginia as residents who are physically present in Virginia throughout the year.

Every resident of Virginia, including domiciliary residents, is liable to State income taxation as a resident. This means that they are subject to Virginia income tax on their entire income, whether it came from sources in or outside of Virginia. Those persons qualifying to exclude certain foreign income from their federal returns in accordance with Section 911 of the Internal Revenue Code will receive the same exclusion on their Virginia returns.

### FILING INSTRUCTIONS FOR INDIVIDUALS LIVING ABROAD

File your return with the Commissioner of the Revenue, Director of Finance, or Director of Tax Administration for the city or county in which you lived. We have listed the mailing address for returns on the back of the income tax instruction booklet, or click the [address \(Web PDFs/address.pdf\)](#) here to see the list. The addresses are listed by city and county and include the local office phone number. Please check the list to determine where you should mail your return.

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## Q Students

Students are subject to the same rules for residency and filing requirements as all other filers. For example, if you lived in Virginia for more than 183 days during the taxable year, you are classified as an [actual resident \(#ActualResidents\)](#), and must file [Form 760 \(taxforms/Individual/Income%20Tax/currentyear/760.pdf\)](#) even if you maintained your legal residency in another state. If you maintained legal residency in Virginia, but attended school in another state, you are still considered a [Virginia resident \(#VIRGINIARESIDENTS\)](#) and must file [Form 760 \(taxforms/Individual/Income%20Tax/currentyear/760.pdf\)](#). If you had income in the other state, you may be required to file in that state also.

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