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Military Personnel

Bulletin GIT-7

Introduction

This bulletin provides New Jersey income tax information for members of the United States Armed Forces who are residents of New Jersey. It also explains the income tax obligations of nonresident military personnel who are stationed here.

This bulletin will help you understand whether or not you (and your spouse) must file a New Jersey income tax return. It also explains who is a resident and who is a nonresident for New Jersey income tax purposes, so that you will know which return (resident or nonresident) to use. Special provisions for military personnel in the New Jersey Gross Income Tax Act are also discussed.

If you need information on preparing a particular line of your New Jersey income tax return, refer to the instructions in the resident or nonresident income tax return booklet.

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Definitions

The terms "domicile," "home of record" and "permanent home" have different meanings, although they may all refer to the same place in some circumstances. The following definitions are provided to aid you in understanding these sometimes confusing terms.

Domicile means the place you regard as your permanent home, the place you intend to return to after you have been away—on vacation, educational leave, military assignment, etc.

Home of Record is the place that is used for fixing travel and transportation allowances. Your "home of record" should not be confused with your domicile, even though they may be the same in certain circumstances.

Permanent Home means a residence (house, building or structure where a person can live) that you maintain permanently as your principal residence, whether you own it or not. It usually includes a residence your husband or wife owns or leases.

A residence, whether inside or outside of New Jersey, is not permanent if you maintain it only during a temporary or limited period of time for the accomplishment of a particular purpose (e.g., temporary job assignment, military assignment, etc.). Likewise, a home used only for vacations is not considered your permanent home, nor is a property which you own but rent or offer for rent to others. You have only one

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permanent home, although you may have more than one residence.

Domicile

To determine whether you are a resident or a nonresident for New Jersey income tax purposes, it is necessary to know your domicile. This is true whether you are a member of the Armed Forces or not.

You have only one domicile, although you may have more than one place to live. Once established, your domicile continues until you move to a new location with the intent to establish a new permanent home and to abandon your old one. Moving to a new location, even for a long time, does not change your domicile unless you intend to remain there permanently. Military assignments do not affect your domicile.

Example

John Smith was a New Jersey resident when he joined the army. He is assigned overseas for three years, and rents an apartment in a town near his base. If John plans to return to New Jersey when his tour of duty is over, New Jersey will remain his domicile, even though he may not have a current New Jersey address.

Resident and Nonresident Defined

Residents. If your home of record (and domicile) was New Jersey when you entered the service, you remain a resident of New Jersey for income tax purposes, unless you qualify for nonresident status (see below). Your domicile does not change when you are temporarily assigned to duty in another state or country.

If you are a member of the Armed Forces whose home of record (and domicile) is New Jersey, and you are residing on shipboard or in barracks, billets or bachelor officer quarters, you remain a New Jersey resident for income tax purposes. You are not considered to be maintaining a *permanent home* outside of New Jersey if you are living in such accommodations.

However, if you pay for and maintain, either by out-of-pocket payments or forfeiture of quarters allowance, an apartment or a home (either owned or rented) outside New Jersey, such facilities will constitute a *permanent home* outside of New Jersey. In this case you will no longer be considered a New Jersey resident for tax purposes.

Military personnel who are domiciled in New Jersey, but who meet all three of the following conditions for the entire year, are considered nonresidents for income tax purposes:

1. You did not maintain a permanent home in New Jersey; and
2. You did maintain a permanent home outside of New Jersey; and
3. You did not spend more than thirty days in New Jersey during the taxable year.

Nonresidents. A member of the Armed Forces whose home of record (and domicile) is outside of New Jersey does not become a resident of this State when assigned to a duty station here. He or she is a nonresident for income tax purposes. See *Income Tax Filing Requirements*, below, for a discussion of when a nonresident serviceperson is required to file a New Jersey income tax return.

Spouses. If your nonmilitary spouse was not domiciled in New Jersey at the time you were married, he or she is not considered a resident of New Jersey if:

- The principal reason for moving to this State was the transfer of the military spouse; and
- It is their intention to leave New Jersey when the military spouse is transferred or leaves the service.

A place of abode, whether in this State or elsewhere, is not considered to be permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. Therefore, a nonmilitary spouse who is not domiciled in New Jersey, and who moves to this State on a *temporary* basis to accompany a military spouse who is stationed here, does not become a New Jersey resident unless he or she intends to remain here permanently. He or she will be considered a nonresident for income tax purposes, and will be subject to tax only on income earned from New Jersey sources.

Nonmilitary spouses whose domicile is New Jersey are residents for income tax purposes unless they meet the three qualifications for nonresident status (see above). See *Income Tax Filing Requirements*, below, for a discussion of when a nonmilitary spouse is required to file a New Jersey income tax return.

Income Tax Filing Requirements

Your filing status and gross income determine whether you have to file a New Jersey income tax return. Age is not a factor; even minors

(including students), members of the Armed Forces and senior citizens must file if they meet the filing requirements. Use the "Who Must File" chart in the front of the resident or nonresident income tax return booklet to find out whether or not you are required to file a New Jersey income tax return.

Using the Correct Form

New Jersey has two personal income tax returns for individuals: Form NJ-1040 for residents and Form NJ-1040NR for nonresidents. There is no part-year tax return. Part-year residents use the same form as full year residents (Form NJ-1040); part-year nonresidents, the same form as full-year nonresidents (Form NJ-1040NR). See the income tax return instructions, and request Tax Topic Bulletin GIT-6, *Part-year Residents*, for information on how to complete a part-year return.

New Jersey Residents

New Jersey residents are subject to tax on all their income, regardless of where the income is earned. If you are a New Jersey resident, all your income, including your military pay and cost of living allowance, is taxable. However, mustering-out payments, subsistence and housing allowances are exempt.

If you are a resident of New Jersey, you must file Form NJ-1040 if your income for the entire taxable year from all sources, including your military pay, is more than \$10,000 (more than \$5,000 if your filing status is married, filing separate return).

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NOTE: A member of the Armed Forces whose home of record (and domicile) is New Jersey, and who resides aboard ship, or in barracks, billets or bachelor officer quarters, is considered a New Jersey resident for income tax purposes. See *Resident and Nonresident Defined*, on page 2.

New Jersey Nonresidents

Nonresidents are taxed only on the income they receive from New Jersey sources. If your home of record (and domicile) was not New Jersey when you entered the military, and you are assigned to a duty station in New Jersey, you are a nonresident of New Jersey. As a nonresident, the military compensation you receive while stationed here is not subject to New Jersey income tax. Mustering-out payments, subsistence and housing allowances are also exempt.

A nonresident is subject to tax on income received from New Jersey sources and must file a New Jersey nonresident return (Form NJ-1040NR). However, as a nonresident serviceperson, you, and your spouse if he or she is also a nonresident, are not required to file a New Jersey return unless you have earned income from New Jersey sources *other than your military pay*.

A nonresident serviceperson and his or her spouse must file a New Jersey nonresident return (Form NJ-1040NR) if he or she receives income such as:

- a. Income from a job in off-duty hours in New Jersey;

- b. Income or gain from property located in New Jersey; or
- c. Income from a business, trade or profession carried on in this State.

Income Tax Withheld from Military Pay

If your permanent home (domicile) was New Jersey when you entered the military, you are considered a New Jersey resident, and New Jersey income tax will be withheld from your military pay. However, if you have changed your state of domicile from New Jersey to some other place, or you satisfy the three conditions for nonresident status (see page 2), your military pay is not subject to New Jersey income tax.

If you meet the three conditions for nonresident status, file Form DD-2058-1, State Income Tax Exemption Test Certificate, with your payroll or finance officer to stop New Jersey income tax from being withheld from your military pay in the future. Form DD-2058-1 is a U.S. Government form which is used as a basis for not withholding New Jersey income tax from military pay. Do not file this certificate with the New Jersey Division of Taxation.

If New Jersey income tax was withheld from your military pay in error, you must file a nonresident return (Form NJ-1040NR) to obtain a refund of the tax withheld. The income section of the New Jersey nonresident return has two columns—Column A, income from everywhere, and Column B, income from New Jersey sources. If you had no income from New Jersey sources other than your military

pay, complete your nonresident return as follows:

- Enter in Column A the amount of your gross income from everywhere (including your military pay).
- Enter zeros on the wages line and on the gross income line in Column B for the amount of income from New Jersey sources.
- Enter the amount of New Jersey income tax withheld on the appropriate line and complete the “overpayment” and “refund” lines.
- Attach a statement explaining how you satisfied the conditions for nonresident status.

Spouses of Military Personnel

Under New Jersey income tax law, a person who maintains a permanent home in New Jersey and spends more than 183 days of the taxable year in this State is a resident for income tax purposes, even if New Jersey is not their domicile. This provision does not apply to members of the Armed Forces and their spouses who are not domiciled in New Jersey. They remain nonresidents for income tax purposes if New Jersey is not their domicile. However, when a nonmilitary spouse who is a resident had income during the year, he or she must file a resident return.

New Jersey law requires that a couple’s filing status for New Jersey gross income tax purposes (single, married, filing joint return, etc.) be the same as for Federal income tax purposes. A married couple who files a joint Federal income tax return must file a joint New Jersey income tax return. An exception exists where one spouse is a New Jersey resident and the

other is a nonresident for the entire year. In this case, the resident may file a separate return, even though the couple files a joint Federal return. The resident spouse computes income and exemptions as if a Federal married filing separate return had been filed. The spouses have the option of filing a joint return as residents, but if so, their joint income will be taxed as if both spouses were residents.

For more information on filing status and New Jersey income tax, request Tax Topic Bulletin GIT-4, *Filing Status*.

When to File

Your New Jersey income tax return is due when your Federal income tax return is due. For calendar year filers (taxpayers who use a calendar year, January 1–December 31, to record their income), the due date is April 15 following the end of the tax year. The exact due date may vary from year to year if April 15 falls on a holiday or weekend. Fiscal year filers must file their New Jersey income tax return by the 15th day of the fourth month following the close of the fiscal year. If the due date falls on a holiday or weekend, the return is due the next business day.

Postmark Date. All New Jersey tax returns postmarked on or before the due date of the return are considered to be filed on time. Tax returns postmarked after the due date are considered to be filed late. When a return is postmarked after the due date, the filing date for that return is the date the return was received by the Division of Taxation, not the postmark date. Interest on unpaid liabilities is assessed from the due date of the return.

Example

If the postmark on your New Jersey income tax return was April 10, but the Division of Taxation did not receive it until April 20, your return would be treated as filed on time since the due date of the return is April 15.

If the postmark date was April 20 and the Division received the return on April 25, the return would be treated as filed on April 25. Penalties and interest would be assessed from April 15, the original due date of the return.

Extensions of Time to File

You may receive a four-month extension of time to file your New Jersey income tax return if at least 80% of your tax liability computed on your NJ-1040 or NJ-1040NR when filed is paid in the form of withholdings, estimated or other payments by the original due date, and

- a. If a Federal extension is filed, enclose a copy of your Federal Application for Automatic Extension with your return and fill in the oval at the top of your NJ-1040 or check the box at the top of your NJ-1040NR,

or

- b. If no Federal extension is filed, request a four-month extension by filing an Application for Extension of Time to File New Jersey Gross Income Tax Return (Form NJ-630), by the original due date of the return.

Extensions Beyond Four Months

If you have requested and been granted a four-month extension, you may apply for an additional two-month extension (before the four-

month extension expires), also by using Form NJ-630. Or, if you obtain a valid additional two-month extension for Federal purposes, you may enclose a copy of the additional two-month Federal extension request with the New Jersey return when filed.

An extension of more than six months will not be granted unless there are exceptional circumstances.

Special Extensions for Military Personnel Serving in a Combat Zone or Qualified Hazardous Duty Area

New Jersey allows an extension of time to file an income tax return for members of the Armed Forces serving in an area which has been declared a "combat zone" by executive order of the President of the United States or a "qualified hazardous duty area" by Federal statute. Once you leave the combat zone or qualified hazardous duty area, you have 180 days to file your tax return. Enclose a statement with your return to explain the reason for the extension.

In addition, if you are hospitalized outside of the State of New Jersey as a result of injuries you received while serving in a combat zone or qualified hazardous duty area, determine your extension by adding to the period of service in the combat zone or qualified hazardous duty area, the period of continuous hospitalization outside of New Jersey, plus 180 days. Enclose a statement of explanation with your return when you file. No interest or penalties will be assessed during a valid extension for service in a combat zone or qualified hazardous duty area. This extension is also granted to a taxpayer's spouse who files a joint return.

NOTE: A person on active duty with the Armed Forces of the United States who cannot file timely because of distance, injury or hospitalization as a result of this service, will automatically receive a three-month extension by enclosing an explanation with the return when filed.

Death Related to Duty

When a member of the Armed Forces serving in a combat zone or qualified hazardous duty area dies as a result of wounds, disease or injury received there, no income tax is due for the taxable year the death occurred, nor for any earlier years served in the combat zone or qualified hazardous duty area. Income tax returns do not have to be filed for the deceased or the estate for these years.

If the deceased paid any tax while in the combat zone or qualified hazardous duty area, the full amount of the tax paid will be refunded to the estate or surviving spouse. If any tax was assessed, but not paid, the assessments will be canceled.

Income Tax Refunds

New Jersey Income Tax Erroneously Withheld

If New Jersey is your domicile but you satisfied the three conditions for nonresident status and New Jersey income tax was withheld from your military pay, file a New Jersey Nonresident Income Tax Return (Form NJ-1040NR) to obtain a refund. Report zero on the wages line in Column B for the amount of income from New Jersey sources. Complete the bal-

ance of the return, indicating the amount of New Jersey income tax withheld on the appropriate lines and attach a statement describing how you met the three conditions for nonresident status.

Time Period for Refunds

You have three years after the return is filed or two years after the tax is paid, whichever is later, to claim a refund for overpayment of New Jersey income tax.

Interest Paid on Refunds

If the Division of Taxation takes more than six months to send you your income tax refund, you have the right to receive interest on that refund. Interest at the prime rate, compounded annually, will be paid six months after the later of:

- the date the refund claim was filed;
- the date the tax was paid; or
- the due date of the return.

Homestead Rebate

Every New Jersey homeowner or tenant who is domiciled in New Jersey, has a principal place of residence in this State and who pays property tax on their residence, either directly or through rent, may be eligible for a homestead rebate, provided their gross income does not exceed \$100,000 (\$40,000 for homeowners who were under 65 and not blind or disabled). Homestead rebates range from \$40 to \$500. A homestead rebate application must be filed each year you are eligible.

A member of the Armed Forces, and his or her spouse, whose home of record (and domicile)

is outside of New Jersey, is not eligible for a homestead rebate even if he or she owns or rents a home in this State. An applicant must be domiciled in New Jersey to be eligible for a homestead rebate. However, the spouse of a nonresident serviceperson may be eligible for a homestead rebate if the spouse's domicile is New Jersey and he or she meets all the other qualifications. In this case, the spouse files a resident return (Form NJ-1040), if required, using the filing status "married, filing separate return" and completes the Homestead Rebate Application (Form HR-1040).

A member of the Armed Forces whose home of record (and domicile) is New Jersey, who remains a New Jersey resident and files a New Jersey resident income tax return, and who owns or rents a home in New Jersey may be eligible for a homestead rebate. Eligibility also depends upon the use of the residence during any periods of absence from New Jersey.

- If you leave your home vacant and continue to pay property taxes (or rent) during your tour of duty outside of New Jersey, you remain eligible for a homestead rebate if the New Jersey home remains your principal residence.
- If your family remains in the dwelling during your tour of duty outside of New Jersey and the home remains your principal residence, you are eligible for a homestead rebate.
- If you rent the property to others, you are not eligible for a homestead rebate. Since the dwelling is not available to you and your family for regular and continued occupancy,

it is no longer considered your principal residence for purposes of the homestead rebate, even though New Jersey remains your domicile.

For more information on homestead rebates, request Tax Topic Bulletin HR-2, *Homestead Rebate Guidelines*.

Pensions

New Jersey treats certain military pensions in the same manner as pensions from the private sector. Pension income received by residents of this State as a result of service with the Armed Forces is subject to New Jersey income tax. You must include pension benefits in your gross income in the year you receive them, whether the benefits are paid to you as a retiree or to your beneficiary either periodically or in a lump sum.

If you are 62 years of age or older or disabled under the Federal Social Security Act, and are receiving a United States military pension or survivor's benefit payments, the military pension or survivor's benefit is not taxable for New Jersey gross income tax purposes.

Military pensions are those resulting from service in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard. This exemption does not apply to civil service pensions or annuities, even if the pension or annuity includes credit for military service. Most military pensions and survivor's benefit payments are received from the U.S. Defense Finance and Accounting Service, while a civil service annuity is received through the U.S. Office of Personnel Management. If your military pen-

sion or survivor's benefit is exempt from New Jersey income tax, do not include such payments on your New Jersey return.

New Jersey provides certain exclusions and benefits for senior citizens and disabled individuals who are receiving taxable pension income. Request Tax Topic Bulletin GIT-1, *Pensions and Annuities*, for details.

Disability Payments

Total and permanent disability income is exempt from tax and should not be reported as pension income. If you are disabled under the Federal Social Security Act and are receiving a United States military disability pension or survivor's benefit payments, the military disability pension or survivor's benefits are not taxable for New Jersey gross income tax purposes.

Veterans Administration Disability Compensation is also exempt from tax and should not be included as income.

Withholding Tax from Military Pensions

Voluntary withholding of New Jersey income tax from retirement pay is permitted for retirees from the uniformed services. There is no age or disability requirement for voluntary withholding of New Jersey income tax. Contact your branch of the Armed Forces if you wish to have income tax withheld.

Surviving Spouse Benefits

Where a surviving spouse receives pension benefits resulting from the employment of a

deceased retiree who dies on or after May 22, 1981, and the transfer is not subject to New Jersey Transfer Inheritance Tax, the beneficiary is entitled to exclude from their New Jersey income the remaining contributions of the decedent. If the decedent's contributions to the retirement plan have already been exhausted, all pension income received by the beneficiary is includable as New Jersey income until the beneficiary reaches age 62, at which time the pension income becomes exempt under the age exemption.

Effective in 1985, when a military retiree has elected to take a reduction in pension as a result of joining the Survivors' Benefit Plan, the reduced pension amount received is taxable for New Jersey income tax purposes until the recipient reaches age 62. Upon the death of the military retiree, the amount paid to the surviving beneficiary is taxable as pension income until the surviving spouse reaches 62 years of age. See Tax Topic Bulletin GIT-1, *Pensions and Annuities*.

Other Benefits for Residents Veteran's Deduction

Qualified war veterans and their unmarried surviving spouses (widows/widowers) who are New Jersey residents are entitled to an annual deduction of \$50 from taxes due on real or personal property. If both a husband and wife are veterans, each may claim the deduction. A surviving spouse who is also a qualified veteran is entitled to a veteran's deduction for each status.

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NOTE: Certain disabled veterans and their surviving spouses (widows/widowers) may claim a 100% property tax exemption under certain conditions. Documentation such as a VA certification of disability or Discharge Form DD214 may be required to substantiate applications for this exemption.

For more information or to apply for the annual veteran's deduction contact your local tax assessor or county board of taxation.

New Jersey provides certain additional tax benefits to senior citizens and persons permanently and totally disabled. These and other benefits are described in Tax Topic Bulletin MISC-2, *Information for Senior Citizens*.

For information about additional property tax relief programs for New Jersey residents, request our brochure TSB-200, *New Jersey's Property Tax Relief Programs*.

Taxpayers' Bill of Rights

The New Jersey Taxpayers' Bill of Rights ensures that taxpayers are accorded fair and equitable treatment and receive the information and assistance they need to understand and meet their State tax responsibilities. To find out more, contact the Division of Taxation.

For More Information

For more information on military personnel, contact the Division's Call Center at 609-292-6400, or write to:

NEW JERSEY DIVISION OF TAXATION
TECHNICAL SERVICES
TAXPAYER SERVICES BRANCH
PO BOX 281
TRENTON NJ 08695-0281

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STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
TECHNICAL SERVICES
TAXPAYER SERVICES BRANCH
PO BOX 281
TRENTON NJ 08695-0281

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GIT-7 Military Personnel
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