

STATE OF DELAWARE  
DEPARTMENT OF FINANCE

DIVISION OF REVENUE  
INFORMATION CIRCULAR NO. 76-2

May 3, 1976

SUBJECT: Non-Resident Taxpayer Employed in Delaware -  
Apportionment of Income For Days Worked Out of State

A non-resident taxpayer is subject to Delaware income tax on income earned or derived from sources within this State. Non-resident individuals employed in Delaware are ordinarily subject to tax on their entire wages, salary or other compensation. However, in computing Delaware taxable income a non-resident taxpayer employed in Delaware may exclude that portion of his compensation which is derived from services required to be performed outside this State. In general, this apportionment is established by completing and attaching to the Delaware return Schedule W, showing the number of days worked during the year outside Delaware. Any allowance claimed for days worked outside Delaware must be based upon the performance of duties which the employee is obligated to perform out-of-state in the service of his employer, and cannot be based on mere convenience or optional considerations. In determining the number of days worked out of State, non-working days (including Saturday, Sunday & holidays), absence due to illness, personal emergency, vacation or leave without pay may not be taken into account.

A question has been raised as to whether an individual non-resident employee is entitled to any apportionment for income attributable to performing duties outside this State for less than a full day.

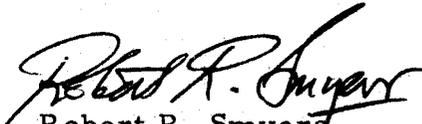
In cases where a non-resident employee only occasionally performs duties outside this State for a part of one day, it is the policy of the Division of Revenue not to allow any apportionment of the income if the work day commences and ends at his regular place of employment, and the employee is not ordinarily expected to work out of State in the normal course of his employment.

On the other hand, where a non-resident employee is required and expected, within the scope of his usual and normal em-

employment, to render services for a part of one day outside this State on a daily or regular basis (such as a person employed as a truck driver to deliver goods), it is the position of the Division of Revenue that such income may be apportioned on an hourly basis and excluded on Schedule W (based on an 8 hour work day) if properly substantiated. Ordinarily, some evidence in support of the claimed hourly apportionment (such as a letter from the employer) should be attached to the return.

Information Circular 74-1, dated February 14, 1974, is hereby revoked.

For the Director of Revenue,

  
Robert R. Smyers  
Deputy Director

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