

STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
601 DELAWARE AVENUE  
WILMINGTON, DELAWARE 19899

SPECIAL REVENUE INSTRUCTIONS NO. 3

February 23, 1973

Individual Personal Income Tax Returns - One Spouse a Nonresident

Questions have been received from nonresidents who have spouses who are either part-year residents or full-year residents of Delaware as to the correct method for filing Delaware tax returns. The pertinent provisions of the law are as follows:

(1) Section 1162 (d) of 30 Delaware Code states: "If either husband or wife is a nonresident and the other a resident for any taxable year, they shall file separate returns on such forms as the State Tax Commissioner shall prescribe and their tax liabilities under this chapter shall be separately determined, unless both elect to file a joint tax return in this State as if both were residents." (Emphasis added)

(2) Section 1103 defines a resident individual of the State as one who either:

"(1) is domiciled in this State for any part of the taxable year to the extent of the period of such domicile; or

(2) maintains a place of abode in this State and spends an aggregate of more than 183 days of the taxable year in this State."

The part-year resident with a spouse who is a nonresident (serviceman or otherwise) would report all income received from any source while a resident of Delaware, and all income derived from Delaware sources while a nonresident. If they elect to file a joint return, the nonresident spouse would be required to report the income from all sources during the period the spouse was a resident. The election is made by the nonresident to report as a resident when a joint return is filed. The nonresident would be treated as a resident for that period for income tax purposes. For example, on April 1, 1972, a serviceman is assigned to the Dover Air Force Base. His wife and family accompany him. The wife is employed in Dover and reports her income on the part-year resident (Form 200PY) return. If they elect to file a Delaware joint return his service and all other income from April 1, 1972, to the end of the year must be reported.

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In the case of a resident who marries a nonresident and thereafter both live in Delaware, the nonresident could file a part-year return and report in the same way as any separate part-year taxpayer (Delaware income while a nonresident plus all income while a Delaware resident). If they elect to file a joint return the entire income of the nonresident would have to be reported on Form 200. A combined separate return could not be filed as one is a resident and the other is a part-year resident.

Servicemen who are legal residents or domiciled in states other than Delaware are liable for Delaware income tax, as nonresidents, on income derived from sources within Delaware such as part-time work. This would not include military pay which is only reportable to the State of domicile. Income earned in Delaware by the spouses of military personnel while living in Delaware is subject to Delaware income tax.

The spouse of a serviceman who has income in Delaware, and who is either a Delaware resident or a part-year resident should ordinarily file a separate return and compute the Delaware tax liability separately, since election to file a joint Delaware tax return would require the entire income of both to be reported on the Delaware return including the service pay.



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