

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

TAX NEWSGRAM 72-56

November 16, 1972

PERSONAL INCOME TAX

- Non-resident individuals - Joint or separate returns - Application of proration percentage.

Certain questions have been raised with respect to non-resident individual requirements for filing Delaware Income Tax returns.

May non-resident married individuals file a joint Delaware return if they filed a joint Federal return and only one spouse has income from Delaware?

If separate returns are filed, how are the itemized deductions and personal exemption to be allocated?

Section 1162(b), Title 30, Delaware Code provides:

"If for any taxable year the federal income tax liability of husband and wife, either both residents of this state or both non-residents of this state, is determined on a joint federal income tax return, then they may file either a joint return or separate returns under this chapter whichever they elect."

Under this provision, non-resident taxpayers may elect to file separate Delaware returns or, if they filed a joint federal tax return they may elect to file a joint Delaware return even though only one spouse had income from Delaware sources.

Section 1124, 30 Delaware Code, allows a non-resident husband and wife, both of whom are required to file returns, to itemize deductions, provided both elect to itemize. Under Section 1125, 30 Delaware Code, a non-resident individual is allowed the same personal exemptions as those allowed a resident. However, itemized deductions and personal exemptions must be allocated in the same manner as required by federal law and prorated in accordance with the limitation provided in Section 1126 as illustrated below.

Example 1

Assume that husband and wife live in Pennsylvania and for calendar year 1972 filed a joint Federal Income Tax Return reporting adjusted gross income of \$20,000. The wife was employed in Delaware and had adjusted gross

income of \$5,000. The husband was employed in Pennsylvania and had adjusted gross income of \$15,000.

If the taxpayers elect to file a joint Delaware return the taxable income would be computed as follows:

Federal Adjusted Gross Income		\$20,000
Less: Income of husband earned in Penna.		<u>15,000</u>
Delaware Adjusted Gross Income (wife)		5,000
The proration percentage $(5,000 \div 20,000) = 25\%$		
Less deductions:		
Standard Deduction	\$ 500	
Federal Income Tax Paid	600	
Personal Exemption 2 X 600 X 25%	<u>300</u>	<u>1,400</u>
Delaware Taxable Income		3,600

If they elect to file separate Delaware returns, taxable income would be computed as follows:

Federal Adjusted Gross Income (wife)		5,000
Delaware Adjusted Gross Income		5,000
Proration percentage = 100%		
Less deductions:		
Standard Deduction	500	
Federal Income Tax Paid	300	
Personal Exemption 1 X 600	<u>600</u>	<u>1,400</u>
Delaware Taxable Income		3,600

Example 2

Assume the same facts as above except the husband worked in Delaware and the wife in Pennsylvania.

Joint return

Federal Adjusted Gross Income		20,000
Less: Income of wife		<u>5,000</u>
Delaware Adjusted Gross Income (husband)		15,000
Proration percentage = 75%		

Less deductions:

Standard Deduction	1,000	
Federal Income Tax Paid	600	
Personal Exemptions 2 X 600 X 75%	<u>900</u>	<u>2,500</u>

Delaware Taxable Income 12,500

Separate return

Federal Adjusted Gross Income (husband) 15,000
 Proration percentage = 100%

Less deductions:

Standard Deduction	500	
Federal Income Tax Paid	300	
Personal Exemption 1 X 600	<u>600</u>	<u>1,400</u>

Delaware Taxable Income (husband) 13,600



J. H. Kennedy
 Director of Revenue

emm

Distribution: B and C