



JONES DAY  
**COMMENTARY**

## WEALTH MANAGEMENT

# OHIO'S NEW RESIDENCY REQUIREMENTS FOR INDIVIDUAL INCOME TAX PURPOSES

On December 14, 2006, the Ohio General Assembly passed Sub. H.B. 73, which changed Ohio's residency requirements for Ohio income tax purposes (the so-called "snowbird" rules). Outgoing Ohio Governor Bob Taft signed the bill into law on January 2, 2007. It is effective for tax years after 2006. The Ohio Department of Taxation recently published the "Affidavit of Non-Ohio Domicile for Taxable Year 2007" form.

Whether an individual is domiciled in Ohio depends upon the number of "contact periods" the individual has in Ohio during the taxable year (for most people, the calendar year). A contact period occurs when an individual is away from his or her out-of-state "abode" and spends a portion of two consecutive days in Ohio. ("Abode" typically means a place where one lives.) In most circumstances, this will be the number of nights spent in Ohio.

### WHY DOES RESIDENCY STATUS MATTER?

An Ohio resident must pay Ohio income tax on his or her worldwide income, subject to credits for taxes paid in other jurisdictions. A nonresident, however, only pays Ohio income tax on income earned or received in Ohio.

### WHO IS A RESIDENT?

Under Ohio law, an individual is a "resident" for Ohio income tax purposes if he or she is "domiciled" in Ohio.

### OLD LAW

Under the old Ohio residency rules, an individual who had 120 or fewer contact periods during a taxable year and at least one abode outside Ohio during the entire taxable year was presumed *not* to be domiciled in Ohio for that taxable year. This presumption was irrebuttable (meaning it could not be challenged), *unless* the taxpayer received a request from the Ohio Tax Commissioner ("Commissioner") for a statement verifying facts concerning the individual's domicile,

and the individual failed to submit the statement within 60 days of receipt. Failure to submit the requested statement resulted in a presumption that the individual was domiciled in Ohio for the entire taxable year. This presumption was rebuttable (or challengeable) by the individual upon presentation of sufficient evidence.

Moreover, Ohio domicile was presumed to exist for an individual with more than 121 contact periods with Ohio during the taxable year. The individual could rebut the presumption with sufficient evidence, but the burden of proof was much higher if the individual had more than 182 contact periods with Ohio during the taxable year.

Certain contact periods were exempt from these determinations. For instance, a contact period did not count for 2006 if the individual spent any portion of a contact period: (i) providing services or raising funds for a not-for-profit organization, (ii) attending to his or her own, or an immediate or extended family member's, medical hardship, or (iii) attending an immediate or extended family member's funeral.

Also, under prior law, an individual could elect nonresident status by filing a written statement with the Commissioner during the taxable year immediately preceding the taxable year to which the election applied. For instance, an individual who made this election in 2005 would have been considered a nonresident for all of taxable year 2006.

## NEW LAW

The new law increases the number of contact periods an individual can have with Ohio and still be presumed *not* to be domiciled in Ohio for income tax purposes from 120 to 182. Ohio domicile is presumed for individuals with more than 182 contact periods (and like the old law, this presumption can be rebutted by the individual, but the burden of proof is high).

The new law brings several other significant changes. It requires an individual wishing to take advantage of the non-Ohio domicile presumption for tax year 2007 to file Ohio Tax Form IT DA-NM (the "Form") (attached hereto), verifying that the individual is not domiciled in Ohio and specifying the

location of each non-Ohio abode (in contrast, under the old law, such a statement was required *only if requested* by the Commissioner). **The Form needs to be filed by May 30, 2008. Failure to file, or filing a false Form, will result in a presumption that the individual was domiciled in Ohio during tax year 2007.** The individual would then need to rebut this presumption by presenting sufficient evidence to the contrary.

As was the case under the old law, only certain types of evidence regarding domicile will be considered by the Commissioner. For instance, the Commissioner will *not* consider: the location of financial institutions in which the individual has accounts, the location of professional services (accounting, legal, health care) utilized by the individual, the location or place of formation of a business entity with which the individual is associated, the place of residency or domicile listed in the individual's estate planning documents, and the location of not-for-profit organizations to which the individual makes contributions. On the other hand, the Commissioner will consider evidence of: the forwarding of mail from an Ohio address to a non-Ohio address by the individual, the use of club facilities outside of Ohio by the individual, utility shut-off notices related to the individual's Ohio residence, and the individual's out-of-state voting records.

Another important change is that the new law no longer includes the so-called "charitable," "medical hardship," or "funeral" exemptions from contact periods. Thus, individuals must now take into account all time spent in Ohio for purposes of computing contact periods. Lastly, under the new law, individuals can no longer affirmatively elect nonresident status in the current year for application in the subsequent year.

## RESIDENCY FOR OHIO ESTATE TAX PURPOSES

The new law only applies for Ohio income tax purposes. For Ohio estate tax purposes, facts and circumstances are analyzed in order to determine where the decedent *intended* to have his or her domicile. An individual's domicile depends upon a variety of factors, including location(s) of the individual's home(s), location(s) of the individual's valuable possessions and personal property, where the individual votes, where the individual is involved in civic activities, etc.

## CONCLUSION

Under the new law, “snowbirds” can spend more time in Ohio while maintaining a presumption of nonresidency status for Ohio income tax purposes, but they must file the requisite Form with the Commissioner. (Although the Form is valid only for tax year 2007, presumably the Ohio Department of Taxation will publish a similar form for subsequent tax years.) Also, individuals must now take into account time spent in Ohio for charitable or medical reasons, or to attend a funeral. For individuals wishing to establish residency outside Ohio, or wishing to establish nonresidency for estate tax purposes, it is still important to take steps such as forwarding mail, changing Ohio club memberships from resident to nonresident status, and registering to vote outside of Ohio (and to keep good records of these steps), as they will provide evidence of nonresidency if needed.

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General e-mail messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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### Affidavit of Non-Ohio Domicile for Taxable Year 2007 – Nonmilitary

This form is for use by nonmilitary individuals who are claiming to be full-year nonresidents under Ohio Revised Code section 5747.24.

**Due date:** May 30, 2008 (Ohio law does not provide for any extension of time to file). See Ohio Revised Code sections 5747.24 and 5703.35.

**Who must file:** Each individual claiming full-year Ohio nonresident status for 2007 must file this affidavit by May 30, 2008 to preserve the presumption of full-year nonresident status.

Filing this affidavit may impact the ability for you and/or your family members to obtain in-state tuition at an Ohio university, to vote in Ohio, and to obtain or keep an Ohio driver’s license, etc. Filing this affidavit does **not** exempt you from timely filing your Ohio income tax return for 2007 and paying any tax due.

First name	M.I.	Last name	Social Security number
Address		County	
City, state, ZIP code			

Under penalties of perjury, I declare all the following to be true:

1. I was not domiciled in Ohio at any time during taxable year 2007. I was domiciled in \_\_\_\_\_ (name of state(s) where domiciled).
2. I had at least one abode (place where I lived) outside of Ohio for the entire taxable year. Name of state(s) where I lived, if different from statement 1, above. \_\_\_\_\_
3. I had less than 183 contact periods\* in Ohio during taxable year 2007.
4. I  shall  shall not be filing a year 2007 Ohio individual income tax return.

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements on this affidavit are true, correct and complete.

\_\_\_\_\_  
Your signature

\_\_\_\_\_  
Date

\* Ohio Revised Code section 5747.24(A)(1) states that an individual "has one contact period in this state" if the individual is away overnight from his/her abode located outside this state and, while away overnight from that abode, spends at least some portion, however minimal, of each of two consecutive days in this state.

**Federal Privacy Act Notice**

Because we require you to provide us with a Social Security number, the *Federal Privacy Act of 1974* requires us to inform you that providing us with your Social Security number is mandatory. Ohio Revised Code sections 5703.05, 5703.057 and 5747.08 authorize us to request this information. We need your Social Security number in order to administer this tax. Your failure to supply any information requested on this affidavit will result in our inability to process this document.

**Please do not attach to, or enclose with, your Ohio income tax return.**

Mail to:  
Ohio Department of Taxation  
Attn: Tax Technical  
4485 Northland Ridge Blvd.  
Columbus, OH 43229-5404.

**Questions? Call us toll-free at 1-800-282-1780.**

## IT DA-NM Instructions

### Who Should File This Affidavit?

You must file this yearly affidavit if you are not in the military and you are claiming the presumption of full-year non-Ohio residency under Ohio Revised Code section (R.C.) 5747.24. If you do not file this affidavit by May 30, 2008, under Ohio law you are presumed to be a full-year Ohio resident.

### What Is the Due Date for Filing This Affidavit?

The due date is May 30, 2008. R.C. section 5747.24 requires that, in order to preserve the presumption of full-year non-Ohio residency, the taxpayer must file this affidavit by the 15th day of the fourth month following the last day of the taxable year. However, R.C. section 5703.35 allows the tax commissioner to extend for 45 days the due date for any report. As such, you must file this tax return by May 30, 2008. The tax commissioner has no authority to extend beyond May 30, 2008 the due date for filing the year 2007 affidavit.

### Where Do I Mail This Affidavit?

Please mail this affidavit to the street address set forth at the bottom of the affidavit. The postmark date must be no later than May 30, 2008. Please do **not** attach this affidavit to, or enclose with, your Ohio individual income tax return.

### Do I Need To File This Affidavit if I Have Not Earned or Received Any Income in Ohio?

Even if you have no income that you earned or received in Ohio, you must timely file this affidavit by May 30, 2008 if you want to preserve the presumption of full-year non-Ohio residency.

### If I Timely File Ohio Form ITDA-NM, Do I Also Have To File Ohio Form IT 10, Information Notice of No Tax Due?

No taxpayer is required to file Ohio form IT 10. However, by filing Ohio form IT 10, you might not be considered a delinquent taxpayer. So, if you have not earned or received any income in Ohio, you may want to consider filing both this affidavit and Ohio form IT 10. Please do **not** file the affidavit and notice together since there is a different address for the affidavit and for the notice.

### Whom Do I Contact if I Have Additional Questions About This Affidavit?

For more information you can call the toll-free number on the front of this affidavit, or for faster service you can go to our Web site at [tax.ohio.gov](http://tax.ohio.gov), click on "Contact Us" and electronically send your question(s) to us.

### What Is the "Bright Line" Test Under Ohio Revised Code Section 5747.24?

This portion of Ohio law provides for a "bright line" test under which an individual is presumed to be a full-year nonresident if all of the following circumstances are present:

- The individual has at least one abode outside Ohio for the entire year (the law does not define "abode"),
- The individual has no more than 182 contact periods in Ohio, and
- The individual timely submits to the Ohio Department of Taxation this affidavit, **and** the affidavit is not false.

### What Is a "Contact Period" in Ohio?

An individual has one contact period in this state if the individual is away overnight from the individual's abode located outside the state and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in this state. Note that the individual does not have to spend the night in Ohio.

For example: An individual who claims to be domiciled in Florida has an abode in Florida for the entire year. On Jan. 2 of the taxable year the individual flies from Florida to Toledo. Later on Jan. 2 the individual drives to Michigan and spends the night in Michigan. On Jan. 3 the individual drives from Michigan back to Ohio. Late in the day on Jan. 3 the individual flies from Toledo back to the individual's abode in Florida.

The individual has one contact period in Ohio because the individual spent some portion of two consecutive days (Jan. 2 and Jan. 3) in Ohio and was away overnight (from sometime on Jan. 2 until sometime on Jan. 3) from the individual's abode in Florida.