



# WERE YOU A NON-RESIDENT OF OHIO IN 2016? TODAY IS THE DEADLINE TO FILE FORM IT-DA!

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*To potentially reduce Ohio income tax, non-residents of Ohio should remember to file Form IT-DA no later than May 30, 2017.*

An individual that has changed his or her residency (domicile)<sup>1</sup> from Ohio to another state or country should remember to consider whether to file Form IT-DA, the Affidavit of Non-Ohio Residency/Domicile (“NR Affidavit”). Even if a former Ohio resident does not have Ohio sourced income for 2016 and is not required to file a 2016 Ohio individual income tax return, the individual may still wish to file the NR Affidavit. By timely filing the NR Affidavit with the Ohio Department of Taxation, an individual may create a binding presumption that the individual is not domiciled in Ohio, which could result in significant Ohio individual income tax savings. The *Cunningham v. Testa* Ohio Supreme Court decision on which we previously reported ([Lights Out for Ohio's Bright-Line Tax Residency Test](#)) could impact the ultimate determination of residency, but those that meet the tests described below for taxable year 2016, should nonetheless still consider filing the NR Affidavit by today.

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<sup>1</sup> The law uses the term “domicile” to effectively mean “residency” as that term is normally used in state income tax matters. We use the term resident and residency in this document to connote domiciliary and domicile.

## **Satisfying the Requirements to Meet the Presumption of Non-Residency**

Revised Code 5747.24(B) indicates that an individual will be considered a non-resident of Ohio if the individual:

- i. Has no more than 212 contact periods (generally, a contact period equates to an overnight stay) in Ohio during the taxable year<sup>2</sup>;
- ii. Has an abode outside Ohio during the entire taxable year; and,
- iii. Files the NR Affidavit by May 30 of the succeeding calendar year (year after the taxable year).

In filing the NR Affidavit, an individual must verify that he or she was not domiciled in Ohio during the prior tax year, the location of the abode outside of Ohio, the number of contact periods did not exceed 212 during the tax year, and if the individual plans on filing a 2016 individual income tax return. The NR Affidavit may not contain a false statement and any statement made by the taxpayer on the NR Affidavit may be challenged by the Ohio Department of Taxation. Therefore, individuals must ensure that the statements made on the NR Affidavit can be supported by his or her individual facts.

## **Why the Determination of Residency is Important**

The determination of whether an individual is considered a resident of Ohio can significantly impact the amount of Ohio individual income tax due from the individual. If an individual is determined to be a resident of Ohio, all income reported on the individual's Federal 1040 is effectively subject to Ohio individual income tax (with a potential credit for taxes paid to other states). Whereas, if the individual is considered to be a non-resident for Ohio income tax purposes, the individual is only subject to Ohio income tax on income *earned or received in Ohio* (the effect is no Ohio tax should be owed on certain interest and capital gains, for example). Accordingly, an individual should consider filing the NR Affidavit by May 30, 2017 to request the statutory presumption that he or she is not a resident of Ohio. Further, individuals that file a joint federal income tax return should ensure that both spouses sign the NR Affidavit, where appropriate. Other non-tax considerations should be explored as well.

Zaino Hall & Farrin's professionals have assisted many individuals with residency planning and tax audit defense. If you would like to discuss how this NR Affidavit or residency treatment might impact your Ohio tax liability, please contact [Adam Garn](#), [Steve Hall](#), or any of our other [tax professionals](#).

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2 An individual has a contact period in Ohio if the individual is away overnight from the individual's 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.

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