

Ga. Comp. R. & Regs. r. 560-7-3-.02 Definitions

Georgia Administrative Code

Department 560. RULES OF DEPARTMENT OF REVENUE

Chapter 560-7. INCOME TAX DIVISION

Subject 560-7-3. SUBSTANTIVE REGULATIONS

Current through Rules filed through December 20, 2017

Rule 560-7-3-.02. Definitions

- (1) "Resident" shall mean the same as defined in O.C.G.A. § [48-7-1](#).
 - (a) Any person who is or has become a resident of this State shall continue to be a resident for income tax purposes even though temporarily absent from the State, until he or she becomes a permanent resident of another State.
 - (b) When a taxpayer is not liable for Georgia income taxes for an entire year because of moving into this State or moving from this State, he or she shall include in his or her return only his or her income received while a resident of this State.
 - (c) In the case of members of the Armed Forces, the Service Members Civil Relief Act provides that a service member shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the income of the service member by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders. There are many cases, however, of service members coming into Georgia by reason of military orders, but who later decide to become a permanent resident of the State. There are other cases where service members have come into the State and purchased property for residential purposes, claiming homestead exemption for tax purposes, and notwithstanding the provisions of the Service Members Civil Relief Act, they would be considered residents of Georgia for income tax purposes and subject to the tax. There are other instances where service members have declared the intention of becoming and remaining residents of this State, in which cases they would be liable for Georgia income tax. Residence is a question of fact which must be determined in each case.
- (2) "Corporation." The term "corporation" as used in these regulations includes not only corporations which have been created or organized under the laws of Georgia, but also every corporation doing business within this State or deriving income from sources within this State, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory, district or foreign country. The term "corporation" is not limited to the legal entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint stock company, and certain kinds of partnerships. Any association or organization which is required to report as a corporation for Federal income tax purposes under the Internal Revenue Code shall be considered to be a corporation for the purposes of the Georgia Act. Conversely, any association, organization or corporation required to report in any other capacity for Federal income tax purposes under the Internal Revenue Code shall report in a like capacity for purposes of the Georgia Act.

year, the period for which such return is made.

Cite as Ga. Comp. R. & Regs. R. 560-7-3-.02

Authority: O.C.G.A. Secs. [48-2-12](#), [48-7-1](#), [48-7-85](#), 92-3005, 92-3006, 92-8405, 92-8406, 92-8409, 92-8427.

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Amended: F. Dec. 6, 2010; eff. Dec. 26, 2010.

CODE OF GEORGIA
 Title 48. REVENUE AND TAXATION
 Chapter 7. INCOME TAXES
 Article 1. GENERAL PROVISIONS

Current through 2017 legislative session

§ 48-7-1. Definitions

As used in this chapter, the term:

- (1) "Corporation" includes, but is not limited to, all associations, professional associations organized pursuant to Chapter 10 of Title 14,
- (2) "Deficiency" means the amount by which the tax imposed by this chapter or any prior law exceeds the amount shown as the tax due or the amount due by a taxpayer upon his return or if no return is made by the taxpayer, the amount determined by the commissioner to be the correct amount of tax due,
- (3) "Dividend," when used for the purpose of defining a taxable dividend, means any distribution made by a corporation out of its earnings made in cash, other property, or a stock different from the stock on which the dividend is paid. "Dividend" also includes, but is not limited to, any distribution of time of dissolution which is in effect a distribution of earnings.
- (4) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. In the case of any federal income tax purposes, the term means the period so elected.
- (5) "Income tax day" means December 31 of each calendar year or, if a person can show to the satisfaction of the commissioner that the income tax reporting purposes, the last day of the person's fiscal year.
- (6) "Nonresidents" means taxable nonresidents and nontaxable nonresidents.
- (7) "Nontaxable nonresident" means every individual who is not otherwise a resident of this state or a taxable nonresident of this state.
- (7.1) "Owning property or doing business in this state" shall not include the following activities, either singularly or in the aggregate, with respect to a commercial printer in the State of Georgia that has contracted with a commercial printer for any printing, including printing related activities, and distribution of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer:
 - (A) The ownership by that person of tangible or intangible property located at the Georgia premises of the commercial printer for the purpose of printing or distribution of printed material produced at and shipped or distributed from the Georgia premises;
 - (B) The sale and distribution by that person of printed material produced at and shipped or distributed from the Georgia premises;
 - (C) The activities performed by or on behalf of that person at the Georgia premises of the commercial printer which are directly related to the printing, including printing related activities and distribution related activities, performed by the commercial printer in Georgia;
 - (D) The printing, including printing related activities and distribution related activities, performed by the commercial printer in Georgia.
- (8) "Paid," for the purpose of the deductions under this chapter, means "paid or accrued" or "paid or incurred." The terms "paid or accrued" and "paid or incurred" mean the method of accounting upon the basis of which the net income is computed under this chapter.
- (9) "Received," for the purpose of the computation of the net income under this chapter, means "received or accrued." The term "received or accrued" means the method of accounting upon the basis of which the net income is computed under this chapter.
- (10) (A) "Resident" means:
 - (i) Every individual who is a legal resident of this state on income tax day.
 - (ii) Every individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more transitory basis of a visitor or sojourner and who so resides within this state on income tax day.
 - (iii) Every individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, during the 12-month period immediately preceding income tax day.
- (B) Every individual who, having become a resident of this state for income tax purposes under subparagraphs (A) and (B) of this paragraph, shows to the satisfaction of the commissioner that he has become a legal resident or domiciliary of another state and that such a showing with respect to any 12 month period immediately preceding income tax day, the person shall be taxable as a resident on an apportionment basis as prescribed in Code Section 48-7-85.
- (C) Every individual who becomes a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph immediately preceding income tax day and who does not otherwise come within division (iii) of subparagraph (A) of this paragraph shall be taxable as a resident on an apportionment basis as prescribed in Code Section 48-7-85.

- (11) "Taxable nonresident" means:

- (A) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently means of employees, agents, or partners, in employment, trade, business, professional, or other activity for financial gain or profit or property located within this state or for use within this state. "Taxable nonresident" does not include a legal resident of another state who consists of performing services in this state for an employer as an employee when the remuneration for the services does not exceed \$5,000.00 for performing services in all places during any taxable year or \$5,000.00;
- (B) Every individual who is not otherwise a resident of this state for income tax purposes and who sells, exchanges, or otherwise disposes of or other disposition has a taxable situs within this state or who sells, exchanges, or otherwise disposes of intangible personal property or disposition a business or commercial situs within this state;
- (C) Every individual who is not otherwise a resident of this state for income tax purposes and who receives the proceeds of any lottery or other disposition of property;
- (D) Every individual who is not a resident of this state for income tax purposes and who makes a withdrawal as provided for in paragraph (C);
- (E)
 - (i) For purposes of this subparagraph, the term:
 - (I) "Deferred compensation" means deferred compensation received from a nonqualified deferred compensation plan.
 - (II) "Nonqualified deferred compensation plan" means the same as it is defined in Section 3121(v)(2) of the Internal Revenue Code.
 - (ii) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently or herself, in activity for financial gain or profit and who receives income from such activity in the form of deferred compensation and whose income exceeds the lesser of 5 percent of the income received by the person in all places during the taxable year or \$5,000.00 in the case of an individual who receives such income when the state is prohibited from taxing such income pursuant to federal law established before January 1, 2011, this subparagraph shall apply only to the portion earned on or after January 1, 2011. In determining the amount earned in Georgia using a "days worked in Georgia" method. Such earned amount shall be included in the individual's gross income for the taxable year.
 - (iii) Employers shall withhold Georgia income tax as provided in Article 5 of this chapter on all deferred compensation and stock options of the taxable nonresident. For purposes of withholding only:
 - (I) The employer shall use records that are available to them. However, if the records are not available, the employer may determine the number of days worked in Georgia by assuming the employee's written representation was false or contained erroneous information; and
 - (II) The employer may elect to determine the number of days worked in Georgia by assuming the employee worked in Georgia for the number of days worked in Georgia.
 - (iv) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this chapter.

(12) "Taxable year" means the calendar year or the fiscal year ending during the calendar year upon the basis of which the net income is reported. Cite as OCGA § 48-7-1

History. Amended by [2011 Ga. Laws 73, §2](#), eff. 5/11/2011.

Amended by [2010 Ga. Laws 483, §1](#), eff. 7/1/2011.

Amended by [2009 Ga. Laws 8, §48](#), eff. 4/14/2009.

Amended by [2008 Ga. Laws 427, §6](#), eff. 5/6/2008.

Amended by [2005 Ga. Laws 31, §7](#), eff. 4/12/2005.

Amended by [2005 Ga. Laws 19, §48](#), eff. 4/7/2005.

Amended by [2002 Ga. Laws 446, §1](#), eff. 4/12/2002.

Related Legislative Provision: See [2002 Ga. Laws 446, §15](#).