Legal and Residency Status

Your legal and residency status in Massachusetts affects how you file your taxes. Find out what you should file and how to report your income.

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Legal Status

Your **domicile, or legal residence**, is your true home or main residence. You may have multiple residences at one time, but only 1 domicile. You can't choose to make your home one place for general living purposes and in another for tax purposes. Your legal residence is usually where you maintain your most important family, social, economic, political, and religious ties, and it depends on all the facts and circumstances per case, including good faith.

A **minor's domicile** is the same as that of the parent or guardian who has lawful custody of the child.

The **domicile of a mentally incompetent person under guardianship** can be changed by the the guardian's intent (within the jurisdiction of the appointing court), or the incompetent's intent if he or she has sufficient mental capacity to choose a new home.

The basic rules that apply when determining a domicile or change in domicile:

1. Each person has a domicile. It may be a:
    - Domicile of origin (where they were born)
    - Domicile by operation of law, or
    - Domicile of choice (done by changing residence)
2. Each person keeps his or her own present domicile until he or she establishes a new domicile in another place.
3. A new domicile may be acquired only by:
    - Abandoning the current domicile
    - Establishing a residence at a new place, and
    - Intending to make the new residence one's home permanently or for an indefinite time, with no certain, present intention to return to the previous home.
4. The burden of proving that a taxpayer has changed their domicile lies with the party asserting the change.

Changing your domicile

You cannot change your domicile by taking a temporary or longer than expected absence from Massachusetts. You must not intend to return. To change your domicile, you must have declared your intent and taken steps to do so. Your declaration of intent will be examined closely. If you assert that your domicile has changed, you bear the burden of proving that fact.

Factors that will be considered when determining if you've changed your domicile:

- You've purchased or leased a new home or an apartment in the new location
- You've moved his personal property to the new location
- You got permanent employment in the new location
- You canceled Massachusetts bank accounts and opened new accounts in the new location
- You sold real property in Massachusetts or canceled leases
- You issued address change notices
- You changed voter registration
- You got a driver's license and automobile registration in the new location
- You changed membership in churches and clubs
- Generally, you're involved in the new community

Detailed information required:

- Any different addresses you had at any point during the past 5 years
- When in Massachusetts, where you live and for how many months per year

- When in the state you claimed legal residence in, where you live and for how many months per year
- Property owned in Massachusetts
- Property owned in other states
- Dates physically present in Massachusetts over the past 5 years
- Dates physically present in other states over the past 5 years
- Part of the year you expect to be in Massachusetts in future years
- Part of the year you expect to be in other states in future years
- Years you've been eligible to vote in Massachusetts
- Years you've been eligible to vote in other states
- Years you've been assessed real estate tax in Massachusetts
- Organizations in Massachusetts (and in other states) that are considered:
    - Church/religious
    - Civic/political
    - Fraternal organizations
    - Clubs

- Bank accounts and safe deposit boxes, noting location and dates opened/closed
- Automobiles owned and where registered in the past 5 years
- Address listed on passport if obtained within the past 5 years
- Which IRS office the federal tax returns were filed in over the past five years
- Where any dependents attend school

Additional Resources

- **LR 08-11: Taxpayer Domiciled in New York, Resident in Massachusetts**

Residency Status

You're a **full-year resident** if:

- Your home is in Massachusetts for the entire tax year, or
- Your home is not in Massachusetts for the entire tax year but you:
    - Maintain a permanent place of abode in Massachusetts, and
    - Spend a total of more than 183 days of the tax year in Massachusetts, including days spent partially in Massachusetts. (Do not count days

spent in Massachusetts while on active duty in the U.S. armed forces.)

You're a **part-year resident** if you:

- Move to Massachusetts during the tax year and become a resident, or
- Move out of Massachusetts during the tax year and end your status as a resident.

You're a **nonresident** if you are neither a full-year nor a part-year resident.

Permanent place of abode

A "permanent place of abode" is a dwelling place that someone, not necessarily the owner, continually maintains. This includes a place owned or leased by a spouse.

A permanent place of abode generally will **not** include:

- A camp, military barracks and housing, dormitory room, hospital room or room in any other similar temporary institutional setting
- A university owned studio apartment available only to a university affiliated student, faculty and staff
- A dwelling place completely lacking both kitchen and bathing facilities, or a dwelling place that is not prepared for winter

- A hotel or motel room (but facts and situational circumstances will be taken into account before deciding)
- A dwelling place owned by someone who, during the term of a lease, leases it:
    - To others not related to the owner or their spouse by blood or marriage
    - For at least 1 year
    - Where the individual has no right to occupy any portion of the premises and who does not use such premises as his or her mailing address during the term of the lease
- A dwelling place that is maintained only during a temporary stay in Massachusetts for accomplishing a particular documented purpose. A temporary stay is defined as a predetermined period of time **not to exceed 1 year.**

Additional Resources

- **TIR 95-7: Change in the Definition of "Resident" for Massachusetts Income Tax Purposes**
- **Letter Ruling 09-5: Residency**
- **830 CMR 62.5A.1(5): Non-Resident Income Tax**

Residency Status for Certain Taxpayers

Certain taxpayers have special guidelines to follow when it comes to residency status and filing taxes:

- **Military service personnel, including military spouses**
- Nonresident and resident aliens
- Teachers temporarily residing in Massachusetts

Residents working overseas

Federal tax treatment:

If you receive income from foreign sources,
you may exclude foreign earned income attributable to the period of residence in a foreign country if you qualify for the exclusion.

To qualify for the foreign earned income exclusion, you must:

- Be a U.S. citizen working abroad
- Make a tax home in a foreign country
- Meet either the:
    - Bona fide residence test, or
    - Physical presence test

A U.S. resident alien working abroad can qualify for this exclusion if they meet the physical presence test.

Foreign income includes:

- Salaries, wages, etc.
- Allowance for housing
- Business profits, rent and royalties
- Fringe benefits

Massachusetts tax treatment:

Massachusetts does **not** allow the foreign earned income exclusion. However, Massachusetts residents who are taxed on income earned in Canada or in any of its provinces can claim credit for such taxes after accounting for any federal credit.

Teachers temporarily residing in Massachusetts

Federal treatment:

Under many income tax treaties, nonresident alien teachers and professors who temporarily visit the United States primarily to teach at a university or other accredited educational institution are **not** subject to U.S. income tax on compensation they receive for teaching for the first 2 or 3 years after arriving in the U.S.

Many treaties also provide exemptions for engaging in research. Pay for teaching includes payments to a nonresident alien professor, teacher, or researcher by a U.S. university or other accredited educational institution for teaching or research work at the institution.

Additional Resources

- **Income Tax Paid to Other Jurisdiction**
- **TIR 09-23: Effect of the Military Spouses Residency Relief Act**

Visas

Whether you're a resident or nonresident alien, your visa status does **not** determine your tax status. Your tax status is determined by tax treaties between the U.S. and another country.

The most common types of visas are:

- **F-1 student visas** - Generally given to those who come to the U.S. as students to pursue a course of study at an established institution of learning.
- **H-1 work visas** - Generally given to those who come to the U.S. to work.
- **J-1 teaching visas** - Generally given to those who come to the U.S. as exchange visitors to take part in authorized programs as teachers, scholars, research assistants, trainers, etc.
- **M-1 visas** - Generally given to those who come to the U.S. as vocational or other nonacademic students.
- **Q-1 visas** - Generally given to those who come to the U.S. as international cultural exchange visitors.

For a complete list of visas, see IRS Immigration classifications and Visa Categories.

U.S. Tax Treaties

Federal tax treatment

The United States has income tax treaties with many foreign countries, most of which are reciprocal. If a type of income is tax-exempt to **U.S. residents working overseas**, that same type of income will be tax-exempt to residents of foreign countries (nonresident aliens) who are working in the U.S.

Under these treaties, nonresident aliens are taxed either at a lower rate, or are exempt from U.S. income taxes on certain types of income they receive from sources within the United States. Each treaty is different and may specify that either all income is exempt, or only certain types of income are exempt.

Income you have to report if you're a nonresident alien:

- For types of income not covered by treaties, report such income and pay tax on Form 1040NR - U.S. Nonresident Alien Income Tax Return.
- If there is **no treaty** between your country and the U.S., report and pay tax on income from all sources

within the U.S. on Form 1040NR - U.S. Nonresident Alien Income Tax Return.

Resident aliens do not benefit from income tax treaties.

Massachusetts treatment of Massachusetts source income

If you're a nonresident, your Massachusetts source income is excluded for Massachusetts purposes if:

1. You're a citizen of a foreign country, and
2. The income is excluded from federal gross income under an income tax treaty or convention that the United States is a part of.

Income you have to report:

- For types of Massachusetts sourced income that is not covered by treaties, report such income and pay tax on Form 1-NR/PY - Nonresident or Part-Year Resident Income Tax Return, or
- If there is **no treaty** between your country and the U.S., report and pay tax on income from Massachusetts sources on Form 1-NR/PY - Nonresident or Part-Year Resident Income Tax Return.

Income excluded due to tax treaties

Income that is federally excluded due to a tax treaty is also excluded for Massachusetts tax purposes. However, you

still need to report the income if it is greater than the **tax return filing threshold**.

1. Include it in your Massachusetts gross income.
2. Report the amount of income subject to Massachusetts tax on MA Form 1 (Line 3) or Form 1-NR/PY (Line 5) as wages.
3. Exclude the income on Schedule Y, Line 4. Claim it as a deduction by filling in the appropriate oval. This deduction affects calculating No Tax Status and the Limited Income Credit, as it is treated as an adjustment to Massachusetts adjusted gross income on the Massachusetts AGI Worksheet and Schedule NTS-L-NR/PY.
4. Attach a copy of U.S. Form 1042-S - Foreign Person's U.S. Source Income Subject to Withholding, relative to any tax treaty provision (if applicable).
5. Include your country of origin, income code number, and/or treaty article citation from U.S. Publication 901.

Massachusetts state tax withholding

Employers must withhold Massachusetts state tax unless an exemption under a tax treaty applies. This will be shown on U.S. Form 1042-S - Foreign Person's U.S. Source Income Subject to Withholding.

If your income is exempt due to a tax treaty, but your taxes have been withheld by an employer anyway, you (a

nonresident) can claim a refund of the amount withheld, by filing Form 1-NR/PY - Massachusetts Nonresident Income Tax Return and attaching:

- The state copy of the W-2 Form indicating that taxes have been withheld
- Documentation of the treaty exemption

Additional Resources

- **Learn about No Tax Status and Limited Income Credit**
- **Personal Income tax forms and instructions**
- **DD 87-4: Nonresidents from Other Countries; Effect of Tax Treaty**

Documents to Submit with an Amended Return or Abatement

- Statement to support a domicile change. The statement must include detailed information about the domicile change.
- If required to file, a copy of the income tax return you filed with any other state
- A copy of:
  - Form 1040 - U.S. Individual Income Tax Return
  - Form 1040NR - U.S. Nonresident Alien Income Tax Return, or

- Form 1040NR-EZ - U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents