

280-RICR-20-55-5

TITLE 280 - DEPARTMENT OF REVENUE

CHAPTER 20 - DIVISION OF TAXATION

SUBCHAPTER 55 - PERSONAL INCOME TAX

PART 5 - Filing Status of Spouses – Nonresident Military Personnel and Partial-Year Residents

5.1 Purpose

These rules and regulations implement R.I. Gen. Laws §§ 44-30-5, 44-30-31, 44-30-51, and 44-30-52. Those sections outline the filing status of nonresident spouses.

5.2 Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws §§ 44-30-95(a) and 44-1-4. These rules and regulations have been prepared in accordance with the requirements of R.I. Gen. Laws § 42-35-1 *et seq.* of the Rhode Island Administrative Procedures Act.

5.3 Application

These rules and regulations shall be liberally construed so as to permit the Division of Taxation the authority to effectuate the purpose of R.I. Gen. Laws §§ 44-30-5, 44-30-31, 44-30-51, and 44-30-52, and other applicable state laws and regulations.

5.4 Severability

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected hereby.

5.5 General

A. R.I. Gen. Laws § 44-30-5 defines a resident of this state as:

1. One who is domiciled in this state.

2. One who is not domiciled in this state but maintains a permanent place of abode in this state and spends more than 183 days of the taxable year in this state, unless he/she is in the armed forces of the United States.
- B. R.I. Gen. Laws § 44-30-51 requires a Rhode Island personal income tax return to be filed by or for:
1. Every resident individual required to file a Federal income tax return.
 2. Every nonresident individual having Rhode Island source income.
- C. R.I. Gen. Laws § 44-30-31 requires that, in part:
1. If the Federal income tax liability of a husband and wife, both of whom are nonresidents, is determined on a joint Federal return, their Rhode Island tax shall be determined on a joint Rhode Island return.
 2. If either husband or wife is a resident and the other is a nonresident, separate Rhode Island taxes shall be determined on their separate Rhode Island source income, unless both elect to determine their joint Rhode Island taxes on their joint income as if both were residents.
 - a. If separate returns are filed, Rhode Island personal income tax shall be determined as if they had filed separate Federal income tax returns.

5.6 Filing Status of a Single Nonresident Military Person

- A. A person who is a nonresident of Rhode Island and is in the United States military service and is stationed in Rhode Island on military orders is required to file a Rhode Island nonresident personal income tax return (RI-1040NR) if he/she has Rhode Island source income other than his/her military wages.
- B. Compensation paid to a nonresident service member of the United States uniformed services for active duty military service can be claimed as a modification to reduce federal adjusted gross income for tax years 2003 and thereafter.

5.7 Filing Status of a Married Nonresident Military Person and His/her Spouse When a Joint Federal Income Tax Has Been Filed

- A. Both spouses may elect to file a resident Rhode Island personal income tax return as married filing jointly on their joint income.
- B. If one or both of the spouses must file and pay personal income taxes in another state, then a special computation has to be made for any allowable out-of-state tax credit on the Rhode Island return.
- C. If either spouse claims Rhode Island as his/her legal residence, then separate Rhode Island personal income tax returns have to be filed.
 - 1. The spouse claiming Rhode Island residency is required to file a resident Rhode Island personal income tax return (RI-1040A or RI-1040).
 - 2. The spouse claiming nonresident status files a Rhode Island nonresident personal income tax return (RI-1040NR) if that person had any Rhode Island source income other than military wages.
 - a. By using the Rhode Island nonresident allocation schedule of the RI-1040NR, the portion of the Federal income tax liability to be used for Rhode Island purposes will be computed.
 - 3. When separate Rhode Island returns are filed, the Federal married filing separate status has to be used to compute the Federal income tax liability for Rhode Island purposes.
 - a. The Federal married filing separately requirements have to be followed as they pertain to income reporting, itemized deductions, personal exemptions and dependents.
 - 4. Nonresident service members filing to report income earned from a separate job in Rhode Island or the income of a spouse living in Rhode Island may subtract active duty military wages as a modification decreasing Federal adjusted gross income in determining the tax due to Rhode Island.
 - a. Residents of Rhode Island serving in the United States military on active duty, regardless of where they are

stationed, are not affected by the modification in § 5.7(C)(4) of this Part above.

- b. Example: A nonresident member of the United States armed forces who is stationed in Rhode Island earns \$50,000 in active duty military wages. She also works part-time earning \$20,000 in a field that is unrelated to her military duties. The nonresident would not be taxed on the \$50,000 in military wages but would report the \$20,000 on the allocation. She would take a decreasing modification of her military pay and would owe tax on the remainder of the unrelated part-time earnings after being reduced by the standard deduction and any personal exemption(s).
- 5. Income for services performed by the service member's spouse in Rhode Island would be exempt from Rhode Island income tax only if the service member's spouse moves to Rhode Island solely to be with the service member complying with military orders sending him/her to Rhode Island. The service member and the service member's spouse must also share the same non-Rhode Island domicile.
 - a. Other income derived from Rhode Island sources such as business income, ownership or disposition of any interest in real or tangible personal property and gambling winnings are still subject to Rhode Island income tax.

5.8 Filing Status of Husband and Wife Where One is a Partial-Year Resident

- A. This section applies when one of the spouses is a partial-year Rhode Island resident, the other spouse is a full-year Rhode Island resident, and the couple files a joint Federal income tax return.
 - 1. For example, a couple gets married and either the husband or the wife did not live in Rhode Island for all of the months during the year prior to marriage.
- B. R.I. Gen. Laws §§ 44-30-31(c) and 44-30-51(b)(4) require that separate Federal liabilities be computed for Rhode Island purposes using the married filing separately status. If one spouse itemizes, then the other spouse must also itemize his/her deductions.

- C. The resident spouse then should file the appropriate resident return form and the partial-year resident spouse should file the appropriate partial-year resident form with special attention to proper allocations and modifications.
- D. The couple may elect to file a joint Rhode Island return as if both were residents of Rhode Island for the full year. If one of the spouses is required to report income to another state as a resident of that state, then R.I. Gen. Laws § 44-30-18(d) must be used in determining any allowable credit for taxes paid to that state.

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Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.