

**CHAPTER 121. FINAL RETURNS**

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**§ 121.1. Filing tax return.**

- (a) Every resident individual, estate or trust having taxable income for the taxable year shall file a tax return.
- (b) Every nonresident individual, estate or trust having taxable income for the taxable year derived from sources within this Commonwealth shall file a tax return.
- (c) The return for any deceased person shall be filed by his executor, administrator or other person charged with his property.
- (d) The return for an individual who is unable to make a return by reason of minority or other disability shall be filed by his guardian, committee, fiduciary or other person charged with the care of his person or property or by his duly authorized agent.
- (e) The return for an estate or trust shall be filed by the fiduciary. If two or more fiduciaries are acting jointly, the return may be filed by any one of them.
- (f) A return need not be filed by an individual whose tax liability is less than \$1.
- (g) A return filed before the due date or extended due date will be considered to be filed on the due date or extended due date.

**Authority**

The provisions of this § 121.1 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 121.1 amended January 25, 2013, effective January 26, 2013, 43 Pa.B. 535. Immediately preceding text appears at serial page (302163).

**§ 121.2. Filing Form PA-40.**

Residents, part-year residents and nonresidents shall file the same Form PA-40.

**§ 121.3. Residence.**

(a) A person is a resident of this Commonwealth for income tax purposes if he is domiciled in Pennsylvania and does not qualify as a nonresident. Domicile is that place which a person considers home and to which he intends to return if away therefrom.

(b) Even though a person is not domiciled in this Commonwealth he shall, nevertheless, be considered a Commonwealth resident for tax purposes if he spends, in the aggregate more than 183 days of the taxable year in this Commonwealth.

**§ 121.4. Method of taxing residents.**

If a person is a Commonwealth resident, income from sources both within and without this Commonwealth shall be subject to the Commonwealth personal income tax. A taxpayer shall be allowed a credit against the personal income tax if subject to and paying any tax imposed by other states or countries which is based upon income and such income is subject to the Commonwealth personal income tax. This credit shall be limited to the proportion of the tax otherwise due that the amount of the income of the taxpayer subject to tax by the other jurisdiction bears to his entire taxable income. If a taxpayer claims a credit for taxes paid to other states, references should be made to the detailed instructions of Schedule G.

**§ 121.5. Nonresidents.**

A person is a nonresident of this Commonwealth for income tax purposes if domiciled in this Commonwealth and has no permanent place of abode in this Commonwealth; does maintain a permanent place of abode elsewhere; and does not spend more than 30 days of the taxable year in this Commonwealth. If a person is not domiciled in this Commonwealth, then he is a nonresident of this Commonwealth if he spends less than 183 days of the taxable year in this Commonwealth.

**§ 121.6. Method of taxing nonresidents.**

(a) If a person is a nonresident of this Commonwealth, the income received, earned or otherwise acquired from sources within this Commonwealth shall be subject to the Commonwealth personal income tax. Generally, if he is an employe, the exact amount of compensation for services performed in this Commonwealth is known because the employer shall allocate the exact amount of compensation, withhold the tax on this amount and report the employe's Commonwealth earnings on the employes Commonwealth withholding forms. If,

however, earnings are not subject to withholding reference should be made to the instructions to Part I of Schedule H to determine how to apportion compensation from services performed both within and without this Commonwealth.

(b) If a person has business or farm income derived from sources both within and without this Commonwealth, and does not maintain accounts and records which clearly reflect income from within this Commonwealth, reference should be made to the instructions to Part II of Schedule H to determine how to apportion business or farm income derived from sources both within and without this Commonwealth.

#### **§ 121.7. Part-year residents.**

A person is a part-year resident for Commonwealth income tax purposes if he has changed his residence during the taxable year from a place outside this Commonwealth to this Commonwealth with the intent of residing permanently in this Commonwealth, or from Commonwealth to a place outside this Commonwealth with the intent of residing permanently outside this Commonwealth.

#### **§ 121.8. Method of taxing part-year residents.**

(a) If a person is a part-year resident he shall be subject to the Commonwealth personal income tax as a resident for only that part of the year in which he was a resident. A taxpayer should indicate on Form PA-40 the length of time he was a resident.

(b) In addition, if a person derived income from sources within this Commonwealth during that part of the taxable year in which he was a nonresident, he shall be subject to the Commonwealth personal income tax as a nonresident for that part of the taxable year on income derived within this Commonwealth. In such case, both his taxable income as a resident and his taxable income as a nonresident should be entered on the same Form PA-40 in order to compute your total tax liability. If as a nonresident his compensation was not subject to withholding or if he derived income from a business and did not maintain records which clearly reflected his income within this Commonwealth, reference should be made to the instructions to Schedule H on how to apportion your income.

#### **§ 121.9. Taxable income.**

(a) The tax imposed under the act of August 31, 1971 (P. L. 362, No. 93) (72 P. S. §§ 7201—8101) applies to income received or accrued to a taxpayer on or after June 1, 1971. Taxpayers who file on a fiscal year basis shall be subject to the tax for the first taxable period on that portion of the fiscal year which post-dates May 31, 1971.

(b) The tax is levied at the flat rate of 2.3% on eight classes of income defined as follows:

(1) *Compensation.* All salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips, and similar

remuneration received for services rendered whether directly or through an agent and whether in cash or in property.

(2) *Net profits.* The net income from the operation of a business, profession, or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices but without deduction of taxes based on income.

(3) *Net gains or income from disposition of property.* Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible. The term net gains or income shall not include gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of this Commonwealth or under the laws of the United States.

(4) *Other.* Net gains or income derived from or in the form of rents, royalties, patents and copyrights.

(5) *Dividends.* Any distribution in cash or property made by a corporation, association, or business trust paid out of the following:

- (i) Accumulated earnings and profits.
- (ii) Earnings and profits of the year in which such dividend is paid.

(6) *Interest.* Interest derived from obligations which are not statutorily free from state or local taxation under any other act of the General Assembly of this Commonwealth or under the laws of the United States.

(7) *Gambling and lottery winnings.* All gambling and lottery winnings.

(8) *Estates or trusts.* Net gains or income derived through estates or trusts.

(c) The act does not provide for any adjustment to the tax base for personal exemptions or deductions.

### § 121.10. Reporting income.

(a) Under the law, only certain classes of income are subject to tax. Therefore, that income not included in any of the eight categories is exempt from the tax.

(b) Examples of income subject to the tax which shall be reported are the following:

- (1) Wages, salaries, commissions, bonuses, incentive payments and tips.
- (2) Net profits from business or profession.
- (3) Profits from a partnership or association.
- (4) Net gains from sales or exchanges of real estate, autos, securities and other property.
- (5) Rents and royalties from property, patents and copyrights.
- (6) Gambling and lottery winnings.
- (7) Interest on bank deposits, bonds and notes.
- (8) Interest on net gain on bonds or obligations of other states or countries.

- (9) The taxpayer's share of income from estates or trusts.
  - (10) Dividends except dividends paid in the form of stock distributed by a corporation to its stockholders if the distribution is not treated as personal income for Federal Income Tax purposes.
- (c) Examples of income not subject to the tax which should not be reported are the following:
- (1) Pensions and annuities.
  - (2) Government payments made to veterans and their families.
  - (3) Benefits paid by public retirement systems.
  - (4) Interest on obligations of this Commonwealth or its political subdivisions and authorities and interest on certain obligations of the United States government, its agencies or instrumentalities are not taxable if they are statutorily free from taxation. Interest on obligations of other states and countries, however, shall be subject to the Commonwealth Income Tax.
  - (5) Payments to reimburse actual expenses.
  - (6) The value of meals and lodging furnished for the convenience of the employer or casual employer.
  - (7) Social Security benefits.
  - (8) Military pay received by a United States serviceman on active duty outside of this Commonwealth.
  - (9) Life insurance proceeds.
  - (10) Workers' Compensation benefits.
  - (11) Payments for occupational diseases under section 108 of the Workers' Compensation Act (77 P. S. § 27.1) and section 108 of the Pennsylvania Occupational Disease Act (77 P. S. § 1208).
  - (12) Public assistance payments.
  - (13) Unemployment compensation payments.
  - (14) Income received for child support.
  - (15) Educational stipends for which no services are rendered, such as scholarships.
  - (16) Dividends paid in the form of stock by the distributing corporation if not treated as personal income for Federal Income Tax purposes.

#### Authority

The provisions of this § 121.10 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

#### Source

The provisions of this § 121.10 amended March 19, 1982, effective March 20, 1982, 12 Pa.B. 994; amended December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial pages (205426) to (205427).

**§ 121.11. Partnership or similar enterprise.**

(a) If a person is a member of a partnership, joint venture or similar enterprise, the person shall report his share of taxable income whether he received it or not.

(b) A taxpayer should enter his share of net profits on line two.

**Authority**

The provisions of this § 121.11 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 121.11 amended December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial page (205427).

**§ 121.12. Members of the armed forces subject to the tax.**

(a) If a person is a member of the armed forces and is a resident of this Commonwealth, he shall be subject to the Commonwealth personal income tax. If a person was domiciled in this Commonwealth at the time he entered the military service, he does not cease to be a resident of this Commonwealth as a result of his presence in another state or foreign country under military orders. That means a person shall file a Form PA-40 and pay the tax due in the same manner as any other resident individual unless he satisfies all three of the following conditions:

(1) Had no permanent place of abode in this Commonwealth during the taxable year.

(2) Maintained a permanent place of abode outside this Commonwealth during the entire taxable year.

(3) Did not spend more than 30 days in this Commonwealth during the taxable year.

(b) A serviceman who lives on a military installation or in assigned or rented government quarters will not be considered as maintaining a permanent place of abode. However, it will generally be recognized that a serviceman does maintain a permanent place of abode if he leases, rents, or buys a dwelling place near his station of duty and occupies it with his family if his duty assignment is of an indefinite nature.

(c) All military pay, whether combat or noncombat is subject to the Commonwealth personal income tax.

(d) Because of the Soldiers and Sailors Civil Relief Act of 1940 (50 U.S.C. § 101 et seq.), nonresident military personnel who are serving at a military installation in this Commonwealth shall not be subject to the Commonwealth personal income tax on their military pay but are subject to tax on any other

income they earn in this Commonwealth. Similarly, any income earned by their spouse or any other member of their household shall be subject to the Commonwealth personal income tax.

**§ 121.13. Net losses.**

(a) Under the provisions of Article III of the Tax Reform Code of 1971 (72 P. S. §§ 7301—7361) a person shall not be allowed to offset a gain in one class of income with a loss in another class of income. However, a gain may be offset with a loss in the same class of income but limited to the amount of the gain if the income class is one in which net income rather than gross income is reported. For example, if a person experiences a net loss from the sale or exchange of property he shall not enter this loss on Form PA-40 and use this loss to offset income from compensation. However, both gains and losses from the sale or exchange of property may be entered on Schedule D and thus offset part or all of the income in this class.

(b) If a person experiences a net loss in an income class he should enter a zero on the appropriate line of Form PA-40.

**Notes of Decisions**

*Class of Income*

Rental losses and losses from the disposition of real estate cannot be used to offset income from compensation or the net profits from the operation of a business or profession, because losses in one class of income, as defined by section 303 of the Tax Reform Code of 1971 (72 P. S. § 7303), cannot be used to offset a gain in another class of income. Therefore, any paper or real loss suffered by or through the ownership of the apartment building could not have been used by the individual taxpayers to offset or reduce income or profit from any other source or endeavor. *Orsato-Guenon, Inc. v. Commonwealth*, 665 A.2d 520 (Pa. Cmwlth. 1995).

*Selective Application Unacceptable*

Selective application of the tax code and these regulations was simply unacceptable. The taxpayer, an S corporation, merely failed to complete a simple form yet in every other way properly complied with the law with the individual stockholders paying Pennsylvania personal income tax on their individual returns. The bottom line was that taxpayer, the corporation, did not own the real estate in question; thus, it had no income and could not be liable for any income tax. *Orsato-Guenon, Inc. v. Commonwealth*, 665 A.2d 520 (Pa. Cmwlth. 1995).

**§ 121.14. [Reserved].**

**Source**

The provisions of this § 121.14 reserved December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial page (205429).

**§ 121.15. Types of returns.**

(a) If a husband and wife elect to file separate returns each shall report his or her separate income on a separate form.

(b) If a husband and wife elect to file a joint return they shall include all income of both husband and wife. A husband and wife may file a joint return even though one of them had no income.

(c) Husband and wife filing jointly receive no tax benefits under the Commonwealth income tax law as is the case when filing a joint return for Federal income tax purposes. The filing of a joint return would be for the convenience of the taxpayer.

(d) If filing a joint return, a spouse shall not offset a gain in one class of income with a loss of the other spouse in another class of income, and in addition a spouse shall not offset a gain in the same class of income with a loss of the other spouse in the same class of income.

(e) If a joint return is filed the couple assumes full legal responsibility for the entire year and if one fails to pay the tax, the other shall pay it. In the return heading, both names and both social security numbers shall be listed. Both shall sign the return.

#### § 121.16. [Reserved].

##### Source

The provisions of this § 121.16 reserved December 26, 2003, effective December 27, 2003, 33 Pa.B. 6423. Immediately preceding text appears at serial page (296638).

#### § 121.17. When to file.

(a) Returns for calendar or fiscal years ending in 1971 after June 1 shall be filed by April 15, 1972.

(b) Returns for the fiscal year beginning in 1971 shall be filed on or before the 15th day of the fourth month following the close of the fiscal year.

#### § 121.18. Extension of time for filing a return.

(a) If a person is granted an extension of time for filing his Federal income tax return, he will automatically be granted an extension of time for filing his Commonwealth income tax return. The extension period granted by the Commonwealth will be equivalent to the extension period granted by the Internal Revenue Service. A copy of the letter or form granting the Federal extension shall accompany your return Form PA-40.

(b) If a person has not been granted an extension for filing his Federal income tax return, he may request an extension of time for filing his Commonwealth tax return. This extension shall not exceed a period of six months except for a taxpayer who is outside the United States. A taxpayer shall file an application for extension of time to file. Applications should be submitted in sufficient time for the Department to consider and act upon them prior to the regular due date of the return. An Application for extension of time to file may be obtained by writing to the Department of Revenue, The Personal Income Tax Bureau, Harrisburg, Pennsylvania, 17129.

(c) An extension of time to file an income tax return shall not extend the time for payment of the tax. For either type of extension a taxpayer shall pay in full on or before the original due date the amount reasonable estimated as his Commonwealth tax due.



**§ 121.19. Where to file.**

Returns shall be filed with the Department of Revenue, The Personal Income Tax Bureau, P. O. Box 8111, Harrisburg, Pennsylvania 17129.

**§ 121.20. How to pay.**

The balance of tax due on line 17 of Form PA-40 shall be paid in full with the return, unless the amount due is less than \$1.00, in which case no payment will be required. Make check or money order payable to Pennsylvania Department of Revenue.

**§ 121.21. Rounding money items off to whole dollars.**

On the return and any schedules required to be completed, money items may be shown in whole-dollar amounts. This is accomplished by eliminating any amount less than \$.50 and increasing any amount that is \$.50 or more to the next highest dollar.

**§ 121.22. Name and social security number on forms and schedules.**

The name and social security number of a taxpayer shall be entered on all schedules accompanying the return and shall be the same as that shown on Form PA-40.

**§ 121.23. Signature and verification.**

(a) A return shall not be valid unless it is signed. Husband and wife both shall sign a joint return.

(b) Any person, firm, or corporation who prepares the return of a taxpayer shall sign. If the return is prepared by a firm or corporation, the return should be signed in the name of the firm or corporation.

(c) The signature on the return verifies by written declaration under penalties of perjury that the individual has personally examined the return and to the best of his knowledge, the return is true, correct, and complete.

**§ 121.24. Maintenance of records.**

Books and records which substantiate information reported on a Pennsylvania Income Tax return or accompanying schedules shall be retained so long as the contents thereof may be material in the collection of the income tax. The books and records shall be made available for the inspection of an authorized employe of the Department.

**§ 121.25. Amended return.**

(a) A person filing a return should carefully follow the instructions which he received with the return. A person filing a return should check the return to make sure he has reported all of his income and claimed all of the credits to which he

is entitled before filing his return. If, after filing a return, a person discovers that he has failed to report some of his income, erroneously claimed credits or is entitled to credits which were not claimed, the person can correct the error by filing an amended return. The person should file a new return clearly marked, "Amended Return," in which the correct tax or refund is shown.

(b) The Department will review an amended return if the following apply:

(1) The amended return is filed within 3 years of the due date or extended due date of the original return.

(2) The amendments shown on the amended return involve issues other than those under appeal.

(3) The taxpayer is not challenging the Department's policy, its interpretation or the constitutionality of the Commonwealth's statutes. A challenge of the Department's policy, its interpretation of the statutes or the constitutionality of the Commonwealth's statutes must be made by filing a petition for reassessment or a petition for refund.

(c) If a tax payment was made with the original return, the amount of this payment shall be included on the amended return in the manner prescribed by instructions of the Department.

(d) If a refund was received or is expected to be received from the original return, the amount of this refund shall be shown on the amended return in the manner prescribed by instructions of the Department.

(e) *Effect of an amended return on petition rights.*

(1) An amended return does not replace the filing of a petition for reassessment or a petition for refund.

(2) The filing of an amended return does not extend the time limits for a taxpayer to file a petition for reassessment or a petition for refund.

(f) *Review of amended return.*

(1) The Department is not obligated to revise the tax due the Commonwealth upon review of an amended return. The Department's failure to revise the tax due the Commonwealth is not appealable and does not change existing appeal rights of the taxpayer.

(2) If the Department determines an adjustment of the taxpayer's account is appropriate, it will adjust the Department's records to conform to the revised tax as determined and will credit the taxpayer's account to the extent of an overpayment resulting from the adjustment or assess the taxpayer's unpaid tax and unreported liability for tax, interest or penalty due the Commonwealth, whichever is applicable.

(g) An amended return filed with the Department must contain the following:

(1) The calculation of the amended tax liability.

(2) Revised Pennsylvania supporting schedules, if applicable.

(3) A complete explanation of the changes being made and the reason for those changes.

**Authority**

The provisions of this § 121.25 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 121.25 amended through February 20, 1981, effective June 23, 1979, 11 Pa.B. 726; amended January 25, 2013, effective January 26, 2013, 43 Pa.B. 535. Immediately preceding text appears at serial pages (205431) to (205432).

**§ 121.26. Penalties for failure to file or for filing a late return.**

(a) If there is a failure to file a return on or before the due date prescribed on or before the date to which an extension has been granted, there shall be added to the amount required to be shown as tax on the return 5% of the amount of the tax, as the penalty, unless it is shown that the failure to file a return is due to reasonable cause and not due to willful neglect. If the failure is for more than 1 month, an additional 5% for each additional month or fraction thereof shall be added during which the failure continues, not to exceed 25% in the aggregate. In no case may the amount added be less than \$5.

(b) A person who willfully fails to file a return, files a fraudulent return or attempts to evade or defeat the tax, shall be guilty of a misdemeanor and upon conviction be subject to fines or be imprisoned as provided for in the law, or both.

**§ 121.27. [Reserved].****Source**

The provisions of this § 121.27 reserved March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial page (115292).

**§ 121.28. Use of Federal income tax information.**

(a) Amounts reported on Form PA-40 are subject to verification and audit by the Department.

(b) The Department and the United States Internal Revenue Service are exchanging income tax information for the purpose of verifying the accuracy of information reported on Pennsylvania Personal Income Tax returns.

[Next page is 123-1.]

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