FYI Income 6

Part-Year Resident and Nonresident Individuals

HOW IS COLORADO RESIDENCY DETERMINED?

A Colorado resident is a person who has made a home in Colorado, or a person whose intention is to be a Colorado resident. [§39-22-103(8), C.R.S.] As evidence of a person's intentions, the Department of Revenue will consider, among other factors, Colorado voter registration, Colorado vehicle registration, Colorado driver's license, school registration, property ownership, and residence of spouse and children.

WHO IS A COLORADO PART-YEAR RESIDENT?

A part-year resident is an individual who was a resident of Colorado for only part of the tax year. This includes anyone who moved into Colorado with the intention of making their home here or a Colorado resident who moved out of Colorado with the intention of making their home elsewhere any time during the tax year. A part-year resident is required to file a Colorado income tax return if they:

- are required to file a federal income tax return, **and**
- had taxable income during that part of the year they were a Colorado resident, or had taxable Colorado-source income at any time during the year.

WHO IS A COLORADO NONRESIDENT?

A nonresident is an individual who did not reside within the boundaries of Colorado at any time during the tax year. However, the person may have temporarily lived and/or worked in Colorado. A nonresident is required to file a Colorado income tax return if they:

- are required to file a federal income tax return, **and**
- had taxable Colorado-source income.

COLORADO SOURCE INCOME

Income earned by an individual while they are not a resident of Colorado will be taxed in Colorado only if it is considered Colorado-source income and is included in their modified federal adjusted gross income. For Colorado purposed, the modified adjusted gross income is the federal adjusted gross income plus or minus some of the additions and subtractions to federal taxable income that are reported on the Colorado Form 104.

Modified federal adjusted gross income shall be considered to be Colorado-source if it arises from:

1. a business, trade, profession or occupation carried on in Colorado. This would include the profit from any business carried-on in Colorado and payments received for work performed in Colorado either as an independent contractor or as an employee; or
2. the ownership of any interest in real or tangible personal property in Colorado. This could mean rents and royalties from real or tangible personal property located in Colorado or the gain or loss from the sale or other disposition of such property; or
3. partnership, limited liability company or S corporation income to the extent such income is from Colorado sources; or
4. income reported as being from an estate or trust to the extent such income is from Colorado sources; or
5. income from intangible property to the extent such property is employed in a trade, business, profession or occupation carried-on in Colorado. [§39-22-109 (2), C.R.S.] Examples of such income include interest income from a finance business located in or active in Colorado, or royalty income from the use of a patent, trademark or copyright employed in the active conduct of a Colorado business operation.

TAX COMPUTATION FOR PART-YEAR RESIDENTS AND NONRESIDENTS

Part-year residents and nonresidents will initially determine their Colorado taxable income as though they are full-year residents. However, they will then apportion the tentative tax in the ratio of Colorado adjusted gross income to total modified federal adjusted gross income. [§39-22-109, 39-22-110, C.R.S.] This calculation is explained below:

A part-year resident or nonresident of Colorado will complete the Colorado Form 104 and the 104PN part-year resident/nonresident tax calculation schedule.

Four steps to complete a part-year/nonresident tax return.

1. Form 104 should be completed as if the taxpayer is a full-year resident of Colorado up to the point that the tax is calculated. This means that the entire federal taxable income is reported on line 1 of Form 104 and any Colorado additions or subtractions to taxable income must be figured to determine the Colorado taxable income. Do not use the Other Subtractions line to subtract income attributed to another state. Doing so will result in a double deduction of that income and will be considered an error. Therefore, the Colorado taxable income will include income from all states and the 104PN Schedule shall be used to eliminate income that is not taxable to Colorado.

2. Use the calculated Colorado taxable income to determine the full-year tax (see the 104 tax table). Usually, this tentative tax will be much higher than the tax that is actually due. This amount has not been apportioned. Do not enter this amount on Form 104, but enter on line 35 of the 104PN schedule instead.

3. Complete the 104PN schedule, which will be used to determine what percentage of the modified gross income is taxable to Colorado. This percentage will then be applied to the tentative tax that was obtained from the tax table and the result will be the apportioned Colorado tax that is due and transferred to Form 104.

4. Complete Form 104 using the apportioned Colorado tax. Calculate any Colorado credit amounts to compute the refund or balance due.

How does the 104PN schedule work?
The 104PN Schedule consists of two columns. The first column is for reporting income as it was reported to the IRS. It will include all of the taxpayer's income, regardless of where it was earned. The federal adjusted gross income (line 24) will be modified by the Colorado additions and subtractions (lines 26 and 30) resulting in the modified federal adjusted gross income (line 32). This is the gross income that would be taxed by Colorado if the taxpayer were a full-year resident. **NOTE**: The federal itemized deductions, standard deduction, and personal exemption are not entered on the 104PN schedule because this schedule is simply computing the percentage of income that is taxable to Colorado. Since line 1 of the 104 form starts with the federal taxable income, taxpayers are given the benefit of these deductions.

The second column of the 104PN Schedule is for income that was:

- earned in Colorado,
- received while the taxpayer was a Colorado resident, or
- earned from Colorado sources

Income will only be included on a line of the Colorado column to the extent it was included on the corresponding line in the federal column. In the case of a joint return when one spouse is a full-year resident and the other is not, the resident spouse will enter their entire income and adjustments in the Colorado column and add in the Colorado income and adjustments of the nonresident spouse. Additions and subtractions (lines 27 and 31) will be reported in the Colorado column only to the extent they apply to income reported in the Colorado column. The modified Colorado adjusted gross income (line 33) is the gross income that will be effectively taxed by Colorado.

The modified Colorado adjusted gross income (line 33) will be divided by the modified federal adjusted gross income (line 32) to determine the percentage of gross income that is subject to Colorado taxation (line 34). In certain cases, particularly if there is a business loss or other loss from a non-Colorado source, this percentage can exceed 100%. The tax from the tax table entered on line 35 will be multiplied by this percentage to determine the actual tax that is due (line 36). This amount will be entered on Form 104 in order to complete the rest of the return.

Example 1: Ann is 57 years old and moved to Colorado on May 1. She earned $7,000 in wages in another state prior to moving to Colorado and earned $16,000 in wages in Colorado after moving. Ann had interest income of $3,000 during the year, $2000 of which was earned while she was a Colorado resident. She also had pension income of $2,200 per month from a previous job for a total of $26,400. Ann's federal taxable income is $34,850.

Ann's 104PN Schedule would be completed as follows:

	Federal Column	Colorado Column
4. Wages	$23,000	
5. Colo Wages		$16,000
6. Interest	$3,000	
7. Colo Interest		$2,000
12. Pension	$26,400	
13. Colo Pension		$17,600
20. Total Income	$52,400	
21. Total Colo Income		$35,600
24. AGI	$52,400	
25. Colo AGI		$35,600
30. Subtractions	$20,000*	
31. Colo Subtractions		$17,600*
32. Modified AGI	$32,400	
33. Modified Colo AGI		$18,000
34. Percentage		55.56%
35. Tentative Tax		$688
36. Apportioned Tax		$382
*(Pension subtraction)		

Example 2: Billy is a full-year resident of Missouri. He has wages of $50,000, interest income of $1,600, and rental income from two homes of $18,000. One of the homes is located in Colorado and the income from that home is $10,000. His federal taxable income is $55,000.

Billy's 104PN Schedule would be completed as follows:

	Federal Column	Colorado Column
4. Wages	$50,000	
6. Interest	$1,600	
16. Rental Income	$18,000	
17. Colo rental income		$10,000
20. Total Income	$69,600	
21. Total Colo Income		$10,000
24. AGI	$69,600	
25. Colo AGI		$10,000
26. Additions	$0	
27. Colo Additions		$0
30. Subtractions	$0	
31. Colo subtractions		$0
32. Modified AGI	$69,600	
33. Modified Colo AGI		$10,000
34. Percentage		14.37%
35. Tentative Tax		$2,547
36. Apportioned Tax		$366

FEDERAL FORM 1040NR

The 104PN provides the federal line references from forms 1040, 1040A and 1040EZ needed to complete the federal column. When completing a federal form 1040NR or 1040NR-EZ, use the following chart to complete the federal column of Form 104PN.

104PN line	**from 1040NR line**	**from 1040NR-EZ line**
4	8	3
6	9a and 10a	N/A
8	20	N/A
10	14 and 15	N/A
12	16b and 17b	N/A
14	13 and 19	N/A
16	18	N/A
18	11, 12 and 21	4 and 5
20	23	7
22	35	8 and 9
24	36	10

FEDERAL ADJUSTMENTS

Form 104PN requires federal adjustments reported on line 22 to be apportioned to Colorado on line 23. Use the following chart to apportion the adjustments on line 23.

Federal Adjustment	**Apportionment Method**
IRA deduction, educator expenses, self-employment tax, self-employed health insurance deduction, SEP and SIMPLE deductions, HSA deduction, MSA deduction, QPA expenses, 501(c)(18)(D) pension plan contributions, 403(b) contributions, business expenses of reservists, performing artists and fee-basis government officials.	Deductions allowed in the ratio of Colorado wages and/or self-employment income to total wages and/or self-employment income.
Student loan interest deduction, alimony, tuition and fees deduction, clean-fuel vehicle deduction, reforestation amortization, repayment of supplemental unemployment benefits.	Deductions allowed in the Colorado to federal total income ratio (line 21 / line 20).
Penalty paid on early withdrawals.	Deduction allowed if paid while a Colorado resident.
Jury pay deduction, PPR deductible expenses.	Deduction allowed if related to jury duty pay or related rental income reported on line 19 of Form 104PN.
Moving expenses.	Deduction allowed if you are moving into Colorado, not if you are moving out.
Domestic Production Activities Deduction	Deduction allowed in the Colorado to Federal Qualified Production Activities Income (QPAI) ratio.

ADDITIONS TO COLORADO ADJUSTED GROSS INCOME

Form 104PN requires additions to AGI reported on line 26 to be apportioned to Colorado on line 27. Use the following chart to apportion the additions on line 27.

Colorado Addition	Apportionment Method
Non-Colorado state and local bond interest	Reported on line 27 if earned while you are a Colorado resident
Lump-sum distributions from a pension or profit sharing plan	Reported on line 27 if received while you are a Colorado resident
The smaller of the amount from line 14 of 8814 or $900	Reported on line 27 if earned in Colorado federal form or received while you are a Colorado resident
Federal charitable deduction claimed as gross conservation easement credit or high technology scholarship contribution credit	Charitable deduction addbacks are never included on either line 26 or 27 of Form 104PN
Recapture of prior year tuition program contribution, ineligible withdrawals from a Colorado medical savings account, expenses paid to a club that restricts membership in a discriminatory manner	Always reported on line 27
Federal net operating loss of a non-resident of Colorado sourced to another state	Never reported on line 27
Fiduciary adjustment, partnership modification	Refer to specific addition.
Unauthorized Alien Labor Services	Reported on line 27 if the expenses were paid for a Colorado business or while you are a Colorado resident.

SUBTRACTIONS FROM COLORADO ADJUSTED GROSS INCOME

Form 104PN requires subtractions from AGI reported on line 30 to be apportioned to Colorado on line 31. Use the following chart to apportion the subtractions on line 31.

Colorado Subtraction	Apportionment Method
Pension/annuity subtraction and the PERA/School District 1 retirement benefits taxed in 1984, 1985 or 1986, Tier I or Tier II railroad retirement benefits.	Reported on line 31 to the extent included on line 13 of Form 104PN.
State income tax refund subtraction.	Reported on line 31 to the extent included on line 19 of Form 104PN.
Federal interest subtraction, Colorado investment deposits.	Reported on line 31 to the extent included on line 7 of Form 104PN.
Colorado capital gain subtraction.	Reported on line 31 to the extent included on line 11 of Form 104PN.
Tuition program contribution subtraction, medical savings account contribution and interest (only if included in federal taxable income), Wildfire mitigation measures.	Reported on line 31 to the extent income is reported on line 29 of Form 104PN.
Qualifying charitable contribution	Charitable contributions are never included on either line 30 or 31 of Form 104PN.
I.R.C. 1341 credit.	Always reported on line 31 because the income was previously taxed in Colorado.
Income earned on a reservation by a tribal member.	Reported on line 31 to the extent included on line 25 of Form 104PN.
Fiduciary adjustment, partnership modification.	Refer to specific subtraction.

MARRIED COUPLES FILING A JOINT FEDERAL RETURN

Married couples who file a joint federal income tax return must file a joint Colorado income tax return even if one spouse is a full-year Colorado resident and the other is not. Check the part-year resident/nonresident box on the top of Form 104 and apportion the tax on the 104PN schedule. See FYI Income 13 A Resident Married to a Nonresident or Part-Year Resident and Filing Jointly.

CREDIT FOR TAX PAID TO ANOTHER STATE

A taxpayer that receives income from another state while a resident of Colorado may claim a credit for tax paid to that state if the other state also taxes that income. This credit prevents double taxation of the income by two states.

A nonresident of Colorado may never claim a credit for tax paid to another state in Colorado. They may be eligible for a similar credit in their state of residency.

A part-year resident of Colorado usually cannot claim this credit because their income is not taxable in both states. Normally, the 104PN Schedule allows income earned in Colorado when the taxpayer is a resident here to be taxed here and income earned in the other state when the taxpayer is a resident of that state to be taxed there. However, if income is earned and/or received from sources in the other state while the taxpayer is a resident of Colorado, this income may be subject to double taxation. For information on computing the credit for tax paid to another state for a part-year resident, see FYI Income 17.

CHILD CARE/CHILD TAX CREDITS AND EARNED INCOME CREDITS

Child care/child tax credits and earned income credits claimed by a part-year resident are allowed in the percentage on line 34 of Form 104PN. However, the credit is not allowed in a percentage in excess of 100%. Nonresidents of Colorado are not eligible to claim these credits.

SEVERANCE PAY/STOCK OPTIONS

It is becoming more common for employees to receive a W-2 reporting wages from a company a year or more after the employee left that company. This income is often a result of a severance agreement or redeemed stock options. If the employee worked in another state but is now a resident of Colorado when the income is received, the entire amount will be taxable in Colorado. A credit for taxes paid to another state may be claimed if the income is also taxed by the state in which the income was earned.

If the employee worked in Colorado but recognized the income after moving to another state, the income will be considered Colorado source income as it is compensation for services performed in Colorado. Colorado withholding should be taken out of the pay and reported on a W-2 form issued by the employer.

This income will be reported on line 5 in the Colorado column of the 104PN schedule. Nonresidents who performed services for the employer both within and outside of Colorado must allocate to Colorado that portion of the income that was earned in Colorado. The most common method of allocation is based on time worked in Colorado versus time worked outside of Colorado.

PART-YEAR RESIDENT CORPORATION SHAREHOLDER

In the case of an S corporation shareholder who is a part-year resident of Colorado, the S corporation income shall be apportioned between the resident and nonresident portions of the shareholder's taxable year based on the number of days of the S corporation taxable period during which the shareholder was a Colorado resident over the total number of days in such period.

COLORADO ALTERNATIVE MINIMUM TAX FOR PART-YEAR AND NONRESIDENTS

Information on the Colorado AMT is provided in FYI Income 14 Alternative Minimum Tax.