

PA-40 NRC-AE, CONSOLIDATED PERSONAL INCOME TAX RETURN FOR QUALIFIED ELECTING NONRESIDENT PROFESSIONAL ATHLETES, NON-PLAYER PERSONNEL, OFFICIALS AND ENTERTAINERS

Purpose

The purpose of the PA-40 NRC-AE form is to simplify filing requirements for athletic and entertainment organizations or entities that have nonresident employees who meet the filing requirements for a PA-40, Pennsylvania Personal Income Tax Return.

CAUTION: The PA-40NRC-AE is not intended for use by any resident or nonresident individual filing on his/her own behalf. A resident or nonresident individual filing on his/her own behalf must use Form PA-40, Pennsylvania Personal Income Tax Return, to file for compensation taxable to Pennsylvania for performances or services completed, or games played, in Pennsylvania.

Who Must File A PA-40 Pennsylvania Personal Income Tax Return?

An individual must file a PA tax return if he or she received total PA gross taxable income in excess of \$33 during 2010, even if no tax is due. In lieu of this individual filing requirement, a nonresident individual may be able to file as a participant in a consolidated tax return that combines the filing of many nonresident taxpayers into a single filing (see the section on Effect of a Consolidated Group Return). To determine if your entity has employees with income in excess of the filing requirement of \$33 of gross taxable income, see Chapter 7 of the Pennsylvania Personal Income Tax Guide for more information on what is taxable compensation for a nonresident individual for PA purposes and how to calculate the amount of taxable compensation for a nonresident individual for PA purposes.

Who May Use The PA-40 NRC-AE Form?

A professional sports team may file a PA-40 NRC-AE form on behalf of its qualifying electing nonresident players or qualifying nonresident non-player personnel who receive wages or compensation. A league may also elect to file on behalf of its qualifying nonresident officials or other qualifying nonresident league personnel who receive wages or compensation. Professional entertainment entities may also elect to file on behalf of nonresident entertainers who receive wages or compensation. Sports teams, league offices and professional entertainment entities will be known collectively as "entity" throughout the remainder of this document unless otherwise noted. Nonresident players and non-player personnel, along with nonresident officials and nonresident entertainers, will be known collectively throughout the remainder of this document as "nonresident individuals". Each nonresident individual who wishes to participate in the PA-40 NRC-AE must meet the following requirements:

1. The nonresident individual must be an individual whose tax year is the calendar year.
2. The nonresident individual and the nonresident individual's spouse must each be a domiciliary of a state or country other than Pennsylvania or the reciprocal states of Indiana, Maryland, New Jersey, Ohio, Virginia and West Virginia for the entire taxable year.
3. The nonresident individual must have no PA-taxable income derived from or connected with PA sources other than his or her apportioned share of compensation for the calendar year.
4. The nonresident individual must elect to join in the filing of the PA-40 NRC-AE.
5. The nonresident individual must not be able, by election or non-election, to participate in the NRC-AE filing by any other entity.

IMPORTANT: You may not use this form for nonresident individuals with qualified unreimbursed business expenses. Individuals who wish to claim qualified unreimbursed business expenses are required to file their own separate PA-40 Pennsylvania Personal Income Tax Returns and include PA Schedule UE with those returns.

Professional Sports Team

A professional sports team is any one of the major, minor or independent league teams including, but not limited to, baseball, basketball, football, hockey or soccer. Employees of a professional sports team include, but are not limited to, players and non-player personnel such as coaches, trainers, owners and other team support staff.

Officials

Officials include nonresident individuals officiating or judging any of the games of the professional sports teams or entertainment activities. Officials also include any employees of the professional sports team league offices or broadcasters of the games of the professional sports teams.

Entertainment Entity

An entertainment entity is any business association, partnership, corporation, S corporation or tax-exempt organization that employs nonresident individuals who perform services within the context of the normal business operations within the Commonwealth of Pennsylvania. Examples of entertainment entities include, but are not limited to, NASCAR drivers, musical groups or individual singers, comedy performers, golfers, other personal service corporations, circuses, off-Broadway musicals or plays, dancing troupes or individual dancers, boxing, dog and horse shows, ice skating, etc.

NOTE: Entities may obtain additional information regarding withholding of PA personal income tax in the Pennsylvania Employer Withholding brochure (REV-580), and register to withhold by completing the PA Enterprise Registration Form (PA-100). Both documents can be found at the department's website at www.revenue.state.pa.us.

Qualified Individual Documentation Requirements

The entity must complete a PA Schedule NRC-AE-1 for each of its nonresident individuals. The entity must maintain for inspection at its principal office the following:

1. The list of all electing and non-electing nonresident individuals including the name, address, Social Security number, apportioned compensation, tax due before application of payments and credit, share of tax withheld or payments and share of overpayment, if any, for each.
2. One of the following:
 - a. Certification that each of the nonresident individuals on a PA Schedule NRC-AE-1 has elected and agreed to file as a participant in a PA consolidated group return for the taxable year; or
 - b. A copy of the agreement that evidences each of the qualified nonresident individuals on a PA Schedule NRC-AE-1 elected to file as a participant in a PA consolidated group return for the taxable year.

Effect of a Consolidated Group Return

Unless rejected, the department considers the PA-40 NRC-AE form a group of separate PA returns that meet the individual filing requirements of Pennsylvania law. The department's acceptance of a PA-40 NRC-AE form is tentative and subject to revocation upon audit or review. The department retains the right at any time to require nonresident individuals to file a PA-40 form or to withdraw and modify the authority to file a PA-40 NRC-AE form. A participating nonresident individual may not change his or her election to file from PA-40 NRC-AE to a PA-40 or from a PA-40 to a PA-40 NRC-AE after filing the PA tax returns unless the entity files an amended PA-40 NRC-AE form, removing the nonresident individual from those electing to be included in the consolidated filing and (if required) the nonresident individual files a separate PA-40 return.

GENERAL INSTRUCTIONS

Identification Information

File the PA-40 NRC-AE under the federal employer identification number (FEIN), name and address of the entity. You are limited to 50 characters, including spaces.

Final Return

If the entity is out of business, fill in this oval. Enter the date the entity went out of existence and explain the reason for filing the return.

Number of Nonresidents Electing

Enter the number of nonresident individuals electing to file on the PA-40 NRC-AE form.

Total Number of Nonresidents

Enter the number of all nonresident individuals. If every nonresident elects to file on the PA-40 NRC-AE form, this number will be the same as the number of nonresidents electing.

LINE INSTRUCTIONS

Apportioned Compensation

Line 1 Enter the total amount of all electing nonresident individuals' apportioned compensation from Line 3 of all participating PA Schedules NRC-AE-1. If every nonresident individual elects to file on the PA-40 NRC-AE, this amount should equal the total nonresident individual amounts of apportioned compensation per the PA Schedules NRC-AE-1.

PA Tax Liability

Line 2 Multiply the amount on Line 1 by 3.07 percent (0.0307) to calculate the PA income tax liability.

PA Tax Withheld

Line 3 Enter the total amount of all electing nonresident individuals' PA tax withheld from PA Schedules NRC-AE-1. If every nonresident individual elects to file on the PA-40 NRC-AE form, this amount should equal the total nonresident individual amounts withheld per the PA Schedules NRC-AE-1.

Extension Payment

Line 4 Enter the amount of any payments made with form REV-276, Application for Extension of Time to File.

Total Payments and Credits

Line 5 Add Lines 3 and 4, and enter the total here.

Tax Due

Line 6 If Line 2 is more than Line 5, enter the amount of PA tax due. If the amount due is \$1 or less, the department does not require a payment but does require that the entity file the PA-40 NRC-AE form.

Payment Options

With Form PA-V

If the entity has a correct personalized Form PA-V, make the check or money order payable to PA Dept of Revenue. Write the entity's FEIN and "2010 PA Tax" on the payment. Place the Form PA-V and payment in the same envelope with the PA-40 NRC-AE.

Please DO NOT:

- Staple the payment to the return or Form PA-V;
- Use the Form PA-V if the entity does not owe tax; or
- Use the Form PA-V if the name is incorrect. (The entity can use the Form PA-V if the address is wrong because the department will obtain the correct address from the PA-40 NRC-AE form.)

Without Form PA-V

If the entity does not have a Form PA-V or if the name on the Form PA-V is incorrect, make the check payable to PA Dept. of Revenue and submit the payment in the same envelope with the PA-40 NRC-AE form. Please be sure to write the FEIN and "2010 PA Tax" on the payment. Please do not staple the payment to your return.

Overpayment/Refund

Line 7 If Line 5 is more than Line 2, enter the overpayment. The department will not refund any overpayment less than \$1.

Signature

Do not sign the return until completing a PA Schedule NRC-AE-1 for each participating and non-participating nonresident individual. A PA Schedule NRC-AE-1 is required for each nonresident employee, whether or not an employee elects to participate in the filing of the PA-40 NRC-AE form. An officer of the organization, partner of the partnership, person designated as the tax matters person (person with detailed knowledge of the preparation and filing of this return) or other responsible person must sign the PA-40 NRC-AE form. Provide the telephone number where the department may call between 8:30 a.m. and 4 p.m. eastern time.

Preparer/Company Name, Telephone Number, SSN or PTIN and Firm FEIN

If a paid preparer was engaged to prepare this tax return, the preparer should enter his or her name or business name, telephone number, SSN or PTIN and the company's FEIN in the spaces provided on the return.

INSTRUCTIONS FOR PA SCHEDULE NRC-AE-1

PA Nonresident Schedule of Apportioned Compensation and PA Tax Withheld

On PA Schedule NRC-AE-1, complete information for each nonresident individual, whether or not they elect to participate in the filing of the PA-40 NRC-AE form. A separate schedule is required for every nonresident individual. This form is required for all entries of information and taxpayer data. Substitute forms or formats are not acceptable.

Enter the following Information:

- a. Enter the entity's FEIN and name. You are limited to 50 characters, including spaces.
- b. Enter the SSN, last name, first name, middle initial and mailing address where the taxpayer can be reached for each nonresident individual who performs services in PA, whether or not that individual elects to participate in the filing of this PA-40 NRC-AE form.
- c. Enter the nonresident individual's two-letter residency state abbreviation. If a nonresident individual's residency state is different from his/her mailing address, please be sure to include the residency state abbreviation, rather than that of the mailing address.
- d. Fill in the oval if the nonresident individual is a resident of a reciprocal state. No additional entries of information are required on this form if the oval is filled in.
- e. Enter the total number of working days in PA as determined by the following:

Players

Compensation paid to nonresident players will be apportioned on the basis of "working days" pursuant to personal income tax regulations (61 Pa. Code § 113.2), except that a working day shall include a Saturday, Sunday or holiday upon which the player must engage in services in the context of a game, practice, training or promotional activities for the team, but shall not include absence due to illness, injury, vacation or leave without pay. In the event that a player is required to engage in rehabilitation or other treatment aimed at furthering the team's purpose, a day attributable to this activity by the player can be counted as a working day. A Pennsylvania working day means and includes a day when a nonresident player or non-player personnel who would ordinarily travel with a team to Pennsylvania to perform services but remains outside Pennsylvania solely for his/her own convenience and not out of business necessity of the team. Additionally, on a day when the player either travels from a point outside this commonwealth to a place within the commonwealth or departs from this commonwealth, it is a Pennsylvania working day if the player does any of the following in Pennsylvania: plays in a game, attends practice, training or a team meeting or engages in rehabilitation or other activity aimed at furthering the sports team's objective.

Compensation paid to nonresident players shall be allocated to Pennsylvania on the basis of a single apportionment fraction, the numerator of which is the number of Pennsylvania working days, and the denominator of which is the total number of working days during the taxable year. Where the compensation paid or the number of duty days in a particular period is not representative of the year as a whole, the league and team can use a reasonable alternative allocation method to eliminate the distortion as may be approved by the department. However, only under extraordinary circumstances will the department approve different methods for different players.

A team may, at its option, determine apportioned income using the same number of total working days for all players irrespective of whether a particular player is with the team for an entire quarter or taxable year. If the team's use of this method of determining apportioned income for a particular individual results in tax withheld that does not correspond to the compensation subject to withholding, the team should inform the individual that he or she should file his or her own individual nonresident Pennsylvania income tax return and that he or she may not satisfy his or her individual filing responsibility by participating in the combined return.

Non-Player Personnel or Entertainers

Compensation paid to nonresident non-player personnel or nonresident entertainers will be apportioned on the basis of working days per year. Working days are determined in the same manner as set forth in the player's paragraphs above. Non-player personnel includes: team employees, such as coaches, trainers and any other persons required to travel with and perform services on behalf of the team (which encompasses being present with the team in the commonwealth); game officials; and entertainers.

- f. Enter the total number of working days in the year.
- Line 1. Divide the total number of working days in PA by the total number of working days in the year to arrive at the working days apportionment fraction. Calculate the fraction to six decimal places.
- Line 2. Enter the nonresident individual's gross compensation before apportionment for the tax year.

Compensation

Compensation includes, but is not limited to, salary and wage payments, performance bonuses, single-year and multi-year signing bonuses (whether conditioned on the performance of present and/or future services) or any similar compensation paid to nonresident members of Pennsylvania teams.

Special Rules for Compensation for Prior or Future Services

Compensation for prior services rendered (performance bonuses, commissions, vacation pay, overtime pay and so forth, attributable at least in part to services performed in a prior tax year) shall be apportioned to Pennsylvania in proportion to total number of Pennsylvania working days divided by the total number of working days in the payment's accrual period. Compensation for services to be rendered shall be apportioned to Pennsylvania (once there is no substantial risk of forfeiture) in proportion to the total number of Pennsylvania working days divided by the total number of working days in the payment's accrual period. Teams may reasonably estimate the total working days if the payment's accrual period is more than one year.

Line 3. Multiply Line 2, Gross Compensation Before Apportionment, by Line 1, Apportionment Fraction, and enter the amount here.

Line 4. Enter the amount of PA Tax Withheld for the nonresident individual.

Mailing Instructions

Mail the completed PA-40 NRC-AE form and accompanying PA Schedules NRC-AE-1 to:

PA DEPARTMENT OF REVENUE
PO BOX 280600
HARRISBURG PA 17128-0600

When to file

Mail the completed PA-40 NRC-AE form, accompanying PA Schedules NRC-AE-1 and any tax due to the department no later than midnight, April 18, 2011, unless an extension of time to file is granted using the procedures found below.

Extension of Time to File

The department will grant up to a six-month extension of time to file a PA income tax return. An extension of time for filing will not extend the time for paying the tax.

Follow these procedures when applying for an extension of time to file:

1. If income tax is owed on the PA-40 NRC-AE return, payment must be made by check or money order with a timely REV-276, Application for Extension of Time to File. The oval under "Type of Return for PA-40 NRC-AE, Nonresident Consolidated Tax Return Athletes/Entertainers," should be completely filled in.
2. Even if no income tax is owed on the PA-40 NRC-AE return, a timely REV-276, Application for Extension of Time to File, must still be filed.

Mail the Form REV-276, with or without a payment, to:

PA DEPARTMENT OF REVENUE
BUREAU OF INDIVIDUAL TAXES
PO BOX 280504
HARRISBURG PA 17128-0504

When filing the PA tax return:

Check the extension request block on the PA-40 NRC-AE form, and submit a copy of the REV-276, Application for Extension of Time to File.

Amended Returns

If a mistake was made on the PA-40 NRC-AE form originally filed, an amended return must be filed. To amend a return, another PA-40 NRC-AE form for the same tax year must be used.

EXAMPLE: To amend for 2010, use a 2010 PA-40 NRC-AE form. A photocopy of a PA-40 NRC-AE form cannot be used to file an amended return.

For filing an amended return on a PA-40 NRC-AE, fill in the "Amended Return" oval on the return, and write AMENDED RETURN at the top of the PA tax return. Follow these steps:

1. From the original return, enter the figures that you are not amending on the appropriate lines.
2. Enter the amended figure(s) on the appropriate lines and include a statement explaining the reason(s) amended information is being filed. Submit only the form(s) or schedule(s) supporting the amended amount(s).
3. Calculate the amended total PA taxable income and tax liability.
4. If a refund was received from the filing of the original return, add that amount to the PA tax liability on Line 2.
5. Calculate the total payments and credits. If tax was paid with the original return, add that payment to the total payments and credits on Line 5.
6. Calculate the amended tax due or overpayment. The amended return must be signed and mailed with all explanations and statements to:

PA DEPARTMENT OF REVENUE
BUREAU OF INDIVIDUAL TAXES
PO BOX 280600
HARRISBURG PA 17128-0600

Refunds from Amended Returns

An amended return can be filed and a refund requested if the income was over-reported. An amended return must be filed within three years from the original due date, without regard to the extension. Under PA law, a petition for refund must be filed within three years following the date of payment. For a refund of tax shown on a timely filed PA tax return, the department may not issue a refund unless the amendment, including a complete, signed amended return, is filed within three years of the payment.

CAUTION: An amended PA return may not be filed after the department issues an assessment, if the amendment relates to the same taxable year and income that the department assessed. A timely petition for reassessment must be filed or the assessment must be paid and a timely petition for refund must be filed. Under PA law, if amounts are paid as a result of an assessment, a Petition Form REV-65 must be filed no later than six months after the date shown on the assessment.

Underreported Income for Amended Returns

If taxable income was not reported or was erroneously claimed, the error must be corrected within 30 days. File an amended PA return and pay the additional tax, plus penalty and interest.

Penalty and Interest

Penalties for Not Filing or for Filing a Late Return

PA law imposes a penalty if a return is not filed on or before the due date or the approved extended due date. The penalty is 5 percent of the unpaid tax due for each month or fraction of a month. PA law imposes this penalty unless reasonable cause is shown for the late filing. The maximum penalty is 25 percent. The minimum penalty is \$5. Because the PA-40 NRC-AE form is allowed by the department for the convenience of nonresident individuals, the department retains the discretion to (1) impose a late filing and/or underpayment penalty (plus interest) if the consolidated return is filed late and/or the tax is not timely paid; or (2) reject a late filed PA-40 NRC-AE form, and thus cause all of the nonresident individuals to incur late filing and possibly underpayment penalties upon filing their individual nonresident personal income tax returns.

These penalties will not apply on an entity return if (1) there are no nonresident individuals who elect to participate in the PA-40 NRC-AE form for the tax year; (2) all of the nonresident individuals are ineligible to participate in the PA-40 NRC-AE form; or (3) the entity chose not to prepare a PA-40 NRC-AE for the convenience of its nonresident individual employees. The department may prosecute any person who attempts to evade or defeat his/her PA tax responsibility.

Penalties for Underpayment or for Late Payment

If the full amount of tax due is not paid with a return, PA law imposes a 5 percent underpayment penalty.

If non-reported taxable income is more than 25 percent of the taxable income shown on the return, PA law imposes an additional penalty. This penalty is 25 percent of the tax due on the unreported income.

If the underpayment of tax is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, these penalties will be imposed. The department may assess both late filing and underpayment penalties if a return is filed after the due date or extended due date, and if the tax liability is not paid with the return.

CAUTION: If the return is filed late or the Pennsylvania income tax is not paid on time, the department retains the discretion to calculate penalty and interest and issue a notice of assessment. If any part of any underpayment of the tax is due to fraud, PA law imposes a penalty of 50 percent of the underpayment.

PA law imposes a \$500 penalty for filing a frivolous return. A frivolous return is one that:

- Does not contain sufficient information for the department to determine the correct liability;
- Contains information indicating the liability is significantly incorrect; or
- Indicates that the return is filed in a manner to delay or impede the administration of the PA tax law.

PA law imposes a penalty on any person/entity required to furnish an information return that does not file a required information return or files a false or fraudulent information return. The penalty is \$250 for each information return.

Penalty for Uncollectible Funds

PA tax law imposes an additional penalty on funds submitted via check and not paid on presentment or an electronic funds transfer payment and not credited on transmission. The penalty is 10 percent of the face amount of the check or electronic funds transfer payment. The penalty imposed cannot exceed \$1,000 or be less than \$25.

Interest for Nonpayment or Late Payment

If the tax due is not paid on or before the due date, PA law imposes interest from April 18, 2011, to the date of payment at the annual interest rate the U.S. Secretary of the Treasury establishes as of January 1 of each calendar year.

TAXPAYER SERVICES AND ASSISTANCE

Taxpayer Service and Information Center

Call 717-787-8201 for PA personal income tax help during normal business hours, 7:30 a.m. to 5 p.m. eastern time.

Services for Taxpayers with Special Hearing and/or Speaking Needs

1-800-447-3020 (TTY)

1-888-PATAXES (728-2937)

Touch-tone service is required for this automated, 24-hour toll-free line. Call to order forms or check the status of a personal income tax account or property tax/rent rebate.

Online Customer Service Center

If you have Internet access, find the answer to your question by using the department's Online Customer Service Center. Search the database of commonly asked questions, and if you cannot find your answer, submit your question to a customer service representative. Visit www.revenue.state.pa.us to use this service.

Language Services

Non-English speaking taxpayers can receive assistance from the department through an interpretation service, available by calling any department phone number.

Español

El Departamento de Impuestos puede ayudar los contribuyentes que no hablan inglés por medio de un servicio de traducción durante el periodo de pago de impuestos.

PA Personal Income Tax (PIT) Guide

Because Pennsylvania does not follow federal filing rules, the department expanded the PA PIT Guide that explains Pennsylvania income tax, describes differences from federal rules and includes income and expense charts and worksheets that assist taxpayers and tax professionals. You can only obtain the complete PA PIT Guide from the department's website.

FORMS ORDERING SERVICES

This form is available from the department in an online format only. To obtain other forms and instructions, visit a Revenue district office, call 1-888-PATAXES, visit www.revenue.state.pa.us or e-mail ra-forms@state.pa.us