



# Guideline

## Income Tax Treatment of Military Personnel

*Cory Fong*  
Tax Commissioner

### Introduction

If you are a member of the U.S. armed forces or a member of the National Guard or Reserve mobilized for federal active duty—referred to as a servicemember in this guideline—you may have the following questions:

- Do I have to file a North Dakota individual income tax return?
- What kinds of income are taxable by North Dakota?
- Are there any special deductions or tax credits available to servicemembers?

The following definitions apply in this guideline:

**Domicile**—means one’s residence by law, or more commonly, one’s legal residence. See **Determining your residency status** later in this guideline for information on how one’s legal residence is determined. In this guideline, the terms “resident,” “residence,” and “residency” all refer to one’s domicile or legal residence.

**Federal active duty**—means duty or service in any of the branches of the U.S. military—Army, Navy, Air Force, Marine Corps, and Coast Guard—under U.S. Code, Title 10. For purposes of applying the provisions of the Federal Servicemembers Civil Relief Act (covered later in this guideline), this terminology also means duty or service as a commissioned officer in the U.S. Public Health Service (U.S. Code, Title 42) or the National Oceanic and Atmospheric Administration (U.S. Code, Title 15).

**National Guard**—means the Army National Guard or the Air National Guard under U.S. Code, Title 32.

**Reserve**—means a reserve component of one of the branches of the U.S. armed forces under U.S. Code, Title 10.

**Servicemember**—means an individual on federal active duty.

In those states with an individual (or personal) income tax, the income tax laws vary widely from state to state. This guideline only provides information about North Dakota’s income tax laws and how they apply to servicemembers. If you have any questions about another state’s treatment of servicemembers and their spouses, you will need to contact the other state for assistance.

### Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act is federal law that provides special protections to servicemembers. Among its provisions are the following three that override state income tax laws to ease state tax obligations of servicemembers:

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### 1—Legal residence

As a servicemember, you are subject to orders that may move you to different duty stations within and without the United States. The Servicemembers Civil Relief Act provides that your state of domicile does not change solely because the U.S. Department of Defense reassigns you to a new permanent duty station in another state or country. This means that if you are a North Dakota resident, your North Dakota residency does not change based only on your assignment to a duty station outside North Dakota. Likewise, if you are a resident of a state other than North Dakota, your residency does not change to North Dakota based only on your assignment to a duty station in North Dakota. See **Determining your residency status** later in this guideline for more information.

### 2—Military compensation

Ordinarily, compensation you receive for your personal or professional services can be taxed by your state of residence and by the state in which you performed the services. The Servicemembers Civil Relief Act provides that compensation you receive for federal active duty may be taxed only by your state of residence. This means that if you are a servicemember who is a legal resident of North Dakota, compensation you receive for your federal active duty may be taxed only by North Dakota regardless of where you are stationed, including overseas. Likewise, if you are a servicemember who is a resident of a state other than North Dakota, North Dakota may not tax your federal active duty compensation if you are stationed in North Dakota.

### 3—Income adjustment for eligible servicemembers

Even though you are not a resident of a state, that state may tax income (other than federal active duty compensation) that you earn or derive from sources in that state. The methods used to calculate the income tax on nonresidents' nonmilitary income differ from state to state. The Servicemembers Civil Relief Act provides that states other than your state of residence may not use your federal active duty compensation in the calculation of the income tax on nonmilitary income if its inclusion would result in an increase in the income tax on the nonmilitary income. North Dakota is one of a number of states that is affected by this provision. Therefore, if you are a servicemember who is a nonresident of North Dakota, and you are required to file a North Dakota income tax return because you (or your spouse, if married filing jointly) has nonmilitary income taxable by North Dakota, you are allowed to deduct your federal active duty compensation in calculating your North Dakota taxable income. A separate line is provided on the North Dakota income tax return, Form ND-1, for this deduction.

## Military Spouses Residency Relief Act

The Military Spouses Residency Relief Act (MSR Act) is federal legislation that amended the Servicemembers Civil Relief Act in 2009 to extend a number of benefits already permitted to servicemembers to their civilian spouses. If you have a civilian spouse, the following two new benefits may affect your civilian spouse's state income tax obligations for tax years 2009 and after:

- Your civilian spouse's domicile does not change when he or she moves from one state to another if the sole purpose for moving is to live with you where you are stationed. *(Note: The language of this provision in the MSR Act has been interpreted differently by the states. Some states interpret it to require you and your civilian spouse to have the same domicile. Other states, including North Dakota, do not require this. \*)*
- Your civilian spouse's income for services is exempt from a state's income tax if (1) you are stationed in that state, (2) neither you nor your civilian spouse are domiciled in that state, and (3) the only reason your civilian spouse is in that state is to live with you. *(Note: The language "income for services" in the MSR Act has been interpreted differently by the states. North Dakota interprets it to mean wages, tips, commissions, and other compensation received for employment services as reported on Federal Form W-2. \*)*

\* For states other than North Dakota, you will need to contact the other state's tax agency to find out how the state applies these provisions.

The MSR Act does not exempt your civilian spouse's compensation from all state income tax. If the exemption requirements in the MSR Act are met, only the state in which your civilian spouse worked is prohibited from taxing the compensation. The compensation is still subject to income tax, if any, imposed by your civilian spouse's state of domicile.

### **Nonresident civilian spouse of a servicemember stationed in North Dakota**

Your civilian spouse is exempt from North Dakota income tax on income for services performed in North Dakota if all of the following conditions are met:

- You and your civilian spouse maintain a domicile in a state other than North Dakota. (For North Dakota purposes, you do not have to have the same state of domicile.)
- Your permanent duty station is in North Dakota.
- Your civilian spouse is in North Dakota only because he or she wants to live with you while you are stationed in North Dakota.

***Note:** Your civilian spouse's income for services, although exempt from North Dakota income tax because of the Military Spouses Residency Relief Act, may be subject to income tax in your civilian spouse's state of domicile if it has an income tax.*

For North Dakota income tax purposes, "income for services" means wages, salaries, tips, and any other form of compensation reportable on Federal Form W-2 that your civilian spouse receives for working in North Dakota. Both you and your civilian spouse are subject to North Dakota income tax on the following types of income:

- Income from real and tangible personal property located in North Dakota, such as rental income, mineral interest royalties, and a gain from the sale or exchange of the property.
- Net income from a trade or business conducted in North Dakota.
- Income from gambling activity carried on in North Dakota.

If your civilian spouse receives wages exempted from North Dakota income tax under the Military Spouses Residency Relief Act, your spouse can stop the withholding of North Dakota income tax from the exempt wages by completing [Form NDW-M](#) and giving it to the employer along with a copy of his or her dependent military ID card. If North Dakota income tax was already withheld from the exempt wages, a refund may be obtained by filing a North Dakota income tax return, Form ND-1, along with Schedule ND-1NR. For more information, see the special notice [Military Spouses Residency Relief Act](#).

### **Resident civilian spouse of servicemember stationed outside North Dakota**

If your civilian spouse is domiciled in North Dakota, all of his or her income is subject to North Dakota income tax, regardless of where it is earned or has its source. This includes compensation your civilian spouse receives for working in a state other than North Dakota that is exempt from the other state's income tax because of the Military Spouses Residency Relief Act.

## **Determining your residency status**

Your residency status determines what filing requirements apply, what forms to use, what income is taxable, and what deductions and tax credits are allowed to you. Your state of residence does not change unless you take affirmative steps to change it. This applies regardless of where you are stationed during the year. If you are married and live with your spouse, both of you will usually have the same state of residence; however, if you and your spouse had different states of residence when you married, you will maintain your separate states of residence until either or both of you take affirmative steps to change your residence.

If you take the necessary steps to change your residence, be sure to let your military payroll office know of the change so that your payroll records are changed to reflect the correct state of residence for withholding purposes. However, be advised that simply making a change to your military payroll records does not in itself result in a change in your state of residence.

### **Domicile (legal residence)**

Your domicile, or legal residence, is your permanent home to which you always intend to return whenever temporarily absent from it. Temporary absences may be attributable to military service, school attendance, vacation travel, or employment. If you have more than one home, only one of them may be your legal residence. Your legal residence is based on your intent as supported by your actions. Once established, your legal residence does not change until you take affirmative steps to change it.

Following are some of the more common factors that are indicative of one's state of legal residence:

- Property and residence information
  - Location of home, whether an apartment, house, or condo
  - Mailing address
  - Amount of time spent in state
- Employment and financial information
  - Location of bank accounts
  - State where eligible for unemployment insurance
  - State where resident income tax returns are filed
  - Location of work or business
  - State where eligible for in-state college tuition
- Voting, license, and registration information
  - Where person is registered for voting, or where person actually voted
  - State where driver's license is obtained
  - State where vehicles are registered
  - State where professional licenses are obtained
- Personal and professional information
  - Location of spouse and/or dependents
  - Location of fraternal, social, or athletic memberships
  - Location of union membership
  - Location of place of religious worship

No single factor is conclusive as to the state of residence. While certain of the above factors may carry more weight than others, all of the facts and circumstances need to be examined together to determine legal residence, especially in cases where there is uncertainty as to the state of residence. Servicemembers and their spouses who have questions regarding their residency status can find help at a military legal services office.

### **Changing legal residence**

Changing legal residence requires (1) abandonment of the current place of legal residence, (2) actual movement to a new place of legal residence, and (3) intent to change the place of legal residence and to remain at the new place of legal residence. Affirmative steps that may support an intent to change legal residence include the following:

- Changing legal documents, such as a will or insurance policy, to reflect the new residence
- Changing employment records, such as payroll taxes, etc.
- Registering to vote in the new location
- Applying for a driver's license in the new state of residence
- Registering vehicles in the new state of residence
- Filing a resident income tax return in the new state of residence
- Selling a home in the former state of residence and purchasing a home in the new state of residence

## Filing requirement and taxable income

### Residents of North Dakota

If you are a full-year resident of North Dakota who is required to file a federal income tax return, you are required to file a North Dakota income tax return. As a North Dakota resident, you are subject to North Dakota income tax on all of your income regardless of its source. This applies regardless of where you may have been stationed during the year. Your income is taxable to the same extent it is taxable for federal income tax purposes. See **Deductions available to servicemembers** later in this guideline for any deductions or credits that may apply.

If you receive nonmilitary income that you earned or derived from sources in another state, you may have to file an income tax return with that state. If you have to pay income tax to another state on your nonmilitary income, you may be able to claim an income tax credit on your North Dakota income tax return to reduce part of your North Dakota income tax—see North Dakota Schedule ND-1CR for details.

### Part-year residents and nonresidents of North Dakota

If you are a nonresident of North Dakota, you are subject to North Dakota income tax on income (other than your federal active duty compensation) that you earn or derive from sources in North Dakota.

If you are a part-year resident or full-year nonresident of North Dakota, you are required to file a North Dakota individual income tax return if both of the following conditions apply to you:

- You are required to file a federal income tax return.
- You received North Dakota gross income (see below).

“North Dakota gross income” means:

- Income received from all sources (including sources outside North Dakota) while you were a resident of North Dakota.
- Income received from sources in North Dakota while you were a nonresident of North Dakota, which includes the following:
  - Compensation for services performed in North Dakota (except federal active duty compensation), such as wages, salaries, tips, commissions and fees.
  - Income from tangible property located in North Dakota, such as rents, mineral interest royalties, and gain from the sale of the property.
  - Income from a trade or business carried on in North Dakota as a sole proprietorship.
  - Income from a partnership, Subchapter S corporation, or limited liability company that carries on a trade or business in North Dakota.

- Income from an estate or trust, but only to the extent the income is derived from tangible property or a trade or business in North Dakota.
- Income from gambling activity carried on in North Dakota.

Your North Dakota gross income is used only to determine if you have to file a North Dakota income tax return; only the portion of your gross income included in your federal taxable income is included in your North Dakota taxable income. If you are required to file a North Dakota income tax return, you must also complete Schedule ND-1NR and attach it to your return. In calculating your North Dakota taxable income, you may deduct your federal active duty compensation received while a nonresident of North Dakota.

## **Deductions available to servicemembers**

### **North Dakota residents in the National Guard or Reserve**

If you are a North Dakota resident who is a National Guard or Reserve member mobilized for federal active duty, you are allowed to deduct your federal active duty compensation in calculating your North Dakota taxable income. However, no deduction is allowed for the portion of your federal active duty compensation that is combat pay exempted from federal income tax, or that is received for basic military training, annual training, or professional military or developmental education. A separate line is provided on the North Dakota income tax return, Form ND-1, for this deduction.

### **Nonresident servicemembers**

If you are a nonresident of North Dakota who is required to file a North Dakota income tax return, you are allowed to deduct your federal active duty compensation in calculating your North Dakota taxable income. However, no deduction is allowed for the portion of your federal active duty compensation that is combat pay exempted from federal income tax.

## **Extension of time to file**

### **Servicemembers serving in a combat zone**

If you are serving, or providing direct support to military operations, in a presidentially-designated combat zone, you have until the extended due date for filing your federal income tax return to file your North Dakota income tax return and pay any tax due without penalty or interest. This also applies if you are a member of the National Guard or Reserve mobilized for federal active duty who is serving, or providing direct support to military operations, in a combat zone. For information on federal extensions for servicemembers, go to the IRS's web site at [www.irs.gov](http://www.irs.gov).

### **Servicemembers not in a combat zone**

**Stationed outside the U.S.**—If you are not serving (nor providing direct support to military operations) in a presidentially-designated combat zone but are stationed outside the boundaries of the United States (including the District of Columbia), you have until the due date (or extended due date) for filing your federal income tax return to file your North Dakota income tax return and pay any state tax due without penalty or interest. For information on federal extensions for servicemembers, go to the IRS's web site at [www.irs.gov](http://www.irs.gov).

**Stationed in the U.S.**—If you are stationed within the boundaries of the United States, you must file your North Dakota income tax return and pay any tax due by April 15 unless you obtain an extension of time to file your return. For complete information on how to obtain an extension of time to file your North Dakota income tax return, go to the Office of State Tax Commissioner's web site at [www.nd.gov/tax](http://www.nd.gov/tax) and click on Miscellaneous Tax Forms and Publications > [Filing an extension](#).

## **Where to get forms and assistance**

### **Web site**

Obtain tax forms and instructions and other information on our web site at—

[www.nd.gov/tax](http://www.nd.gov/tax)

### **E-mail**

Submit your questions to us at—

[individualtax@nd.gov](mailto:individualtax@nd.gov)

### **Phone**

Between 8:00 a.m. and 5:00 p.m. (Central Standard Time), Monday through Friday (except holidays), call us toll free (within North Dakota) at 1-877-328-7088. In the Bismarck-Mandan calling area, or from outside North Dakota, call us as follows—

Questions: (701) 328-1247

Form requests: (701) 328-1243

If speech or hearing impaired, call us through Relay North Dakota at 1-800-366-6888.

### **Or write to us at—**

Office of State Tax Commissioner  
600 E. Boulevard Ave., Dept. 127  
Bismarck, ND 58505-0599