

**FORM NDW-M - Exemption From Withholding for a Qualifying Spouse of a U.S. Armed Forces Servicemember**

NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER  
SFN 28720 (2-2019)



For Calendar Year  
**20**\_\_\_\_

- ▶ **Employee** - See "Instructions for employee" for eligibility requirements and other information.
- ▶ **Employer** - See "Instructions for employer" for the purpose and proper handling of this form.

**Part 1 - To be completed by the employee**

1. For each of the following statements, indicate whether it is true or false by filling in the appropriate circle. If any of the statements are false, you are not eligible for the withholding exemption.

- |   | TRUE                  | FALSE                 |
|---|-----------------------|-----------------------|
| a. I am not a member of the U.S. armed forces .....   | <input type="radio"/> | <input type="radio"/> |
| b. I am married to an active duty member of the U.S. armed forces .....   | <input type="radio"/> | <input type="radio"/> |
| c. My military spouse and I are domiciled in a state other than North Dakota .....  | <input type="radio"/> | <input type="radio"/> |
| d. My military spouse's permanent duty station is in North Dakota .....   | <input type="radio"/> | <input type="radio"/> |
| e. I am residing and working in North Dakota only because I want to be with my military spouse while he or she is stationed in North Dakota ..... | <input type="radio"/> | <input type="radio"/> |

2. If ALL of the statements in item 1 are true, provide the following information for you (the employee) and your military spouse. All boxes must be filled in to be valid.

<b>Employee information</b>	Name ( <i>First, MI, Last</i> )		Social security number		State of domicile (legal residence)	
	Street address where currently residing		City		State	ZIP code
<b>Military spouse information</b>	Name ( <i>First, MI, Last</i> )				Social security number	
	Military spouse's permanent duty station			Military spouse's state of domicile (legal residence)		

3. I declare, under penalty of perjury, that the wages I earn for my services performed in North Dakota are exempt from North Dakota income tax because I meet the conditions for exemption under the Servicemembers Civil Relief Act (50 U.S.C. 4001), and the information I provided on this form is accurate to the best of my knowledge and belief.

Employee's signature	Date signed	Phone number
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- ▶ **ATTACH A COPY OF YOUR DEPENDENT MILITARY ID CARD ISSUED BY THE U.S. DEPT. OF DEFENSE**
- ▶ **Give the completed Form NDW-M with attached copy of military ID card to your employer.**
- ▶ **Notify your employer if you become ineligible for this exemption - see instructions.**
- ▶ **You must complete a new Form NDW-M each year to maintain the exemption - see instructions.**

**Part 2 - To be completed by the employer**

**Note:** An employer shall be held harmless from liability for withholding based on the employee's representations on this form.

Employer name		Employer identification number (EIN)			
Address		City		State	ZIP code

- ▶ **See "Instructions for employer" for the proper handling of this form.**

**PRIVACY ACT NOTIFICATION**

In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 57-01-15 and 57-38-56, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

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## Instructions to Form NDW-M

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### Purpose of form

The Servicemembers Civil Relief Act (50 U.S.C. 4001) provides that, if certain conditions are met, wages that a civilian spouse of an active duty U.S. armed forces servicemember receives for working in the state where the servicemember is stationed are exempt from that state's income tax. A qualifying civilian spouse must use Form NDW-M to exempt the wages from North Dakota income tax withholding.

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## Instructions for employee

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### Eligibility

You are eligible for the exemption from North Dakota income tax withholding on wages earned in North Dakota if you meet all of the following conditions:

- You are a civilian who is married to an active duty U.S. armed forces servicemember.
- You and your servicemember spouse maintain a domicile (that is, legal residence) in a state other than North Dakota. You do not have to have the same state of domicile. See "Domicile outside North Dakota" below.
- Your servicemember spouse's permanent duty station is in North Dakota.
- The sole purpose for your presence in North Dakota is to be with your servicemember spouse.

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### Domicile outside North Dakota

"Domicile" refers to your residence by law, and is also referred to as your legal residence. It is the place that is your permanent home, and is the place to which you always intend to return whenever you are absent from it. Domicile is based on your intent and actions, which must be consistent. If you are a civilian spouse of an active duty U.S. armed forces servicemember, the Servicemembers Civil Relief Act provides the following exceptions to these domicile (or legal residence) rules:

- Your domicile does not change if the sole purpose of your movement from one state to another is to reside wherever your servicemember spouse is permanently stationed.
- You may elect to use the same state of domicile as your servicemember spouse for state tax purposes for any tax year in which you are married for any part of the year. This means that, regardless of where you are domiciled under the normal rules (including North Dakota), you will be treated as being domiciled in the state where your servicemember spouse is domiciled for state tax purposes.

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### Completing Form NDW-M

If you meet all of the eligibility requirements for the exemption from withholding, fill in the last two digits of the calendar year in the upper right-hand corner, then fill out Items 1 through 3 of Part 1. Attach a copy of your dependent military ID card to Form NDW-M, and give them to your employer.

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### When the withholding exemption takes effect

Form NDW-M takes effect on the later of (1) the date you give it to your employer or (2) the first payroll period your employer is able to put the exemption into effect. The exemption does not apply to wages paid prior to the date Form NDW-M takes effect.

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### Annual renewal

Form NDW-M is valid only for the calendar year for which it is completed. Provided you are still eligible, you must file a new Form NDW-M for each subsequent year you want to continue the exemption from North Dakota withholding.

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### Notification of ineligibility

You must notify your employer to begin the withholding of North Dakota income tax from your wages if you become ineligible for the exemption. This would occur in any of the following cases:

- Divorce from the servicemember.
- Death of the servicemember.
- Change in domicile to North Dakota by either spouse.
- Change in the servicemember's permanent duty station to a location outside North Dakota.

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## Instructions for employer

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### Requirement to withhold

North Dakota income tax law requires you to withhold North Dakota income tax from wages paid to an employee if the employee performs services within North Dakota and the wages are subject to federal income tax withholding.

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### Form NDW-M exemption

An exception to the requirement to withhold North Dakota income tax applies if an employee completes and gives to you a Form NDW-M. This exception applies only if you have a Form NDW-M on file for the employee; it is not enough that the employee is eligible for the exemption under the Act.

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### What you must do

If an employee gives you a completed Form NDW-M, do the following:

1. Check to see that all items in Part 1 are filled in and a copy of the employee's dependent military ID card is attached. If not, return the form to the employee.
2. Fill in Part 2.
3. Keep the original signed Form NDW-M and copy of the military ID card for your records; it relieves you of your obligation to withhold North Dakota income tax, and holds you harmless from liability for the employee's representations on the form.
4. Mail a copy of the completed Form NDW-M and military ID card to:  
Attn: Withholding Tax Section  
Office of State Tax Commissioner  
600 E. Blvd. Ave., Dept. 127  
Bismarck, ND 58505-0599

Alternatively, fax it to the Withholding Tax Section at (701) 328-1942, or email scanned copies to [withhold@nd.gov](mailto:withhold@nd.gov).

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## Questions

If you have questions about this form, call the Withholding Tax Section at (701) 328-1248, or send an email to [withhold@nd.gov](mailto:withhold@nd.gov).