



# NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

## GUIDELINE - INCOME TAX: INCOME TAXATION OF NATIVE AMERICANS

### INTRODUCTION

This guideline explains the criteria used to determine if a Native American is subject to North Dakota individual income tax. The criteria are based on federal law and U.S. Supreme Court decisions that limit states' authority to tax the income of a Native American and on North Dakota income tax law. Except as provided under **Nonresident Of North Dakota** on page 2, the information in this guideline assumes the Native American is a resident of North Dakota.

### EXEMPTION CRITERIA

A Native American is exempt from North Dakota income tax if all three of the following criteria apply:

1. The person is enrolled as a member of an Indian tribe (*see **Enrollment** below*).
2. The person lives on any Indian reservation located in North Dakota (*see **Indian reservation** below*).
3. The person's income is derived from sources on any Indian reservation located in North Dakota.

If any of these criteria are not met, an American Indian may be subject to North Dakota income tax.

### ENROLLMENT

Enrollment as a member of a federally-recognized Indian tribe is a prerequisite to exemption from North Dakota income tax. If a person is not enrolled as a member of a federally-recognized Indian tribe, the exemption that is discussed in this guideline does not apply. Enrollment is determined by the constitution, by-laws, rules or regulations of the tribal government, or by federal law. An affirmative act of enrollment with a tribe, as evidenced by records maintained by either the tribal government or the U.S. Bureau of Indian Affairs, is generally required.

### INDIAN RESERVATION

In this guideline, "Indian reservation" or "reservation" means not only a formal Indian reservation, but also any other lands included in the definition of Indian country under federal law. Therefore, these terms mean any land set aside by the federal government for the residence of Native Americans, including formal Indian reservations, allotments to individual Native Americans, and dependent Indian communities within the United States.

### LIVING ON AN INDIAN RESERVATION IN NORTH DAKOTA

If a Native American lives on an Indian reservation in North Dakota for the entire year, income from the following sources is *exempt* from North Dakota income tax:

- Wages and other compensation for work performed on any Indian reservation in North Dakota
- Income from a business operated entirely within any Indian reservation in North Dakota, whether a sole proprietorship, partnership, limited liability company or Subchapter S corporation
- Rents, gains, and other income from tangible property located on any Indian reservation in North Dakota
- Income from gambling activity conducted on any Indian reservation in North Dakota
- Interest, dividends, gains and other income from intangible property, such as stocks and bonds
- Income from a pension or annuity account
- Income from sources outside North Dakota

**Service in U.S. Armed Forces.** If a Native American's legal residence is on any Indian reservation in North Dakota, compensation received for active duty service in the U.S. Armed Forces is exempt from North Dakota income tax, regardless of whether the service is performed within or without North Dakota. This includes service in the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard, and service as an officer in the U.S. Public Health Service if detailed by proper authority for duty with the U.S. Army or Navy.

If a Native American lives on an Indian reservation in North Dakota for the entire year, income from the following sources is **taxable** by North Dakota:

- Wages and other compensation for work performed within North Dakota but outside the boundaries of an Indian reservation
- Income from a business operated within North Dakota but outside the boundaries of an Indian reservation, whether a sole proprietorship, partnership, limited liability company or Subchapter S corporation
- Rents, gains, and other income from tangible property that is located within North Dakota but outside the boundaries of an Indian reservation in North Dakota
- Income from gambling activity conducted within North Dakota but outside the boundaries of an Indian reservation in North Dakota

## LIVING OFF AN INDIAN RESERVATION IN NORTH DAKOTA

If a Native American does not live on an Indian reservation in North Dakota for any part of the year, the person's entire income is subject to North Dakota income tax. This applies even if part or all of the income is derived from sources on an Indian reservation in North Dakota or sources outside North Dakota. If a Native American lives off of an Indian reservation in North Dakota for part of the year, the person is subject to North Dakota income tax on the following:

- Income derived from any source during the part of the year the person lived off of the reservation
- Income derived from sources in North Dakota but outside the boundaries of an Indian reservation in North Dakota during the part of the year the person lived on the reservation

## NONRESIDENT OF NORTH DAKOTA

If a Native American is enrolled as a member of a federally-recognized Indian tribe and resides on an Indian reservation **located outside North Dakota**, income derived from North Dakota sources is subject to North Dakota income tax. Income from North Dakota sources includes (1) wages and other compensation for services performed in North Dakota, (2) income from tangible property located in North Dakota, (3) income from a business conducted in North Dakota, and (4) income from gambling activity conducted in North Dakota. This applies even though the source of the income is located on an Indian reservation in North Dakota.

In the case of a Native American who lives on an Indian reservation located outside North Dakota, income from North Dakota sources **does not** include (1) compensation for active duty service in the U.S. Armed Forces, (2) compensation eligible for exemption under the reciprocity agreement with Minnesota or Montana, or (3) compensation for services performed in North Dakota by a person who performs regularly assigned duties in more than one state for a railroad or other interstate motor carrier.

If a Native American is an enrolled member of a federally-recognized Indian tribe **located in North Dakota**, but is not a legal resident of North Dakota for the entire year, income from North Dakota sources is not subject to North Dakota income tax if the income-producing activity or property is located on the reservation where enrolled.

## NORTH DAKOTA INCOME TAX RETURN

A Native American must file a North Dakota individual income tax return if the person (1) is required to file a U.S. individual income tax return and (2) has income that is subject to North Dakota income tax. North Dakota individual income tax forms and instructions may be obtained from the North Dakota Office of State Tax Commissioner.

### NEED FORMS OR ASSISTANCE?

Phone: 701.328.1247

Speech/hearing impaired — call us through Relay North Dakota at 1.800.366.6888

E-mail: [individualtax@nd.gov](mailto:individualtax@nd.gov)

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

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