



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

GUIDELINE - INCOME TAX: LICENSED PEACE OFFICER

RETIREMENT EXCLUSION

INTRODUCTION

Beginning with tax year 2023, an individual may be entitled to an exclusion from North Dakota taxable income for the retirement benefits attributable to employment as a licensed peace officer. This guideline provides information related to the exclusion, including eligibility for the exclusion, amount of the exclusion, and how to substantiate eligibility. The exclusion is claimed on Form ND-1, which includes instructions for claiming. The exclusion is contained in North Dakota Century Code (N.D.C.C.) § 57-38-30.3(2)(u) and includes the following definitions:

Peace officer - means a public servant authorized by law or by a government agency or branch of the United States, a state, or a political subdivision of a state to enforce the law and to conduct or engage in investigations of violations of the law.

Retired law enforcement personnel benefits - means retirement income received by a taxpayer eligible to receive retirement income attributable to the taxpayer's employment as a peace officer from a retirement plan maintained by or through the employer from which the taxpayer retired as a peace officer.

ELIGIBILITY FOR THE EXCLUSION

An individual's retirement benefits from an employer plan qualify for exclusion if the individual was either 1) a licensed peace officer for at least 20 years, or 2) became mentally or physically disabled while employed as a licensed peace officer.

Twenty-year licensee

The 20-year licensee criteria is satisfied if the individual was a peace officer licensed for a cumulative total of at least 20 years in any state, federal, tribal, or other political subdivision jurisdiction. The years of license need not be in North Dakota, consecutive years, or specific to any type of employment. For North Dakota service, licensed status is determined according to the status pursuant to the Peace Officer Standards and Training (POST) board, which is administered by the North Dakota Bureau of Criminal Investigations. For licensed status in other states or jurisdictions, it is determined by the appropriate official licensing body which would be substantially similar to North Dakota POST licensing. Any type of formal license status recognized by the licensing body, such as limited or part-time, is treated as qualifying license service.

An individual receiving eligible retirement benefits may qualify for the exclusion and still be employed as a licensed peace officer.

Even though benefits related to the purchase of service credit in the employer plan may result in benefit payments entitled to the exclusion, purchased service is not included for determining the 20-year minimum license threshold.

Disabled retired

The disabled retired criteria is satisfied if the individual became mentally or physically disabled while employed as a licensed peace officer and unable to discharge the person's duties. For this criteria, there is no minimum number of years for licensed peace officer status.

AMOUNT OF EXCLUSION

For a qualifying individual, the amount excludable is the retirement benefit received from the employer's retirement plan which has been included in federal taxable income for that year. Generally, this will be the amount shown on the recipient's Form 1099-R, box 2a. Benefits that have not been included in federal taxable income for the year are not eligible for exclusion. An exclusion is allowable whether or not the employer's plan withheld North Dakota income taxes.

If employer retirement plan benefit payments are attributable to service both as a licensed peace officer as well as other service, the amount of the exclusion is not reduced or prorated, as long as the individual met one of the two criteria entitling it to the exclusion.

For a qualifying individual that received peace officer retirement benefits from more than one employer plan, the amount excludable is the sum received from all retirement plan payments for which the individual was employed as a licensed peace officer. If an individual is married and filing a joint return and both spouses are claiming an exclusion, the total sum received by both spouses may be eligible for the exclusion.

Only retirement benefits received from the former employer's retirement plan qualify for the exclusion. A lump-sum payout from an employer plan may qualify for the exclusion to the extent it was included in an individual's federal taxable income. If an individual rolled over or cashed out of the employer's plan into a 401(k) or other type of individual retirement plan, the subsequent payments from the individual's retirement plan do not qualify. Amounts received from the employer plan by a surviving spouse or other person do not qualify.

If the amount eligible for the exclusion is excluded from North Dakota taxable income pursuant to a separate exclusion, such as qualifying Native American income, a duplicate exclusion for peace officer retirement benefits of the same income is not allowable.

HOW TO SUBSTANTIATE THE EXCLUSION

For the first tax year an individual claims the exclusion on Form ND-1, documentation must be attached to the tax return to substantiate eligibility for the exclusion. If the appropriate documentation is attached for the first year an exclusion is claimed, no additional substantiation is required for that individual for any future year, as our office will retain the information to automatically substantiate eligibility for the exclusion for all subsequent years. However, in each year an exclusion is claimed, all Forms 1099-R which reflect the excluded retirement benefits should be attached to the tax return when filed to corroborate the amount of the exclusion claimed.

The type of documentation to attach in the first year of claiming the exclusion generally depends on which of the two qualifying criteria were met for determining eligibility.

Twenty-year licensee

If meeting the 20-year licensee criteria, for the first year claiming the exclusion, attach the documentation from the official licensing board necessary to meet the 20-year criteria.

Twenty-years North Dakota service – If meeting the service requirement with at least 20 years of licensed status by North Dakota, attach page one of the North Dakota POST board employment training profile. The training profile is maintained by the POST board. For questions regarding your training profile or obtaining a copy, contact their office:

North Dakota POST Board
Phone: 701-328-5504 or 701-328-5529
Email: ph420@nd.gov or jrlinder@nd.gov
Website: post.nd.gov

Twenty-years multistate service – If meeting the 20-year service requirement by any combination of service years which includes non-North Dakota service, attach the relevant documentation of each state or licensing jurisdiction to substantiate licensed status of at least 20 years. Other states or jurisdictions may have different types of documentation that could substantiate licensed status. The documentation should reflect the years or term of licensed status.

If filing the tax return as married filing jointly and both spouses are claiming an exclusion, documentation for each individual must be attached in the first year claiming the exclusion.

Disabled retired

If meeting the disabled retired criteria, for the first year claiming the exclusion, attach the medical certificate or other medical documentation from the employer's plan to substantiate the individual became mentally or physically disabled while employed as a licensed peace officer. The documentation should indicate the name of the employer and date determined disabled or retired.

If the individual is receiving retirement benefits from an employer plan as retired disabled and also receiving retirement benefits from another employer plan for which they were a licensed peace officer, the retirement benefits from the additional employer plan are also eligible, regardless of the number of years of service. In that case, the return for the first year claimed should also include documentation described in the 20-year license section above, except the documentation need not reflect the 20 years of minimum licensed status.

NEED HELP?

Phone: 701-328-1247
Speech / hearing impaired – relay North Dakota 1-800-366-6888
Fax: 701-328-1942
Email: individualtax@nd.gov
Website: tax.nd.gov
Write: Office of State Tax Commissioner
600 E. Boulevard Ave, Dept. 127
Bismarck, ND 58505-5621