



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER GUIDELINE - INCOME TAX: MILITARY SERVICE MEMBERS

INTRODUCTION

If you are a member of the U.S. armed forces or a member of the National Guard or Reserve —referred to as a “service member” 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 service members?
- How is my civilian spouse taxed in North Dakota?

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 domicile is determined.

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.

Service member—means an individual that is a member of the U.S. armed forces on active or reserve duty.

In those states with an individual (or personal) income tax, the income tax laws vary widely from state to state. This guideline provides information about North Dakota’s income tax laws and how they apply to service members. For information on how a civilian spouse of a service member is taxed in North Dakota, see the Civilian Spouses of Military Service Members Income Tax Guideline found at www.tax.nd.gov/guidelines. If you have any questions about another state’s treatment of service members and their spouses, you will need to contact the other state for assistance.

DEDUCTIONS AVAILABLE TO SERVICE MEMBERS

Military pay deduction

Military pay received by members of the U.S. armed forces on active and reserve duty and members of the National Guard may be subtracted from North Dakota taxable income. The deduction is equal to the taxable amount of the pay reported on the federal income tax return for the tax year. Military pay includes all federal pay for training, education, mobilization, and bonuses and state pay when called to support an emergency on state active duty. No deduction is allowed for the portion of your federal active duty compensation that is exempted from federal income tax, such as combat pay. Also, the deduction does not apply to wages paid from the military to individuals which are not members of the military.

Alternatively to the general deduction above, for an individual domiciled in other than North Dakota, active duty military pay is excluded from North Dakota taxable income under the Servicemembers Civil Relief Act ("Act"), discussed later in this guideline. Because income excludable by the Act cannot be used for the tax rates applicable to non-military pay, it may be more beneficial to claim the deduction pursuant to the Act instead of the general deduction for military pay. Separate lines are provided on the North Dakota income tax Form ND-1 to claim the appropriate deduction.

Military retirement benefits deduction

Military retirement benefit payments received by retired U.S. armed forces, Reserve, and National Guard members, or their surviving spouses, may be subtracted from North Dakota taxable income. The deduction is equal to the taxable amount of the benefits reported on the federal income tax return for the tax year. For this purpose, "U.S. armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard. Benefits received for federal civil service employment as a dual status military technician under Title 32 or Title 10 are also eligible for this deduction.

SERVICEMEMBERS CIVIL RELIEF ACT

The Servicemembers Civil Relief Act (50 U.S.C. 4001) is federal law that was enacted to provide a number of protections to U.S. armed forces service members and their civilian spouses. The protections include limitations on the state taxation of their income that would otherwise result from their movement in and out of states due to military orders. This guideline provides information on the state income tax protections under the Act that are specific to service members, and how those protections affect the taxation of their income under North Dakota income tax law. For information on how the protections affect the taxation of civilian spouses of service members, see the Civilian Spouses of Military Service Members Income Tax Guideline found at www.tax.nd.gov/guidelines.

The Act provides the following three state income tax protections for service members:

1—Domicile (or legal residence)

As a service member, you are subject to orders that may move you to different duty stations within and without the United States. The 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 domiciled in North Dakota, it does not change based only on your assignment to a duty station outside North Dakota. Likewise, if you are domiciled in a state other than North Dakota, it does not change to North Dakota based only on your assignment to a duty station in North Dakota. In addition, the Act has been amended to also allow the service member to elect to use as its domicile either its permanent duty station state or its spouse's state of domicile. Also see **Determining your domicile** later in this guideline for more information. The Act also impacts the domicile options for military spouses. For more military spouse information, see the Civilian Spouses of Military Service Members Income Tax Guideline.

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 Act provides that compensation you receive for federal active duty may be taxed only by your state of domicile. See **Military pay deduction** earlier in this guideline for the North Dakota exclusion of all military pay received by a service member, regardless of domicile.

3—Income adjustment for eligible servicemembers

Even though you are not domiciled in 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 Act provides that states other than your state of domicile 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 service member who is not domiciled in 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 for compensation specifically excludable by the Act is provided on the North Dakota income tax return, Form ND-1. Also see **Military pay deduction** earlier in this guideline.

DETERMINING YOUR DOMICILE

Where you are domiciled determines what filing requirements apply, what forms to use, what income is taxable, and what deductions and tax credits are allowed to you. Your domicile 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. The Act provides for an exception to this general rule for civilian spouses of service members.

For more information, see the Civilian Spouses of Military Service Members Income Tax Guideline found at www.tax.nd.gov/guidelines.

If you take the necessary steps to change your domicile, 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 domicile 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 domicile.

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 domicile. Your domicile is based on your intent as supported by your actions. Once established, your domicile does not change until you take affirmative steps to change it.

Following are some of the more common factors that are indicative of where you are domiciled:

- Property and residence information
 - Location of home, whether an apartment, house, or condo
 - Mailing address
 - Amount of time spent at the location

- 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 domicile. 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 domicile, especially in cases where there is uncertainty. Service members and their spouses who have questions regarding their domicile status can find help at a military legal services office.

Changing domicile

As a general rule, changing domicile requires (1) abandonment of the current place of domicile, (2) actual movement to a new place of domicile, and (3) intent to change the place of domicile and to remain at the new place of domicile.

Affirmative steps that may support an intent to change domicile 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

Service members domiciled in North Dakota

If you are a service member who is domiciled in North Dakota all year and are required to file a federal income tax return, you are required to file a North Dakota income tax return, even though military pay is eligible to be excluded from North Dakota taxable income. See **Deductions available to service members** earlier in this guideline.

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.

Service members domiciled outside North Dakota

If you are domiciled outside North Dakota for part or all of the year, you are subject to North Dakota income tax on income (other than your military pay) that you earn or derive from sources in 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 domiciled in North Dakota.
- Income received from sources in North Dakota while you were domiciled outside North Dakota, which includes the following:
 - Compensation for services performed in North Dakota, such as wages, salaries, tips, commissions, and fees.
 - Income from real and tangible personal property located in North Dakota, such as rental income, royalties from mineral interests, and gain from the sale or exchange 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 real or tangible personal 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, deduct your military pay and your federal active duty compensation received during the time you were domiciled outside North Dakota.

EXTENSION OF TIME TO FILE

Service members 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 service members, go to the IRS's website at www.irs.gov.

Service members 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 service members, go to the IRS's website at **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. Complete information on filing an extension is available on the Office of State Tax Commissioner's website at **www.tax.nd.gov/extension**.

NEED HELP?

Our office is available to assist you between 8:00 a.m. and 5:00 p.m. Central Standard Time, Monday through Friday, except for holidays.

Phone: 1-877-328-7088 – Toll free within North Dakota
701-328-1247 – Bismarck-Mandan Calling Area, or from outside North Dakota
701-328-1243 – Form requests
Speech / hearing impaired – Relay North Dakota 1-800-366-6888

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Email: **individualtax@nd.gov**

Website: **tax.nd.gov**

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