



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

### INTRODUCTION

Federal law provides protections to U.S. armed forces service members and their civilian spouses, certain of which ease their state income tax obligations in states where they are not legal residents (or domiciled). This guideline provides information on the state income tax protections under the Act that are specific to civilian spouses of service members, and how those protections affect the taxation of their income under North Dakota income tax law.

### SERVICEMEMBERS CIVIL RELIEF ACT

The Servicemembers Civil Relief Act ("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. They include limitations on the state taxation of service members' income that would otherwise result from their movement in and out of states due to military orders. Amendments to the Act passed by Congress expanded the Act to provide state income tax protections and domicile options to the civilian spouses of service members.

#### Military Spouses Residency Relief Act

In 2009 the Act was amended by the Military Spouses Residency Relief Act (P.L. 111-97). Effective for tax years 2009 and after, this amendment provides the following:

- The domicile (or legal residence) of a civilian spouse does not change when he or she moves from one state to another if the sole purpose for moving is to live wherever the service member is stationed. **(Note:** This provision has been interpreted differently by the states. Some states interpret this as requiring both the civilian spouse and the service member to have the same domicile. Other states, including North Dakota, do not require this.\*)
- A civilian spouse's income for services performed in a state is exempt from that state's income tax if (1) the service member is permanently stationed in the state, (2) the service member and civilian spouse are not domiciled in the state, and (3) the civilian spouse is in the state only to be with the service member. **(Note:** This provision has been interpreted differently by the states. North Dakota interprets it to mean wages, tips, commissions, and other compensation received for employment, as reported on federal Form W-2.\*)

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

#### Veterans Benefits and Transition Act

In 2018 the Act was amended by the Veterans Benefits and Transition Act (P.L. 115-407). Effective for tax years 2018 and after, this amendment provides the following:

- A civilian spouse may elect to use the same state of domicile as the servicemember for state income tax purposes for any tax year in which they are married for any part of the year.

## Veterans Auto and Education Improvement Act

In 2023, the Act was amended by the Veterans Auto and Education Improvement Act (P.L. 117-333). Effective for tax years 2022 and after, this amendment provides the following:

- The civilian spouse (or the service member) may elect to use the state of the service member's permanent duty station as their domicile.

## WHAT DOES DOMICILE MEAN?

The term "domicile" is used throughout this guideline. It is a key element to the state income tax treatment of a civilian spouse of a U.S. armed forces service member.

**General rules on domicile** — The word "domicile" refers to an individual's residence by law, and is often referred to as the individual's legal residence. The general legal rules on domicile provide that an individual's domicile is the true, fixed, and legally recognized place of residence, and is the place to which the individual always intends to return whenever absent from it for temporary purposes. Domicile is based on an individual's intent and actions, which must be consistent.

To change one's domicile, an individual must abandon the current place of residence, actually move to the new place of residence, and intend to establish a new place of residence and remain there. An individual must take affirmative steps to establish a new place of residence, such as acquiring a place of abode, registering to vote, applying for a driver's license, registering a motor vehicle, changing employment records, filing a resident income tax return, and making changes to legal documents, such as a will, to reflect the new domicile. Not any one act is conclusive, and some acts may carry greater weight depending on the circumstances.

**Exceptions to general rules on domicile under the Act** — For a civilian spouse of a service member, the Act provides the following three exceptions to the general rules on domicile:

- For tax years 2009 and after, a civilian spouse's domicile does not change if the sole purpose of a civilian spouse's movement from one state to another is to reside wherever the service member is permanently stationed.
- For tax years 2018 and after, a civilian spouse may elect to use the same state of domicile as the service member for state tax purposes for any tax year in which they are married for any part of the tax year. This means that, regardless of where a civilian spouse is actually domiciled under the general rules for domicile, a civilian spouse who makes the election under the Act must be treated as being domiciled in the same state of domicile as the service member for state tax purposes.
- In addition to the spousal election option in the prior item, for tax years 2022 and after, a civilian spouse may elect to use the state of the service member's permanent duty station for their domicile.

**Civilian spouse domiciled in North Dakota** — If a civilian spouse's actual domicile is in North Dakota, the civilian spouse's domicile for state tax purposes remains in North Dakota until any of the following occurs:

- The civilian spouse changes his or her domicile to another state under the general rules on domicile (see **General rules on domicile** earlier in this guideline.) A change in domicile under the general rules applies prospectively from the date of the change.
- The civilian spouse elects under the Act to use the service member's state of domicile for state tax purposes, which is a state other than North Dakota. This election may be made for tax years 2018 or after.

- A civilian spouse elects under the Act to use as their domicile the service member's permanent duty station, which is located in a state other than North Dakota. This election may be made for tax years 2022 or after.

**Civilian spouse domiciled outside North Dakota** — If a civilian spouse's actual domicile is outside North Dakota, the civilian spouse's domicile for state tax purposes remains outside North Dakota until either of the following occurs:

- The civilian spouse changes his or her domicile to North Dakota under the general rules on domicile. (See **General rules on domicile** earlier in this guideline.)
- The civilian spouse elects under the Act to use the service member's state of domicile for state tax purposes, which is North Dakota. This election may be made only for tax years 2018 or after.
- The civilian spouse elects under the Act to use as their domicile the service member's permanent duty station, which is located in North Dakota. This election may be made only for tax years 2022 or after.

**Note:** In the instructions to the North Dakota individual income tax return, the term "full-year resident" is used to describe an individual who is domiciled in North Dakota all year; the term "full-year nonresident" refers to an individual whose domicile is outside North Dakota all year; and "part-year resident" refers to one who is domiciled in North Dakota for only part of the year.

## CIVILIAN SPOUSE DOMICILED IN NORTH DAKOTA

If a civilian spouse is actually domiciled in North Dakota, or if a civilian spouse elects under the Act to be domiciled in North Dakota, the civilian spouse is subject to North Dakota income tax on all of his or her income regardless of its source inside or outside North Dakota.

If a civilian spouse who is domiciled in North Dakota elects under the Act to use either the service member's state of domicile or permanent duty station, which is a state other than North Dakota, the civilian spouse is treated in the same manner as a civilian spouse domiciled outside North Dakota. See **Civilian Spouse Domiciled Outside North Dakota** below.

## CIVILIAN SPOUSE DOMICILED OUTSIDE NORTH DAKOTA

In general, a civilian spouse who is domiciled outside North Dakota (or because of an election under the Act is treated as being domiciled outside North Dakota) is subject to North Dakota income tax on any income derived from sources in North Dakota. Income sourced in North Dakota includes the following:

- Compensation for services performed in North Dakota, such as wages, salaries, tips, commissions, and fees. This includes unemployment compensation attributable to employment in North Dakota. However, see **Exemption under Servicemembers Civil Relief Act** below for an exception.
- Net income from a trade or business conducted in North Dakota, whether in the form of a sole proprietorship, partnership, S corporation, or limited liability company.
- 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 an estate or trust that is attributable to real or tangible personal property or a trade or business in North Dakota.
- Income from gambling activity carried on in North Dakota.

In the case of a civilian spouse domiciled outside North Dakota, income from sources in North Dakota does not include the following:

- Interest, dividends, or gain from the sale or exchange of intangible property. However, if any of these income items are derived from a trade or business conducted in North Dakota, they are taxable in North Dakota.
- Pension, annuity, IRA, or other payment received from a qualified retirement plan.
- Compensation exempted under the reciprocity agreement with Minnesota or Montana.
- Compensation exempted under federal interstate commerce law.
- Compensation exempted under North Dakota's mobile workforce exemption.

**Exemption under Servicemembers Civil Relief Act** — Under the Act, a civilian spouse's wages received for services performed in North Dakota are exempt from North Dakota income tax if he or she meets all of the following conditions:

- Both the service member and civilian spouse are domiciled outside North Dakota. They do not have to have the same domicile for this purpose. For tax years 2018 and after, a civilian spouse domiciled in North Dakota will be treated as being domiciled outside North Dakota if (1) the service member is domiciled outside North Dakota and (2) the civilian spouse elects under the Act to use the service member's state of domicile for state tax purposes.
- The service member's permanent duty station is in North Dakota.
- The civilian spouse is residing and working in North Dakota only because he or she wants to be with the service member.

The following actions or events will result in a civilian spouse becoming ineligible for this exemption of wages from North Dakota income tax:

- The service member's permanent duty station changes from North Dakota to another state. If a service member's permanent duty station remains in North Dakota but the service member is relocated under temporary duty orders, such as to a war zone, the civilian spouse does not lose eligibility for the exemption.
- Either the civilian spouse or the service member changes his or her domicile to North Dakota.
- The civilian spouse and the service member divorce.
- The service member dies.

If a civilian spouse's wages are exempt from North Dakota income tax under the Act and North Dakota income tax was withheld from the wages, the civilian spouse may be eligible for a refund of the withheld North Dakota income tax. For more information, see **How Does An Eligible Civilian Spouse Obtain a Refund of North Dakota Income Tax Withheld From Exempt Wages?** later in this guideline.

### **If Eligible For The Exemption From North Dakota Income Tax, Can The Civilian Spouse Stop The Withholding Of North Dakota Income Tax From His Or Her Wages?**

Yes. An eligible civilian spouse can stop the withholding of North Dakota income tax from his or her exempt wages by completing Form NDW-M and giving it to the employer. A copy of the civilian spouse's dependent military ID card issued by the U.S. Department of Defense must be attached to Form NDW-M.

**Annual renewal** — Form NDW-M is valid only for the calendar year for which it is completed. If the civilian spouse is still eligible for the exemption, the civilian spouse must file a new Form NDW-M for each year for which he or she wants to continue the exemption from North Dakota withholding. Form NDW-M is available on the North Dakota Office of State Tax Commissioner's website at [www.tax.nd.gov/forms](http://www.tax.nd.gov/forms).

### **If A Civilian Spouse's Wages Are Exempt From North Dakota Income Tax, Does The Civilian Spouse Have To File A North Dakota Income Tax Return?**

No, provided the civilian spouse and the service member have no other income that is taxable by North Dakota. However, if any North Dakota income tax was withheld from the civilian spouse's exempt North Dakota wages, a North Dakota individual income tax return must be filed to obtain a refund of the withheld amount. For information on obtaining a refund, see **How Does An Eligible Civilian Spouse Obtain A Refund Of North Dakota Income Tax Withheld From Exempt Wages?** later in this guideline.

There would be a requirement to file a North Dakota individual income tax return if either the civilian spouse or service member have other income that is taxable by North Dakota. Other types of income that are taxable by North Dakota include:

- A service member's non-military compensation for work performed in North Dakota (on or off of a military installation).
- 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.
- Net income from a trade or business conducted in North Dakota, whether in the form of a sole proprietorship, partnership, S corporation, or limited liability company.
- Income from an estate or trust that is attributable to real or tangible personal property or a trade or business in North Dakota.
- Income from gambling activity carried on in North Dakota.

### **How Does An Eligible Civilian Spouse Obtain A Refund Of North Dakota Income Tax Withheld From Exempt Wages?**

If a civilian spouse receives wages for working in North Dakota, and the wages are exempt from North Dakota income tax under the Act, the civilian spouse must file a North Dakota income tax return to obtain a refund of the withheld tax. If a civilian spouse already filed a North Dakota income tax return for a tax year, but did not claim the exemption, the civilian spouse must file an amended North Dakota income tax return to claim a refund of the withheld tax.

The original or amended North Dakota income tax return must be filed within the following time periods to obtain a refund:

- To obtain a refund of withheld North Dakota income tax on an original return, the return must be filed within three years after the due date (without extension) of that return.
- To obtain a refund of withheld North Dakota income tax on an amended return, the amended return must be filed within three years after the due date (without extension) of the original return or within three years after the original return was filed, whichever period expires last. The time period is six years, instead of three years, if there is a change in North Dakota taxable income or income tax liability that exceeds 25% of the amount stated in the original return as filed.



Use Form ND-1 and Schedule ND-1NR. Complete them according to the instructions, but note the following special instructions:

- If filing an amended return, be sure to fill in the circle next to “Amended return: General” at the top of page 1 of Form ND-1.
- Do not enter the civilian spouse’s exempt wages anywhere on Form ND-1. Note: On Form ND-1, only the active duty military pay of a nonresident U.S. armed forces service member is to be entered on the line that reads “Nonresident only: Servicemembers Civil Relief Act adjustment.”
- Ordinarily, on Schedule ND-1NR, the portion of any income from the federal return shown in Column A that is taxable by North Dakota must be entered in Column B. However, to indicate that the civilian spouse’s wages are exempt from North Dakota income tax because of the Act, do not enter them in Column B of line 1 when completing Schedule ND-1NR.
- Be sure to attach the applicable Form W-2 statements showing the North Dakota income tax withheld.
- Attach a statement explaining the reason for filing the return. The Office of State Tax Commissioner may contact the taxpayer, if necessary, to request additional information to verify eligibility for the exemption under the Act.

## 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  
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