NORTH DAKOTA
Brian Kroshus, Tax Commissioner

INCOME TAX WITHHOLDING EXEMPTION FOR CIVILIAN SPOUSES OF MILITARY SERVICE MEMBERS

Exemption For Civilian Spouse Of Military Service member

The Servicemembers Civil Relief Act ("Act") (50 U.S.C. 4001), as amended by the Military Spouses Residency Relief Act (P.L. 111-97), the Veterans Benefits and Transition Act (P.L. 115-407), and the Veterans Auto and Education Improvement Act (P.L. 117-333), provides a number of benefits to civilian spouses of active duty U.S. armed forces service members. If certain conditions are met, one of the benefits exempts a civilian spouse's compensation from state income tax in the state in which the service member is stationed.

If a civilian spouse's wages are exempt from North Dakota income tax under the Act, the civilian spouse's wages are exempt from North Dakota income tax withholding. This guideline explains who is eligible for the exemption and sets out the procedures for claiming the exemption from North Dakota income tax withholding.

Who Is Eligible For The Exemption From Withholding?

An individual is eligible for the exemption from North Dakota income tax withholding under the Act if all the following conditions are met:

- The individual is a civilian and is married to an active duty U.S. armed forces service member.
- Both the service member and civilian spouse maintain their domicile (or legal residence) in a state other than North Dakota. They do not have to have the same state of domicile. For tax years beginning on or after January 1, 2018, a civilian spouse whose actual domicile is in North Dakota will be treated as being domiciled outside North Dakota for this purpose if (1) the service member is domiciled in a state other than North Dakota and (2) the civilian spouse makes the election under the Act to use the service member's state of domicile for state tax purposes.

  For information on what is meant by "domicile," see the Civilian Spouses of Military Service Members Income Tax Guideline on the North Dakota Office of State Tax Commissioner's website at **www.tax.nd.gov/guidelines**.
- The service member's permanent duty station is in North Dakota, and for years 2022 and after, the spouse has not elected under the Act to use the service member's North Dakota permanent duty station as his or her domicile.
- 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 from North Dakota income tax withholding:

- The service member's permanent duty station changes from North Dakota to another state or country. 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 employee does not lose eligibility for the exemption.
- Either the civilian spouse or the service member changes, or elects under the Act to change, his or her domicile to North Dakota.
- The civilian spouse and service member divorce.
- The service member dies.

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How Does A Civilian Spouse Apply For The Exemption From Withholding?

To apply for the exemption from North Dakota income tax withholding, a civilian spouse must complete Form NDW-M and give 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. A civilian spouse must file a new Form NDW-M for each calendar year for which he or she wants to continue the exemption from North Dakota withholding. Form NDW-M is available on the Office of State Tax Commissioner's website at **www.tax.nd.gov/forms**.

What Procedures Apply To The Employer?

Until an employer receives a valid Form NDW-M, the employer must withhold North Dakota income tax from the wages paid to a civilian spouse working in North Dakota. It is not enough that the civilian spouse is eligible for the exemption under the Act.

If an employer receives a Form NDW-M, the employer must do the following:

1. Check to see that all items in Part 1 are filled in and a copy of the civilian spouse's dependent military ID card from the U.S. Department of Defense is attached. If any item is missing, the form is not valid and must be returned to the civilian spouse for completion.
2. If Part 1 is complete (including the dependent military ID card), complete Part 2.
3. Retain the original signed Form NDW-M with attached copy of the military ID card in the civilian spouse's payroll records. It relieves the employer from the obligation to withhold North Dakota income tax from the civilian spouse's wages. An employer shall be held harmless from liability for withholding based on the civilian spouse's representations on Form NDW-M.
4. Mail a copy of the completed Form NDW-M and military ID card to:

   Attn. Customer Support - Withholding
   Office of State Tax Commissioner
   600 E. Blvd. Ave., Dept. 127
   Bismarck ND 58505-0599

Alternatively, fax them to 701-328-0146 or email scanned copies to **withhold@nd.gov**.

When Does Form NDW-M Take Effect?

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

Form NDW-M is valid only for the calendar year for which it is completed. If still eligible, a civilian spouse must complete a new Form NDW-M and give it to the employer each year to continue the exemption from North Dakota withholding.

When Does Form NDW-M Expire?

Form NDW-M expires on the earlier of (1) the last day of the calendar year for which it was filed or (2) the date on which the civilian spouse becomes ineligible for the exemption from North Dakota income tax under the Act.

A civilian spouse becomes ineligible for the exemption from North Dakota income tax under the Act on the date one of the following occurs:

- The service member's permanent duty station changes from North Dakota to another state or country. However, 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 employee does not lose eligibility for the exemption.
- Either the civilian spouse or the service member changes, or elects under the Act to change, his or her domicile to North Dakota.
- The civilian spouse and service member divorce.
- The service member dies.

If an employer becomes aware that a civilian spouse is no longer eligible for the exemption, the employer must begin withholding North Dakota income tax from the civilian spouse's wages starting on the later of (1) the date the employer becomes aware of the ineligibility or (2) the first payroll period the employer is able to put the withholding into effect.

Does A Civilian Spouse Have To Notify The Employer If He Or She Becomes Ineligible For The Exemption?

Yes. If a civilian spouse becomes ineligible for the exemption under the Act, the civilian spouse must notify the employer to begin withholding North Dakota income tax from his or her North Dakota wages.

A civilian spouse becomes ineligible for the exemption from North Dakota income tax under the Act on the date one of the following occurs:

- The service member's permanent duty station changes from North Dakota to another state or country. However, 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 employee does not lose eligibility for the exemption.
- Either the civilian spouse or the service member changes, or elects under the Act to change, his or her domicile to North Dakota.
- The civilian spouse and service member divorce.
- The service member dies.

Questions

For assistance, call 701-328-1248. Or send an email to **withhold@nd.gov**.

For more information on how the Act affects North Dakota income tax, including what is meant by "domicile" and how to file a North Dakota individual income tax return to obtain a refund, see the Civilian Spouses of Military Service Members Income Tax Guideline on the North Dakota Office of State Tax Commissioner's website at **www.tax.nd.gov/guidelines**.