



# Guideline

## Income Tax Treatment of Military Personnel

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### Introduction

If you are a member of the U.S. armed forces, the National Guard, or reserve component of the U.S. armed forces, this guideline provides information to help you answer the following questions:

- Do I have to file a North Dakota individual income tax return?
- What kinds of income are taxable?
- What forms should I use?
- Are there any special deductions or tax credits available to military personnel?

**Unless otherwise stated in this guideline, the information in this guideline applies to tax years beginning on or after January 1, 2001.**

The following definitions apply in this guideline:

**Federal active duty**—means duty or service in the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, and U.S. Coast Guard, under U.S. Code, Title 10. This includes duty or service of National Guard and reserve members mobilized for federal active duty by the U.S. Government under U.S. Code, Title 10. For purposes of applying the provisions of the Federal Servicemembers Civil Relief Act of 2003, 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 duty or service in the Army National Guard or the Air National Guard, under U.S. Code, Title 32.

**Reserve**—means duty or service in one of the branches of the U.S. armed forces reserve, under U.S. Code, Title 10.

In those states that have an income tax that applies to individuals, the income tax laws vary widely from state to state. This guideline only provides information about North Dakota's income tax laws and how they apply to military personnel.

### Servicemembers Civil Relief Act

The Federal Servicemembers Civil Relief Act applies to military personnel on federal active duty. It contains the following three provisions that override state income tax laws to ease state tax obligations of military personnel on federal active duty:

- **Legal Residence.** Military personnel on federal active duty are subject to orders that move them to different duty stations within and without the United States. The Act provides that the legal residence (or domicile) of military personnel on federal active duty does not change just because the U.S. Government assigns them to a duty station in another state or country. If you entered the U.S. armed forces while a

North Dakota resident, you remain a legal resident of North Dakota until you take affirmative action to give up your legal residence in North Dakota and establish legal residence in another state. If you are not a legal resident of North Dakota, you do not become a legal resident of North Dakota solely by reason of being stationed in North Dakota.

- **Military Compensation.** The Act provides that compensation received by military personnel for federal active duty is taxable only by their state of legal residence. If you are a legal resident of North Dakota, any compensation you receive for federal active duty is subject to North Dakota income tax regardless of where you are stationed, including overseas. If you are a nonresident of North Dakota who is stationed in North Dakota, you are not subject to North Dakota income tax on your compensation received for federal active duty.
- **Income adjustment for certain nonresident military personnel.** The Act provides that a state may not use the compensation for federal active duty received by nonresident military personnel in the calculation of the tax on other income sourced in the state if its inclusion would result in an increase in the state's income tax. Nonresident military personnel who use North Dakota Form ND-1 (Main Method) may subtract their federal active duty compensation in calculating their North Dakota taxable income. (Note: This provision of the Act does not affect the calculation of the tax on Form ND-2, the Optional Method.)

## Determining residency status

Your legal residence (or domicile) status determines what filing requirements apply, what forms to use, what income is taxable, and what deductions and tax credits are allowed to you.

Your legal residence in a state 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, you and your spouse generally are considered to have the same state of legal residence. However, if you and your spouse had different states of legal residence when you married, you will maintain your separate states of legal residence until either of you takes affirmative steps to change your residency.

Note: If you took the necessary steps to change your legal residence, 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 residence for withholding purposes. However, be advised that simply making a change to your military payroll records does not in itself mean that you have met the requirements to change your legal residence.

### Legal residence.

Legal residence (which is also called domicile) is the place that is your permanent or indefinite home to which you always intend to return whenever absent from it. If you have more than one home, only one of them may be your legal residence. Legal residence is based on your intent as supported by your actions. Legal residence, once established, does not change until affirmative steps are taken to change it.

If there is uncertainty as to a person's state of legal residence, the following factors are looked at to make the determination:

- Property and residence information
  - Location of home, whether an apartment, house, condo, etc.
  - Mailing address
  - Amount of time spent in state
- 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 is person registered for voting
  - 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
  - If a dependent of another person, state where that person is a resident
  - Location of fraternal, social or athletic memberships
  - Location of union membership
  - Location of place of religious worship

No single factor is conclusive as to the state of legal residence. While certain of the above factors carry more weight than others, all of the facts and circumstances need to be examined together to determine legal residence.

### **Changing legal residence.**

Changing legal residence requires (1) abandonment of the current place of legal residence, (2) actual movement to a new place of legal residence, and (3) intent to change the place of legal residence and to remain at the new place of legal residence. Affirmative steps that support an intent to change legal residence include the following:

- Changing legal documents, such as a will or insurance policies, 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 current state of residence and purchasing a home in the new state of residence

## **Filing requirement and taxable income**

### **Full-year residents of North Dakota.**

If you are a full-year resident of North Dakota who is required to file a federal income tax return, you are required to file a North Dakota income tax return. As a North Dakota resident, you must pay North Dakota income tax on all of your taxable income regardless of its source (including sources outside North Dakota). Your income is taxable to the same extent it is taxable for federal income tax purposes. This applies regardless of where you may have been stationed during the year. See **Deductions available to military personnel** later in this guideline for any deductions or exemptions that may apply.

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If you had nonmilitary income taxed by another state while you were a North Dakota resident, you may qualify for an income tax credit for taxes paid to another state. See Schedule ND-1CR (if filing Form ND-1) or Schedule 4 (if filing Form ND-2).

**Part-year residents and full-year nonresidents of North Dakota.**

Even though your compensation for federal active duty is not taxable by North Dakota while you are nonresident of North Dakota, you are subject to North Dakota income tax on other kinds of income that you or your spouse receive from sources in North Dakota. This may include income from a civilian job, a business, or gambling winnings.

If you are a part-year resident or full-year nonresident of 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, and
- 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 a resident of North Dakota.
- Income received from sources in North Dakota while you were a nonresident of North Dakota, which includes the following:
  - Compensation for services performed in North Dakota (except military pay), such as wages, salaries, tips, commissions and fees.
  - Income from tangible property located in North Dakota, such as rents, oil royalties, and the gain from the sale of such 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 tangible property or a trade or business in North Dakota.
  - Income from gambling activity carried on in North Dakota.

Gross income is used only to determine if there is a requirement to file a North Dakota income tax return; only the portion of the gross income that is included in federal taxable income is included in North Dakota taxable income. If you (or your spouse, if filing a joint return) is a nonresident of North Dakota for part or all of the tax year, you must complete Schedule ND-1NR (if filing Form ND-1) or Schedule 3 (if filing Form ND-2).

**Forms**

North Dakota income tax law provides for two methods of calculating the individual income tax, which are implemented on two different forms: Form ND-1 and Form ND-2. The calculation method and tax rates are different under each method, so the form you choose will affect the amount of tax you will have to pay. The form you should use will depend on your factual situation, but generally you should use Form ND-1 because over 97 percent of all filers will calculate a lower tax on this form.

It is important to note that just because you are eligible for one of the deductions or tax credits allowed only on Form ND-2, you should not automatically assume it is the best form to use. While there are a number of special deductions (including a number for military personnel) and tax credits that are only allowed if Form ND-2 is used, as a general rule they are not enough to offset the higher tax rates on Form ND-2.

*The only way to know for sure which form is best for you is to calculate the tax on both forms and compare the results; file the form showing the lowest tax.*

## **Deductions available to military personnel**

If Form ND-1 is used, the following deductions are allowed to military personnel:

- For 2003 and after, compensation for federal active duty received while a nonresident of North Dakota is deductible in calculating North Dakota taxable income.
- For 2003 and after, if you are a member of the North Dakota National Guard or the Reserve who is mobilized for federal active duty under Title 10, U.S. Code, your compensation received for the federal active duty service is deductible in calculating North Dakota taxable income. However, you may not deduct any part of this compensation that is excluded from federal income tax, nor may you deduct any compensation received for attending annual training, basic military training, professional military education, or active duty for which you volunteered and did not receive mobilization orders.

If Form ND-2 is used, the following deductions are allowed to North Dakota resident military personnel:

- Up to \$1,000 of compensation received for federal active duty.
- Up to \$1,000 of compensation received for attending periodic training for drill and instruction as a member of the National Guard or Reserve.
- If you are on federal active duty overseas for at least 30 days during the year, up to \$300 of your compensation received for that duty is allowed for each month (or fraction of a month) you are overseas. Overseas duty means that you are stationed outside any of the U.S. states and the District of Columbia. The following officers are not eligible for this overseas deduction:
  - Major or higher rank in the U.S. Army, Air Force, or Marine Corps.
  - Lieutenant commander or higher rank in the U.S. Navy.
  - Surgeon or higher rank in the commissioned corps of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration.
- If you are at least 50 years old, you may deduct up to \$5,000 of your retirement pay received for service in the U.S. armed forces or any of its reserve components. If you also received social security benefits, you must reduce your allowable deduction by the amount of those benefits.

***Important: Eligibility for any of the above deductions allowed on Form ND-2 does not mean you should automatically use Form ND-2. It is very possible that your tax liability will be less on Form ND-1 (without the deduction). The only way to know for sure which form is best for you is to calculate the tax on both forms and compare the results; file the form showing the lowest tax.***

## **Extension of time to file**

### **Federal active duty in a combat zone.**

North Dakota generally follows federal income tax law as to an extension of time to file a North Dakota income tax return. Therefore, U.S. armed forces members who serve, or provide direct support to military operations, in a presidentially-declared combat zone have until the extended due date of their federal income tax return to file their North Dakota income tax return without penalty or interest. For more information on the federal extended due dates for military personnel serving in a combat zone, go to the IRS's web site at [www.irs.ustreas.gov](http://www.irs.ustreas.gov).

**National Guard and Reserve members mobilized for federal active duty in a combat zone.**

National Guard and Reserve members mobilized for federal active duty in a combat zone have the same extended due date as U.S. armed forces members serving in a combat zone to file their North Dakota income tax return without penalty or interest.

**Military personnel serving outside a combat zone.**

U.S. armed forces, National Guard, and Reserve members who are not serving in a combat zone (nor providing direct support to military operations in a combat zone) but are on federal active duty and stationed outside the boundaries of the United States (including the District of Columbia) have until the due date of their federal income tax return to file their North Dakota income tax return and pay any state tax due without penalty or interest. If they are stationed within the boundaries of the United States, they must file their North Dakota income tax return and pay any state tax due by April 15 unless they obtain an extension of time to file. For information on obtaining an extension of time to file the North Dakota income tax return, click on [www.nd.gov/tax/genforms/](http://www.nd.gov/tax/genforms/) and select Form 101.

## **Where to get forms and assistance**

**Web site**

Obtain tax forms and instructions and other information on our web site at—

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

**E-mail**

Submit your questions to us at—

**[individualtax@nd.gov](mailto:individualtax@nd.gov)**

**Phone**

Between 8:00 a.m. and 5:00 p.m. (Central Standard Time), Monday through Friday (except holidays), call us toll free (within North Dakota) at 1-800-638-2901. In the Bismarck-Mandan calling area, or from outside North Dakota, call us as follows—

Questions: (701) 328-1247

Form requests: (701) 328-3450

If speech or hearing impaired, call us through Relay North Dakota at 1-800-366-6888.

**Or write to us at—**

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