



Notice

Income Tax Withholding Military Spouses Residency Relief Act

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Tax Commissioner

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New Exemption from North Dakota Income Tax Withholding

Purpose of notice

The Military Spouses Residency Relief Act ("Act") (P.L. 111-97) is federal legislation that was signed into law on November 11, 2009. This Act amended the Servicemembers Civil Relief Act to provide a number of benefits to civilian spouses of active duty U.S. armed forces servicemembers. If certain conditions are met, one of the benefits exempts from state income tax a civilian spouse's compensation received for working in the state in which the servicemember is stationed.

If an employee's wages are exempt from North Dakota income tax because of the Act, the employee may apply for exemption from North Dakota income tax withholding. This notice explains who is eligible for the exemption and sets out the procedures for claiming it.

Who is eligible for the exemption from North Dakota income tax withholding under the Act?

An employee is eligible for the exemption from North Dakota income tax withholding under the Act if he or she meets all of the following conditions:

- The employee is a civilian and is married to an active duty U.S. armed forces servicemember;
- Both the employee and the servicemember maintain their domicile (that is, their legal residence) in a state other than North Dakota. This condition is met even if each spouse has a different state of domicile;
- The servicemember's permanent duty station is in North Dakota; and,
- The employee is residing and working in North Dakota only because he or she wants to be with the servicemember.

Certain actions or events will result in an employee becoming ineligible for the exemption from North Dakota income tax withholding. They include the following:

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

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North Dakota Office of State Tax Commissioner

600 E Blvd - Dept 127
Bismarck ND 58506-0599

701.328.7088
TDD: 1.800.366.6888

taxinfo@nd.gov
www.nd.gov

How does an eligible employee apply for the exemption from North Dakota income tax withholding?

If eligible for the exemption from North Dakota income tax withholding, the employee must do the following:

- Obtain and complete Form NDW-M;
- Attach a copy of the employee's dependent military ID card issued by the U.S. Department of Defense; and,
- Give the completed Form NDW-M with attached copy of the military ID card to the employer.

Form NDW-M is available on the North Dakota Office of State Tax Commissioner's web site at www.nd.gov/tax. Click on Income Tax Withholding > Forms > [Form NDW-M](#).

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

What procedures apply to the employer?

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

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

1. Check to see that all items in Part 1 are filled in and a copy of the employee'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 employee for completion;
2. If complete, fill in Part 2;
3. Retain the original signed Form NDW-M with attached copy of the military ID card in the employee's payroll records. It relieves the employer from the obligation to withhold North Dakota income tax from the employee's wages. An employer shall be held harmless from liability for withholding based on the employee's representations on Form NDW-M; and,
4. Mail a copy of the completed Form NDW-M and attached military ID card to:

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

Or fax it to the Withholding Tax Section at (701) 328-1942.

When does Form NDW-M take effect?

Form NDW-M takes effect on the *later of* (1) the date the employee gives it to the employer 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, the employee 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 employee becomes ineligible for the exemption under the Act.

An employee becomes ineligible for the exemption from North Dakota income tax under the Act on the date one of the following occurs:

- The servicemember's permanent duty station changes from North Dakota to another state or country. However, if a servicemember's permanent duty station remains in North Dakota but the servicemember is relocated under temporary duty orders, such as to a war zone, the employee does not lose eligibility for the exemption.
- Either the employee or the servicemember changes their domicile to North Dakota.
- The employee and servicemember divorce.
- The servicemember dies.

If an employer becomes aware that an employee is no longer eligible for the exemption, the employer must begin withholding North Dakota income tax from the employee'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 an employee have to notify the employer if he or she becomes ineligible for the exemption from North Dakota income tax under the Act?

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

An employee becomes ineligible for the exemption from North Dakota income tax under the Act on the date one of the following occurs:

- The servicemember's permanent duty station changes from North Dakota to another state or country. However, if a servicemember's permanent duty station remains in North Dakota but the servicemember is relocated under temporary duty orders, such as to a war zone, the employee does not lose eligibility for the exemption.
- Either the employee or the servicemember changes their domicile to North Dakota.
- The employee and servicemember divorce.
- The servicemember dies.

Questions

If an employee or employer has any questions about these procedures, call the Withholding Tax Section at (701) 328-1248. Or send an e-mail to the Withholding Tax Section at 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, click on [Military Spouses Residency Relief Act Notice](#).