

This publication covers Colorado income taxation of current military personnel and those collecting military retirement benefits.

A person in the military service remains a resident of the state in which he/she resided at the time he/she entered the service unless he/she declares residency in another state.[Regulation 39-22-103 (8)] The service member would declare residency in another state by changing his/her residency with the Consolidated Base Personnel Office or Military Pay Office.

Only the service member's home state may tax his/her **military** income. Every service member must have a home state.

A "resident" is a person who considers his/her home state to be Colorado.

A "nonresident" is a person who considers his/her home state to be another state.

A "part-year resident" is a person who considers himself/herself a resident of Colorado for part of the year and a nonresident for the other part of the year.

## RESIDENT SERVICE MEMBER

A service member who is a Colorado full-year resident is taxed in the same manner as any other Colorado resident. Colorado resident service members are those who are Colorado residents when they enter the service or those who are from another state and who choose to become Colorado residents.

## NONRESIDENT SERVICE MEMBER

A nonresident service member is not required to report his/her **military** income to Colorado. However, if the service member earned **nonmilitary** Colorado income, this income must be reported to Colorado for income tax purposes. The service member must pay Colorado tax on:

- nonmilitary Colorado salaries,
- nonmilitary Colorado wages,
- nonmilitary Colorado tips,
- nonmilitary Colorado commissions,
- income from a Colorado business,
- income from rents, royalties and/or gains from the sale of tangible personal property or real property located in Colorado.

He/she **would not** report income from interest or dividends.

Colorado tax for nonresidents shall be what the tax would have been, were they full-year residents with the tax apportioned in the ratio of their Colorado adjusted gross income to their modified federal adjusted gross income. See the Colorado 104 Booklet for detailed instructions.

## RESIDENT/NONRESIDENT SPOUSES

The Colorado income tax filing status (joint or separate) must conform to the status used for federal income tax filing purposes. For example, if a taxpayer and spouse filed a joint federal return, they must file a joint Colorado return. If a taxpayer and spouse filed separate federal returns, they must file separate Colorado returns. [§39-22-107, C.R.S.]

## DETERMINING RESIDENT AND NONRESIDENT SPOUSE'S COLORADO TAX

The couple will determine their Colorado tax by computing what the tax would have been if they were both full-year residents. They will then apportion this tentative tax in the ratio of the income taxable in Colorado to their total income (as modified by their Colorado additions and subtractions). The income taxable in Colorado will generally include all of the income of a full-year resident spouse plus any nonmilitary income earned in Colorado by a nonresident spouse. This tax calculation is performed on the 104PN schedule that is attached to the Colorado Individual Income Tax Return (104).

For tax years beginning on or after January 1, 2009, wages and tips of a qualifying nonresident spouse are not taxable in Colorado and should not be included on Form 104PN. A qualifying spouse must:

- Have moved to Colorado from another state,
- File an income tax return and report the Colorado wages in the state of residency, if applicable,
- Be in Colorado solely to accompany their active duty service member spouse who is stationed in Colorado in accordance with military orders, and
- Have the same state of residency as the home of record of the service member.

A qualifying spouse who claims exempt wages and tips must submit form DR 1059 to their employer and submit a copy of the DR 1059 along with their military ID card when filing the Colorado income tax return. A qualifying spouse may also be required to provide proof of qualification including, but not limited to, permanent change of station documentation, prior state filing history and tax returns, voter registration, and driver's license of the other state. (50 U.S.C App. 571)

#### **REACQUISITION OF RESIDENCY DURING ACTIVE MILITARY SERVICE**

Beginning on or after January 1, 2016, an active duty service member whose home of record is Colorado and whose state of legal residency is any state other than Colorado may reacquire legal residence in Colorado if at least one of the following five criteria are met. "Home of record" is the place one was living when they entered or re-enlisted in the military. An individual must:

- Register to vote in Colorado,
- Purchase residential property or an unimproved residential lot in Colorado,
- Title and register a motor vehicle in the state,
- Notify the state of the individual's previous legal residence and the intent to make Colorado the individual's state of legal residence, or
- Prepare a new last will and testament that indicates Colorado as the individual's state of legal residence.

For the tax year that begins on January 1, 2016, and for subsequent tax years, an active duty service member who has reacquired residency in Colorado may:

- Claim a subtraction on the Colorado individual income tax return of an amount equal to any compensation received for active duty service in the armed forces, to the extent that the compensation is included in federal taxable income,
- Not file an individual income tax return with the State of Colorado if the individual's only source of income is compensation that is subtracted from federal taxable income, and
- Elect not to deduct or withhold taxes from the individual's wages if the individual's withholding certificate indicates that the compensation is eligible to be subtracted from the Colorado income tax return.

#### **SERVICE MEMBER STATIONED OUTSIDE OF THE UNITED STATES**

A service member who is a full-year Colorado resident who spends at least 305 days of the tax year outside of the 50 state boundary of the United States of America while stationed outside of the United States of America for active military duty may file as a nonresident on their Colorado income tax return. The service member's spouse may also file as a nonresident if he or she accompanies the service member outside of the country for at least 305 days of the tax year while they are stationed there on active military duty. A service member or their spouse who meets the above criteria to file as a nonresident is not required to do so and may continue to file as a Colorado resident if they wish. This election must be indicated on form 104PN when the return is filed. [§39-22-103(8) (b), C.R.S.]

#### **SERVICE MEMBER SERVING IN A COMBAT ZONE**

Active duty pay earned in a combat zone that qualifies for the federal tax exemption is not subject to Colorado income tax. However, to the extent income is included in federal taxable income, Colorado tax will also be due on the income.

Colorado law allows military and support personnel stationed in a combat zone, as declared by the president, to postpone filing and paying state income taxes until 180 days after their assignment in the combat zone ends. Interest and penalty are deferred during this period. Because most Colorado taxpayers receive a refund, affected taxpayers may want to plan ahead to authorize someone else to file their income tax return for them using a Power of Attorney Form (DR 0145). If the return is filed under this 180 day extension, write the name of the applicable combat zone across the top of the Form 104.

#### **TAXATION OF MILITARY RETIREMENT BENEFITS**

Persons who were 55-64 years of age as of December 31 may exclude up to \$20,000 of their military retirement benefits received during the calendar year. Persons who were 65 years of age or older as of December 31, may exclude up to \$24,000 of their military retirement benefits received during the calendar year. [§39-22-104 (4) (f), C.R.S.]

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FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.