

Income Tax Topics: Military Servicemembers

Several special rules apply in determining the Colorado income tax liability of an active duty or retired military servicemember. Whether and how a servicemember's income is taxed depends largely on the servicemember's state of legal residence. Additionally, military retirement benefits may be fully or partially exempted from Colorado taxation. This publication provides information regarding various Colorado tax rules that apply to active duty and retired military servicemembers.

This publication is designed to provide general guidance regarding certain tax rules and requirements applicable to military servicemembers and to supplement guidance provided in the *Colorado Individual Income Tax Guide*. Nothing in this publication modifies or is intended to modify the requirements of Colorado's statutes and regulations. Taxpayers are encouraged to consult their tax advisors for guidance regarding specific situations.

Military servicemembers

In general, a military servicemember is any member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard. For the purpose of determining residency under federal law, as discussed in the following section of this publication, but not with respect to any other guidance presented in this publication, military servicemembers include members of the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Commissioned Corps of the Public Health Service.

Residency

Special rules under both state and federal law determine the states of residency for military servicemembers and their spouses. Residency determines, among other things, whether a state can impose income tax on a servicemember's military pay.

Military servicemembers

For state income tax purposes, a servicemember does not lose or acquire residency in a state as a result of being physically present or absent in that state solely in compliance with military orders. Consequently, a servicemember will generally retain their state of residency from when they entered military service, regardless of where they are stationed, unless they take steps to change their state of residency.

A servicemember who is a Colorado resident does not lose their Colorado residency simply because they are stationed outside of Colorado. A servicemember who is not a Colorado resident does not become a Colorado resident simply because they are stationed in Colorado.

Generally, if a military servicemember changes their state of legal residence, they will certify the change by filing Department of Defense Form 2058, which states, "the formula for changing your State of legal residence/domicile is simply stated as follows: physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile." However, see page 3 of this publication for information regarding the reacquisition of Colorado residency by military servicemembers.

Servicemembers' spouses

A servicemember's spouse may elect, for income tax purposes, to use the same state of residence as the servicemember. If a servicemember is not a Colorado resident, and is instead a resident of another state, his or her spouse can elect to also be a resident of that state and not a resident of Colorado. No specific step is required to make this election, but any spouse making an election not to be a Colorado resident should provide to their employer a completed *Affidavit of Exemption for the Nonresident Spouse of a Servicemember* (DR 1059) and mark the applicable box on the *Part-Year Resident/Nonresident Tax Calculation Schedule* (DR 104PN) filed with their Colorado income tax return to indicate their nonresidency.

Additionally, if a servicemember and his or her spouse have as their shared state of residence a state other than Colorado, the spouse also does not become a Colorado resident simply because he or she is in Colorado solely to be with the servicemember who is serving in compliance with military orders.

Servicemembers stationed outside the U.S.

Any servicemember whose domicile is Colorado and who spends at least 305 days of the tax year stationed on active military duty outside of the United States, including its possessions may, but is not required to, elect for that tax year to be treated as a nonresident of Colorado for Colorado income tax purposes. The 305 days do not have to be consecutive, but all 305 days must occur within the tax year for which the election is made.

The spouse of any servicemember who makes the election to be treated as a nonresident may also elect to be treated as a nonresident for the tax year if the spouse accompanies the servicemember for at least 305 days of the tax year while the servicemember is stationed on active military duty outside of the United States.

A servicemember and spouse, if applicable, make the election to be treated as nonresidents of Colorado by checking the applicable box on the *Part-Year Resident/Nonresident Tax Calculation Schedule* (DR 104PN) filed with their Colorado income tax return.

Resident servicemembers and spouses

In general, the income of any Colorado resident is subject to Colorado taxation, regardless of whether the Colorado resident is a servicemember or a servicemember's spouse. The military compensation earned by a servicemember who is a Colorado resident is generally subject to Colorado income tax, regardless of the state in which the servicemember is stationed. However, see page 3 of this publication for information about the income tax subtraction allowed to servicemembers who reacquire Colorado residency.

Every Colorado resident is required to file a Colorado income tax return if they are required to file a federal income tax return or have otherwise incurred a Colorado tax liability.

If any Colorado resident receives income from sources in another state and the income is taxed by both by that state and Colorado, the Colorado resident can claim a credit on their Colorado income tax return for such taxes paid to the other state. See *FYI Income 17* for additional information about credits for taxes paid to other states.

Military family relief fund grants

An income tax subtraction is allowed for any amount received as a grant from the Military Family Relief Fund, to the extent that it is included in federal taxable income. Please visit [Colorado.gov/dmva/services-26#App](https://colorado.gov/dmva/services-26#App) for additional information about the fund.

Reacquisition of Colorado Residency

Under certain circumstances, a servicemember who is a Colorado resident can claim a subtraction on the Colorado *Subtractions from Income Schedule* (DR 104AD) of their Colorado income tax return for any compensation they receive for active duty military service that is included in their federal taxable income. The subtraction is not allowed for any other type of income the servicemember may receive during the tax year.

A servicemember may qualify for this subtraction only if:

- the servicemember's home of record is Colorado;
- while in the military, the servicemember acquired legal residence in a state other than Colorado; and
- the servicemember subsequently reacquired Colorado residency.

A servicemember claiming this subtraction must include with their Colorado income tax return (1) a form furnished by the military confirming Colorado as their home of record, (2) evidence of their residency in another state, after joining the military, and (3) evidence of their subsequent reacquisition of Colorado residency.

Documentation verifying the acquisition of residency in another state, after joining the military, includes:

- DD Form 2058, signed by the servicemember, reporting a change in residency to that state;
- federal Form W-2, reflecting the servicemember's residency in that state;
- voter registration in that state;
- prior notification submitted by the servicemember to Colorado advising of the servicemember's change in state of legal residence to that state; or
- last will and testament indicating the servicemember's residency in that state.

Documentation verifying the reacquisition of residency in Colorado includes:

- voter registration in Colorado after reacquiring residency;
- Colorado residential property records reflecting the servicemember's purchase of property in Colorado in conjunction with reacquiring Colorado residency;
- motor vehicle records reflecting the titling and registration of a vehicle in Colorado in conjunction with reacquiring Colorado residency;
- prior notification submitted by the servicemember to the other state advising of the servicemember's change in state of legal residence to Colorado; or
- last will and testament executed subsequent to reacquiring Colorado residency that identifies Colorado as the servicemember's state of legal residence.

Nonresident servicemembers and spouses

The military wages of a servicemember who is not a Colorado resident are not subject to Colorado taxation, even if the servicemember earned those wages while serving in Colorado.

If the spouse of a servicemember is not a resident of Colorado and is in Colorado solely to be with the servicemember serving in compliance with military orders, any income, such as wages or unemployment compensation, the spouse earns for services performed in Colorado are exempt from Colorado income tax and wage withholding. A servicemember's spouse who meets these requirements may provide to their employer a completed *Affidavit of Exemption for the Nonresident Spouse of a Servicemember* (DR 1059) to attest to the spouse's eligibility for exemption from Colorado wage withholding.

If a servicemember who is not a Colorado resident has any income, other than military wages, derived from Colorado sources, such Colorado-source income is subject to Colorado taxation. Colorado-source income includes, but is not limited to:

- any other wage income for work performed by the servicemember in Colorado;
- income from any business activity conducted in Colorado; and
- rental income and capital gains from any real property in Colorado.

Similarly, if a servicemember's spouse who is not a Colorado resident has any income, other than income from services performed, derived from Colorado sources, such Colorado-source income is subject to Colorado taxation. See *Income Tax Topics: Part-Year Residents and Nonresidents* for additional information regarding Colorado-source income for nonresidents.

If a nonresident has any Colorado source income, the nonresident must file a Colorado return, regardless of whether such nonresident is a servicemember or the spouse of a servicemember.

Extensions allowed to servicemembers

The due dates for filing and payment of Colorado income tax are extended for military servicemembers who are serving in combat zones. Any return or payment a servicemember would otherwise be required to file or pay during such period of service is instead due 180 days after the servicemember's service in the combat zone ends.

The extension applies with respect to any service in an area designated by presidential order as a combat zone. See *IRS Publication 3, Armed Forces' Tax Guide* for a list of areas designated by presidential order as combat zones.

Additionally, any servicemember who notifies the Department that their ability to pay any Colorado income tax due is materially affected by their military service is allowed up to 180 days after termination or release from military service to pay the tax. The servicemember must notify the Department to be allowed an extension. No penalty or interest will accrue during the extension period.

Retired servicemembers

A retired servicemember may claim one of two subtractions for all or part of the military retirement benefits that are included in their federal taxable income. The subtraction that may be claimed depends on the retired servicemember's age at the end of the tax year.

Retired servicemembers under 55 years of age

If a retired servicemember is under 55 years of age at the end of the tax year, they may claim the military retirement subtraction on the applicable line of the Colorado *Subtractions from Income Schedule* (DR 0104AD) for military retirement benefits included in their federal taxable income, subject to the following limitations based on the tax year.

Military Retirement Subtraction Limits

<i>Tax year</i>	<i>Limit</i>
2019	\$ 4,500
2020	\$ 7,500
2021	\$10,000
2022	\$15,000
2023	\$15,000

Retired servicemembers age 55 or older

If a retired servicemember is at least 55 years old at the end of the tax year, they may claim the regular pension and annuity subtraction on the applicable line of the Colorado *Subtractions from Income Schedule* (DR 0104AD) for military retirement benefits included in their federal taxable income. The regular pension and annuity subtraction is not subject to the limitations shown above, but rather is subject to its own limitations, discussed in *FYI Income 25*.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to military servicemembers. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-22-103, C.R.S. Definitions.
- § 39-22-110.5, C.R.S. Reacquisition of residency during active duty military service.
- § 39-22-610, C.R.S. Relief for members of the armed forces of the United States.
- Rule 39-22-103(8)(b). Military servicemember resident individual.
- 50 U.S.C. § 4000. Income taxes.
- 50 U.S.C. § 4001. Residence for tax purposes.

Forms and guidance

- [Tax.Colorado.Gov](https://tax.colorado.gov)
- *Part-Year Resident/Nonresident Tax Calculation Schedule* (DR 0104PN)
- *Subtractions from Income Schedule* (DR 0104AD)
- *Affidavit of Exemption for the Nonresident Spouse of a Servicemember* (DR 1059)
- *Income Tax Topics: Part-Year Residents and Nonresidents*
- *FYI Income 17: Credit for Income Tax Paid to Another State*
- *FYI Income 25: Pension and Annuity Subtraction*
- *IRS Publication 3, Armed Forces' Tax Guide*
- *State of Legal Residence Certificate* (DD 2058)