

FYI – For Your Information

Military Servicepersons

GENERAL INFORMATION

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. [Reg. 39-22-103 (8)] The serviceperson would declare residency in another state by changing his/her residency with the “Consolidated Base Personnel Office” or “Military Pay Office.”

Only the serviceperson’s home state may tax his/her **military** income. Every serviceperson 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 SERVICEPERSON

A serviceperson who is a Colorado full-year resident is taxed in the same manner as any other Colorado resident. Colorado resident servicepersons 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 SERVICEPERSON

A nonresident serviceperson is not required to report his/her **military** income to Colorado. However, if the serviceperson earned **nonmilitary** Colorado income, this income must be reported to Colorado for income tax purposes. The serviceperson 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 with the status used for federal income tax filing purposes. For example, if a taxpayer and spouse filed a joint federal return, they



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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 Form 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 line 5 of Form 104PN. A qualifying spouse must:

- Have moved to Colorado from another state,
- 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 may 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)

SERVICEPERSON STATIONED OUTSIDE OF THE UNITED STATES

For tax years beginning on or after January 1, 2001, a serviceperson 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 serviceperson's spouse may also file as a nonresident if he or she accompanies the serviceperson outside of the country for at least 305 days of the tax year while they are stationed there on active military duty. A serviceperson 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. [§39-22-103(8) (b), C.R.S.]

SERVICEPERSON 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 via 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 income tax return, Form 104.

TAXATION OF MILITARY RETIREMENT BENEFITS

Persons who were 55-64 years of age as of Dec. 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 Dec. 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.]

FURTHER INFORMATION

FYIs, commonly used forms and additional tax information are available on the Web at *www.taxcolorado.com*

For additional Colorado tax information visit the "Tax Information Index" which covers a variety of topics including links to forms, publications, regulations, statutes and general questions and answers. The "Tax Information Index" is located at *www.taxcolorado.com*

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 authority to bind the Department, has not formally reviewed and/or approved these FYIs.