

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 service-member'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.

## MILITARY SERVICEMEMBERS

In general, a military servicemember is any member of the Army, Navy, Air Force, Marine Corps, or Coast Guard.

### 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 the information on the following page regarding the reacquisition of Colorado residency.

#### 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. 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 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 outside of the United States.

A servicemember and spouse, if applicable, make the election to be treated as nonresidents of Colorado by filing a nonresident Colorado income tax return for the tax year and checking the applicable box on Form 104PN.



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

If any Colorado resident receives income from sources in another state and is required to pay income tax to such other state, 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.

### Reacquisition of Colorado residency

Under certain circumstances, a servicemember who is a Colorado resident can claim a subtraction on Form 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 documentation verifying:

- 1) Colorado as their home of record,
- 2) their residency in another state, after joining the military, including at least one of the following documents:
  - DD Form 2058, signed by the servicemember, reporting a change in residency to that state;
  - federal Form W-2 from a prior year, 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 another state; or
  - last will and testament indicating the servicemember's residency in that state.
- 3) their subsequent reacquisition of Colorado residency, including at least one of the following documents:
  - 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 such 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 wages 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. Similarly, if a servicemember's spouse who is not a Colorado resident has any income, other than 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.

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. See FYI Income 6 for additional information regarding Colorado-source income for nonresidents.

## **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 line 5 or 6 of Form 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>	2019	2020	2021	2022	2023
<i>Limit</i>	\$4,500	\$7,500	\$10,000	\$15,000	\$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 line 3 or 4 of Form 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 - construction of terms.
- § 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.
- Reg. 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

- *Part-Year Resident/Nonresident Tax Calculation Schedule* (Form 104PN)
- *Subtractions from Income Schedule* (DR 0104AD)
- *Affidavit of Exemption for the Nonresident Spouse of a Servicemember* (DR 1059)
- *FYI Income 25: Pension and Annuity Subtraction*
- *FYI Income 6: Part-Year Resident and Nonresident Individuals*
- *FYI Income 17: Credit for Income Tax Paid to Another State*
- *IRS Publication 3, Armed Forces' Tax Guide*
- *State of Legal Residence Certificate* (DD 2058)

FYIs represent a good faith effort to provide general information concerning a variety of Colorado tax topics in simple and straightforward language. By their nature, however, FYIs cannot and do not address all taxpayer situations nor do they provide a comprehensive overview of Colorado's tax laws. For this reason, FYIs are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations.

A taxpayer seeking additional guidance regarding the tax consequences of a particular transaction or factual scenario can request a Private Letter Ruling (PLR) or General Information Letter (GIL). Requests for PLRs and GILs must comply with certain requirements, which are currently set forth at 1 Code of Colorado Regulations 201-1, Regulation 24-35-103.5. PLRs are binding upon the Department only with respect to the specific taxpayer that requested the PLR. GILs are for informational purposes only and are not binding on the Department.