

## NEBRASKA INCOME TAX FOR MILITARY SERVICEMEMBERS (THEIR SPOUSES) AND CIVILIANS WORKING WITH U.S. FORCES IN COMBAT ZONES

### OVERVIEW

The Federal Servicemembers Civil Relief Act provides that active duty military service pay can be taxed only by the state in which the servicemember is a legal resident. The place of residence at the time of entry into the service is presumed to be the state of legal residence, or domicile, and remains so until legal residence in another state is established. For tax year 2009 and later, the Act also provides that if the spouse is a resident of the same state as the servicemember, the income earned by the spouse while accompanying the servicemember to another state is only taxable in the state of legal residence.

All individuals who are Nebraska residents for the entire year, and who are required to file a federal income tax return, must file a Nebraska individual income tax return. This includes all servicemembers who are domiciled in Nebraska, even those living outside Nebraska. All nonresidents and partial-year residents with income from Nebraska sources, who are required to file a federal return, must file a Nebraska return. This includes nonresident military servicemembers and any military dependents other than spouses.

Nebraska recognizes the Internal Revenue Service (IRS) designations of “combat zones” and allows the same income exclusions, filing extensions, suspension of audits, collection activities, and notices for military members outside the United States. Also, Nebraska extends the same provisions to civilians working with the U.S. Armed Forces in combat zones, as allowed to civilians for federal tax purposes.

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*This information guide is intended to provide an overview. Nothing in this guide supersedes, alters, or otherwise changes any provisions of the Nebraska tax code, regulations, Nebraska Department of Revenue (Department) rulings, or court decisions.*

*This information guide may change with updated information or added examples. The Department recommends you do not print this guide, and instead, check [www.revenue.ne.gov](http://www.revenue.ne.gov) periodically for changes.*

### TERMS

**Domicile.** Domicile is the place an individual considers his or her permanent home, or the place to which he or she intends to return after a period of absence. A domicile, once established, continues until a new, fixed, and permanent home is acquired. No change in domicile results from moving to a new location if the person’s intent is to remain for a limited time, even if it is several years.

**Resident.** A resident is a person who is domiciled in Nebraska, or who maintains a permanent place of abode and resides in Nebraska for six months or more during the tax year.

**Nonresident.** A nonresident is a person who is domiciled for the entire year in a state(s) other than Nebraska, and does not reside in Nebraska for more than six months during the tax year.

**Partial-Year Resident.** A partial-year resident is a person who either begins or ends his or her domicile in Nebraska during the tax year, or resides in Nebraska for more than six months during the tax year.

**Taxable Nebraska Source Income.** Taxable Nebraska source income is all income earned in Nebraska from the conduct of a trade or business, from real or personal property, or from civilian employment by the servicemember or any dependent, other than a spouse. "Civilian employment" includes working for a non-appropriated fund activity, such as post exchanges, military stores, or officers' clubs, whether located on or off the military installation. Prizes awarded in a lottery game conducted pursuant to the Nebraska Lottery Act or under the Nebraska Charitable Gaming Act are also taxable Nebraska source income.

**Spouse.** For the purposes of this information guide, spouse refers to a servicemember's spouse, who is not a servicemember, and who has the same legal residence as the servicemember. If the spouse is not a legal resident of the same state as the servicemember, the provisions below dealing with other military dependents apply to that spouse.

## RESIDENCE

**Servicemember and Spouse.** An individual's legal residence is the same as his or her place of domicile. The place of residence at the time of entry into the service is presumed to be the state of legal residence and remains so until legal residence in another state is established. Military assignments do not affect the servicemember's or spouse's domicile. No change of legal residence (domicile) results from moving to a new location for a limited period of time, such as under a temporary duty (TDY) assignment. A permanent change of station (PCS) order also does not automatically change legal residence. Physical presence in a state by the servicemember does not necessarily establish domicile in that state.

Because of certain federal law restrictions, Nebraska's six-month automatic residence provision does not apply to the military servicemember or spouse. The military servicemember or spouse, however, may choose to change his or her legal residence. Unless the servicemember or spouse produces adequate evidence, and has the intent to change his or her legal residence (see **Change of Legal Residence** below), the Servicemembers Civil Relief Act prevents a change in legal residence solely because of physical presence in a state.

A spouse with the same legal residence in another state as the servicemember, who has been required to file as a Nebraska resident in prior tax years, does not have to file as a resident for 2009 or later years because of changes in federal law. To receive a refund of Nebraska income tax withholding for 2009, file Form 1040N and Schedule III as nonresidents. On line 66 of Schedule III enter zero and write "Exempt Nonresident Military Spouse" on the line provided. Contact your state of legal residence regarding filing and estimated tax requirements for 2009. The tax returns for prior years cannot be amended to nonresident returns because the federal law changes are not retroactive.

**Military Dependents.** Military dependents, including a spouse with a different legal residence than the servicemember, are not protected from a change in their residence for tax purposes. Instead, once they are present in this state, the following situations result:

- ❖ If the military dependents have been in Nebraska for the entire year, they are full-year residents;
- ❖ If the military dependents have been in Nebraska for more than six months, but less than one year, they are partial-year residents for the period of time spent in the state; and
- ❖ If the military dependents have been in Nebraska for less than six months, they are considered nonresidents, unless they choose to change their residence to this state and file as partial-year residents for the period of time spent in this state.

**Change of Legal Residence.** To make a change of legal residence, the person must have a physical presence in the new state, as well as show intent to establish residence in that state and to abandon the prior residence.

**Note:** Requirements for establishing residency vary by state. Contact the state where you are establishing residency to determine these requirements.

Generally, intent to change residence can be shown by:

- ❖ Purchasing a home in another state for use as a principal residence;
- ❖ Paying taxes as a resident of another state;
- ❖ Obtaining a driver's license as a resident of another state;
- ❖ Registering a motor vehicle as a resident of another state; or
- ❖ Obtaining a hunting or fishing permit as a resident of another state.

**Substantiating Change of Legal Residence.** If there has been a change of residence to another state, the taxpayer must supply the Department with copies of three or more documents substantiating the change.

## FILING REQUIREMENTS

**Resident.** All Nebraska residents required to file a federal income tax return must file a Nebraska Individual Income Tax Return, Form 1040N or Form 1040NS. This includes all Nebraska servicemembers, spouses, and other military dependents who are domiciled in Nebraska (who are legal residents of Nebraska, including those living outside Nebraska).

The entire federal adjusted gross income (AGI) of a resident, as adjusted for state tax purposes, is subject to tax in Nebraska. There is no adjustment for military pay or for income earned outside Nebraska. Instead, a credit is allowed on Form 1040N for income taxes paid to another state. To claim this credit, complete a Nebraska Schedule II, Credit for Tax Paid to Another State for Full-Year Residents and attach a copy of the return filed with the other state.

A spouse domiciled in Nebraska, who accompanies a servicemember domiciled in Nebraska to another state, will owe income tax to Nebraska on income earned in the other state. The other state will not be able to tax the spouse's income, so there will not be a credit allowed for taxes paid to another state by the spouse. Since most out-of-state employers will not withhold for Nebraska, the resident spouse will need to consider making [estimated tax payments](#) to Nebraska during the year.

**Nonresident.** All nonresidents with income from Nebraska sources who are required to file a federal return must file a Nebraska return. The active duty military pay received by the nonresident military servicemember is exempt from Nebraska tax by the Servicemembers Civil Relief Act. Servicemembers domiciled outside of Nebraska may exclude the military compensation from gross income when computing the tax on nonmilitary income. The nonresident military income should be reported on Nebraska Schedule I as an adjustment decreasing Federal AGI. Other income received from **Nebraska sources** is subject to Nebraska income tax.

A spouse domiciled in another state who accompanies a servicemember to Nebraska and who is employed in Nebraska, does not have income from Nebraska sources. The spouse must provide any employer in Nebraska with a completed a Nebraska Nonresident Employee Certificate, Form 9N, showing that the income is not subject to Nebraska income tax withholding. Your employer may not be required to withhold tax for your state of legal residence. Contact your state of residence to determine if you need to make estimated payments. If your employer has questions, they should contact the Department.

A nonresident military spouse who wants to prove to their employer their eligibility for the special treatment under the federal Military Spouses Residency Act may make a copy of their military dependent identification documents to give to their Nebraska employer. For more information go to our [Web site](#).

**Partial-year Resident.** Partial-year residents must file with Nebraska if they have Nebraska source income as defined above. This applies to the military servicemember, the spouse, and military dependents. During the next tax year, if the partial-year resident is in Nebraska from January through December, he or she will be considered a resident for income tax filing purposes.

The active duty military pay received by the military servicemember while a resident of another state is exempt from Nebraska tax by the Servicemembers Civil Relief Act. Other Nebraska source income is subject to tax in Nebraska. The spouse's income received while a resident of another state is not Nebraska source income.

Military pay, and all other income received while a resident of Nebraska that is not taxed by another state, is subject to tax in Nebraska.

**A nonresident or partial-year resident filing a married, filing jointly return (as explained below) can deduct active duty military pay received while a nonresident on Nebraska Schedule I.** The Form W-2 that attributes the income to a state other than Nebraska, issued by the armed forces to the servicemember, must be attached to Form 1040N. Adjustments cannot be made for income earned in another state. Complete Nebraska Schedule III to report any income received from Nebraska sources.

**Computation of Nebraska Tax for Nonresidents and Partial-Year Residents Only — Schedule III, Form 1040N.** The tax liability of any nonresident or partial-year resident is a percentage of a resident's liability on the same amount of income, excluding active duty military pay received while a nonresident. All of the nonresident's or partial-year resident's income, including income from another state (but not including active duty military pay received as a nonresident), is used in calculating the tax on Nebraska source income.

## FILING STATUS

**Married, Filing Jointly.** Joint Nebraska returns must be filed when a federal joint return has been filed, and:

- ❖ **Both spouses are residents** of Nebraska for the entire year; or
- ❖ **Both spouses are nonresidents** of Nebraska for the entire year, and the military servicemember has nonmilitary Nebraska source income.

**Joint Return by Election.** This election may be made if one taxpayer, for any part of the year, is a Nebraska resident (partial-year or full-year) while the other taxpayer is a nonresident. A married, filing jointly return must have been filed federally. By making this election, both taxpayers are taxed as Nebraska residents or partial-year residents for the period either taxpayer was a resident of Nebraska. Any active duty military pay of the nonresident is not taxed by Nebraska. When a married, filing jointly return is filed, the nonresident can deduct active duty military pay on Nebraska Schedule I, line 59 by writing "Nonresident military service compensation." All other income is subject to Nebraska tax.

**Revocation of the Election.** The election to file a joint return and be taxed as residents or partial-year residents may be revoked by both taxpayers at any time during which a claim for refund can be filed (see the section called "Statute of Limitations" at the end of this guide). The election can be changed for other taxable years only if the federal filing status is changed. The revocation of the election is effective only when the following conditions have been satisfied:

- ❖ Both taxpayers file separate Nebraska returns. The taxpayer whose social security number was listed first files an Amended Nebraska Individual Income Tax Return, Form 1040XN. The taxpayer whose social security number was listed as the spouse's number on the original joint return files a Nebraska Individual Income Tax Return, Form 1040N;
- ❖ A copy of the federal married, filing jointly return actually filed with the IRS is attached to each Nebraska return;
- ❖ A copy of a federal return for each taxpayer computed as if married, filing separately federal returns had been filed, is attached to each Nebraska return;
- ❖ Each Nebraska return includes the full name and social security number of both taxpayers; and
- ❖ Each Nebraska return is signed by both taxpayers.

Compliance with these conditions is an agreement that both spouses are jointly and severally liable for any tax due, and that any refund due at the time of filing the Nebraska returns may be paid to both taxpayers jointly, or to either taxpayer.

**Married, Filing Separately.** Servicemembers must file separate Nebraska returns when separate federal returns were filed and the servicemember either is a Nebraska resident or the servicemember has Nebraska source income. Spouses must file separate Nebraska returns when separate federal returns were filed and the spouse is a Nebraska resident.

Other military dependents must file separate Nebraska returns when separate federal returns were filed and the dependent either is a Nebraska resident or the dependent has Nebraska source income.

Separate returns must also be filed when one taxpayer is a Nebraska resident or partial-year resident while the other taxpayer is a nonresident and, although a federal married, filing jointly return was filed, they did not elect to file a joint return for Nebraska. The resident taxpayer must file a return when he/she receives any income. The nonresident taxpayer must file when he or she has Nebraska source income. If both are nonresidents of Nebraska, even if not residents of the same state, separate Nebraska returns are not allowable if a joint federal return was filed.

The Nebraska married, filing separately return must include all income that would be properly included in a federal married, filing separately return. Income from jointly held property is presumed to belong equally to the owners, and when owned by a married couple, one-half of the income would be reportable by each taxpayer.

The taxpayer claiming military dependents as exemptions on a married, filing separately Nebraska return must have earned more than half of the income used to support the family. For example, if a couple has three children, a taxpayer earning one-third of the income cannot claim one of the family's three children. Support payments are presumed to go to all children equally.

Itemized deductions for joint expenses, such as mortgage interest, that are paid out of jointly-owned funds, are presumed to be deductible equally by the taxpayers. The deductions based on income are divided between the taxpayers according to the ratio between each income item and total income. Deductions that relate to a specific person, such as medical expenses or professional association dues, may only be deducted by the person who incurred the expense.

A taxpayer required to itemize deductions under the federal rules for separate returns may use the larger of the itemized deductions or the Nebraska standard deduction.

The credit for child and dependent care expenses cannot be taken by a married, filing separately filer, unless the taxpayer's federal return was filed as married, filing separately and the credit was allowed on that return.

Adjustments to income, such as an IRA deduction, can only be taken if they would be allowable for that taxpayer.

Additional information for married, filing separately returns can be obtained by referring to the instructions for the federal return.

## COMBAT ZONES

Nebraska recognizes the IRS designation of "combat zones."

This includes **Combat Pay** exclusions related to operations such as those authorized by the President. The wages shown on a military servicemember's Wage and Tax Statement, Form W-2, should not include combat pay.

In most cases, Nebraska law is the same as federal law on income exclusions, filing extensions, suspension of audits and collections activities, and suppression of notices for military servicemembers outside the United States. This includes those individuals serving in a designated combat zone, contingency operation, or in a qualified hazardous duty area.

**Federal Filing Extensions Allowed.** Nebraska will allow the same extensions for filing income tax as the federal government. No penalty or interest will be charged or assessed during this period. Taxpayers filing a joint return with servicemembers or affected support personnel (see **Civilian Taxpayers** below) are also covered by this provision. To claim this extension, print the geographic area or military operation name and deployment dates in bold letters at the top of your return when it is filed. Use the same designation as required by the IRS. Additional federal information may be found in IRS Publication 3, Armed Forces' Tax Guide, at [www.irs.gov](http://www.irs.gov).

**Civilian Taxpayers.** Civilian taxpayers serving in a combat zone in support of the U.S. Armed Forces should note their special work status on returns filed. At the top of any return or extension request filed, print geographic area or military operation name and deployment dates in bold letters. This would include merchant marines serving aboard vessels under the operational control of the Department of Defense, American Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the U.S. Armed Forces in support of those forces. Nebraska law also extends the same provisions as federal law on filing extensions, suspension of audits and collections activities, and suppression of notices as for military servicemembers serving outside the United States.

## **ARMED FORCES RESERVE AND NATIONAL GUARD PAY**

Income received for state service in the Nebraska National Guard is taxable by Nebraska regardless of the residence of the servicemember. This income, if subject to federal withholding, is also subject to Nebraska withholding. If a nonresident of Nebraska is called to federal active duty from the National Guard, this federal active duty income is deducted on Nebraska Schedule I.

Income earned for service in the Armed Forces Reserves is pay for military service. This income is taxable only by the servicemember's state of legal residence. It is subject to withholding by the state of legal residence.

Any deduction allowed on the federal return, before the calculation of federal AGI, to National Guard and Armed Forces Reserve members for overnight transportation, meals, and lodging expenses for travel more than 100 miles to attend Guard and Armed Forces Reserve meetings is also allowed for Nebraska purposes.

Armed Forces Reservists not serving in a combat zone, but called to active duty, may be able to qualify for a deferment of payment on their back taxes, without interest, if their ability to pay has been severely impaired. Even in those instances where they do not meet this test, an interest rate of six percent, or the state rate if lower, on taxes owed before they entered active service may be available upon request. For information on requesting deferment, contact the Department's Taxpayer Assistance at the telephone numbers listed below or send an e-mail to [www.revenue.ne.gov/mail/ndrmail.phtml](http://www.revenue.ne.gov/mail/ndrmail.phtml).

## **POWERS OF ATTORNEY**

If acting on behalf of someone serving in a combat zone, and there is no power of attorney specifying the handling of Nebraska tax matters, a general power of attorney, or statement signed by the person serving in the combat zone, will be accepted. The general power of attorney or statement must grant the authority to act on behalf of the person serving in the combat zone even though Nebraska tax matters are not specified. A copy of the general power of attorney or statement must be attached to the tax return.

If it is not possible for the spouse of a servicemember in a combat zone to obtain that person's signature on a joint return, power of attorney, or other signed authorization to act on his or her behalf, a written statement filed with the return explaining that the servicemember is in a combat zone will be accepted. The statement must be signed by the taxpayer filing the tax return and attached to the tax return.

## **BACK TAXES, AUDIT, OR CORRESPONDENCE**

The Department will defer payment of back taxes, without interest or penalty, and suspend any audit activity for at least 180 days following a servicemember's departure from a combat zone. This also includes civilians serving in support of the U.S. Armed Forces.

If a tax notice or similar correspondence is received from the Department, the servicemember/civilian or his or her authorized representative should contact the Department at one of the numbers listed below. When contacting the Department, please provide the following information:

- ❖ Name and social security number;
- ❖ Branch of service;
- ❖ Unit name and number;
- ❖ Mailing and/or permanent address; and
- ❖ A copy of any correspondence received from the Department.

## **DECEDENTS**

The Department has adopted the Combat Zone Forgiveness and the Terroristic or Military Action Forgiveness provisions adopted by the IRS. If either of these tax-forgiveness provisions applies to a prior year's tax that has already been paid, and the period for filing a refund has not expired, the tax will be refunded; if any tax is still due, it will be canceled.

If a servicemember dies in a combat zone or in a terroristic or military action, use the following procedures in filing a claim for tax forgiveness:

- ❖ File Form 1040N if a Nebraska Individual Income Tax Return has not been filed for the tax year (Form W-2, Wage and Tax Statement, must accompany the return); or
- ❖ File Form 1040XN if a Nebraska Individual Income Tax Return has already been filed (a separate Form 1040XN must be filed for each year in question).

All returns must be identified by writing the name of the combat zone or terroristic or military action in bold letters on the top of page 1 of the return. On Forms 1040N and 1040XN, the name of the zone or action must be written on the line for **Total Nebraska Tax**.

An attachment should accompany any return or claim and should include a computation of the decedent's tax liability and the amount that is to be forgiven. For married, filing jointly returns, follow the guidelines in IRS Publication 3. A certification of death from the Department of Defense or the U.S. State Department must accompany all returns for decedents.

## STATUTE OF LIMITATIONS

A claim for refund must be filed within two years of the time the tax was paid, or within three years of the time the original tax return was filed. The refund is limited to the amount paid during the preceding two or three year period, respectively. Payments made before the due date of the return are considered to have been made on the due date.

Abatement of penalty or interest is allowed in limited situations. Request abatements by filing an [Application for Abatement of Penalty, Form 21](#), or [Application for Abatement of Interest, Form 21A](#), with the Department.

## RESOURCE LIST:

- ❖ [Authorization to Copy Military Identification \(ID\) Card to Obtain Tax Benefits](#)

**www.revenue.ne.gov**

(800) 742-7474 (toll free in Nebraska and Iowa), (402) 471-5729

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