



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
 Cory Fong, Commissioner

Memorandum

To: Senator Dwight Cook
 Chairman, Interim Taxation Committee

From: Joseph Becker
 Research and Education Section

Date: February 3, 2010

Subject: Summary of Testimony on—
 (1) Recap of Income Tax Credits Claimed Under 2007 Senate Bill 2032;
 (2) 2009 House Bill 1448; and
 (3) Military Spouses Residency Relief Act

Item 1—Recap of Income Tax Credits Claimed Under 2007 Senate Bill 2032

- Estimated fiscal effect of Sections 6 and 7 of 2007 Senate Bill 2032..... \$112,000,000
(This amount was included in the \$115,000,000 transferred from the Permanent Oil Tax Trust Fund to the State General Fund.)
- Total income tax credits claimed for both years of the program..... \$83,397,879
(2007 and 2008 individual and corporation income tax returns)
- The following provides further breakdown of the total credits shown above:

By type of credit

Residential and agricultural property \$75,601,890
 Commercial property..... 7,795,989

By type of taxpayer

Individuals..... \$82,800,519
 "C" corporations..... 597,360

By tax year

2007 income tax returns \$41,447,145
 "C" corporations..... 41,950,734

**Property tax relief certificates issued and redeemed by counties
 (for unused credits on residential and agricultural property)**

	Number	Amount
2007 income tax returns	29,316	\$5,776,035
2008 income tax returns	30,546	6,236,076
	59,862	\$12,012,111 *

* This amount is included in the total credits of \$83,397,879 claimed under the program.

**Item 2—Briefing on 2009 House Bill 1448
(Retroactive property tax relief income tax credit)**

- This bill provides “retroactive” relief to the following three groups that were ineligible for the credit under the 2-year property tax relief program enacted in 2007 Senate Bill 2032:
 - **Group 1**—North Dakota resident individuals (*their primary residence was in North Dakota*) who had transferred the title to their ND agricultural property to a partnership, S corporation, or limited liability company in which they held an interest.
 - **Group 2**—Nonresident individuals of North Dakota (*their primary residence was not in North Dakota*) with ND agricultural property, regardless of whether the title to the property was held by the individual or by a partnership, S corporation, or limited liability company in which they held an interest.
 - **Group 3**—Estates and trusts with ND agricultural property and/or ND commercial property, regardless of whether the title to the property was held by the estate or trust or by a partnership, S corporation, or limited liability company in which it held an interest.
- The is effective only for the 2009 income tax year, with a 4-year carryover for an unused credit.
- The credit = SUM of the following:
 - (1) 10% of the 2006 real estate taxes on eligible property, up to \$1,000;
PLUS
 - (2) 10% of the 2007 real estate taxes on eligible property, up to \$1,000.
- Property eligible for the retroactive credit is limited to—
 - Agricultural property located in North Dakota, and
 - Commercial property located in North Dakota.
 - Property that was eligible for the tax credit under the former 2-year program enacted in 2007 is not eligible for the retroactive credit.
- Estimated fiscal impact of 2009 House Bill 1448, per the fiscal note, was undeterminable. However, it was assumed that the remaining portion of the monies transferred from the Permanent Oil Tax Trust Fund to the General Fund in 2007 (and still in the General Fund for the new biennium)—that is, the difference between \$112,000,000 and the amount of credits claimed on the 2007 and 2008 returns—would cover the amount of retroactive credit claimed on the 2009 returns.

Item 3—Military Spouses Residency Relief Act

- Attached is a notice recently released by the Office of State Tax Commissioner regarding the Military Spouses Residency Relief Act signed into law on November 11, 2009. It explains the Act and North Dakota’s response to it.
- Based on information from the 2008 North Dakota individual income tax returns, the estimated fiscal impact of the Act is approximately \$118,000.

If the Committee needs further information on any of these items, let me know.



Notice

Individual Income Tax Military Spouses Residency Relief Act

Cory Fong
Tax Commissioner

February 2010

What is the Military Spouses Residency Relief Act?

The Military Spouses Residency Relief Act (the "Act") (Public Law 111-97) is federal legislation that was signed into law on November 11, 2009. The Act amended the Servicemembers Civil Relief Act to extend a number of benefits already permitted to active duty U.S. armed forces servicemembers to their civilian spouses. Beginning with the 2009 tax year, the civilian spouse of a servicemember is provided with the following benefits that affect their state income tax obligations:

- The domicile (or legal residence) of a civilian spouse does not change when he or she moves into a state if (1) the servicemember is permanently stationed in the state, (2) the servicemember and civilian spouse are not domiciled in the state, and (3) the civilian spouse is in the state only to be with the servicemember.
- A civilian spouse's compensation received for work performed in a state is exempt from that state's income tax if (1) the servicemember is permanently stationed in the state, (2) the servicemember and civilian spouse are not domiciled in the state, and (3) the civilian spouse is in the state only to be with the servicemember.

Note: Even if a civilian spouse qualifies for the Act's exemption from income tax in a state in which he or she is not domiciled, the civilian spouse may be required to file an income tax return and pay income tax to the state in which he or she is domiciled.

The remainder of this notice explains how the Act affects civilian spouses of active duty U.S. armed forces servicemembers stationed in North Dakota.

Who is eligible for the exemption from North Dakota income tax?

A civilian spouse's compensation for work performed in North Dakota is exempt from North Dakota income tax if he or she meets all of the following conditions:

- The civilian spouse and the servicemember maintain their domicile (or legal residence) in a state other than North Dakota. This condition is met even if each spouse has a different state of domicile. See "What does it mean to be domiciled outside North Dakota?" later in this document;
- The servicemember's permanent duty station is in North Dakota; and,
- The civilian spouse is residing and working in North Dakota only because he or she wants to be with the servicemember.

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North Dakota Office of State Tax Commissioner

600 E Blvd - Dept 127
Bismarck ND 58506-0599

701.328.7088
TDD: 1.800.366.6888

taxinfo@nd.gov
www.nd.gov

Certain actions or events will result in a civilian spouse becoming ineligible for the exemption of compensation from North Dakota income tax. They include the following:

- The servicemember's permanent duty station changes from North Dakota to another state or country. If a servicemember's permanent duty station remains in North Dakota but the servicemember is relocated under temporary duty orders, such as to a war zone, the civilian spouse does not lose eligibility for the exemption.
- Either the civilian spouse or the servicemember changes his or her domicile to North Dakota.
- The civilian spouse and the servicemember divorce.
- The servicemember dies.

What does it mean to be domiciled outside North Dakota?

One of the requirements for the exemption of a civilian spouse's compensation from North Dakota income tax is that both the civilian spouse and the servicemember must maintain their domicile outside North Dakota. They do not have to have the same state of domicile, but their respective domiciles must be outside North Dakota.

The word "domicile" refers to an individual's residence by law, and is often referred to as the individual's legal residence. It is the individual's true, fixed, and legally recognized place of residence, and is the place to which the individual always intends to return whenever absent from it for temporary purposes. Domicile is based on an individual's intent and actions, which must be consistent.

To change one's domicile, an individual must abandon the current place of residence, actually move to the new place of residence, and intend to establish a new place of residence and remain there. An individual must take affirmative steps to establish a new place of residence, such as acquiring a place of abode, registering to vote, applying for a driver's license, registering a motor vehicle, changing employment records, filing a resident income tax return, and making changes to legal documents to reflect the new domicile. Not any one act is conclusive, and some acts may carry greater weight depending on the circumstances.

If a civilian spouse's domicile was *in North Dakota* prior to January 1, 2009, that domicile remains in North Dakota until it is changed. All compensation and other income of a civilian spouse who is domiciled in North Dakota, regardless of the income's source, is subject to North Dakota income tax.

Due to the domicile protection under the Act, if a civilian spouse's domicile was *outside North Dakota* prior to January 1, 2009, that domicile does not change if the civilian spouse moves into North Dakota only to be with the servicemember who also is not domiciled in North Dakota but is permanently stationed in North Dakota.

Note: In the instructions to the North Dakota individual income tax return, the term "full-year resident" is used to describe an individual who is domiciled in North Dakota all year; the term "full-year nonresident" refers to an individual whose domicile is outside North Dakota all year; and "part-year resident" refers to one who is domiciled in North Dakota for only part of the year.

If a civilian spouse is eligible for the exemption under the Act, what income is exempt from North Dakota income tax?

A civilian spouse who is eligible for the exemption under the Act does not have to pay North Dakota income tax on compensation received for work performed in North Dakota. This means wages, salaries, tips, and any other form of compensation received for employment services performed in North Dakota that is reportable on Federal Form W-2 (in Box 1, "Wages, tips, and other compensation").

The following types of income are not eligible for the exemption:

- Income from real and tangible personal property located in North Dakota, such as rental income, royalties from mineral interests, and gain from the sale or exchange of the property.
- Net income from a trade or business conducted in North Dakota.
- Income from gambling activity carried on in North Dakota.
- Other income having a source in North Dakota; however, interest, dividends, and gains from the sale of intangible property (e.g., stocks and bonds), and retirement plan payments received by a nonresident of North Dakota are not taxable by North Dakota.

What tax years are affected by the Act?

The Act takes effect starting with the tax year in which the Act was signed into law. Therefore, the Act applies to all tax years beginning with the 2009 tax year. If an eligible civilian spouse worked in North Dakota in 2009, the civilian spouse may be eligible for a refund of North Dakota income tax withheld from his or her North Dakota wages.

How does an eligible civilian spouse apply for a refund of North Dakota income tax withheld from his or her exempt North Dakota wages?

An eligible civilian spouse who worked in North Dakota can apply for a refund of the North Dakota income tax withheld from his or her wages exempted under the Act by filing a North Dakota individual income tax return. The forms that will be needed are Form ND-1 and Schedule ND-1NR. Complete the forms as they normally would be completed according to their instructions, but note the following added instructions:

- Do not enter the civilian spouse's exempt wages anywhere on Form ND-1. *Note: On Form ND-1, only the active duty military pay of a nonresident U.S. armed forces servicemember is to be entered on the line that reads "Nonresident only: Servicemembers Civil Relief Act adjustment."*
- Ordinarily, on Schedule ND-1NR, the portion of any income from the federal return shown in Column A that is taxable by North Dakota must be entered in Column B. However, to indicate that the civilian spouse's wages are exempt from North Dakota income tax because of the Act, **do not enter them in Column B of line 1** when completing Schedule ND-1NR.
- No special documentation needs to be attached to the North Dakota return to support the claim for refund. However, the North Dakota Office of State Tax Commissioner may contact the taxpayer and ask the taxpayer to provide documentation or other information to verify his or her eligibility for the exemption under the Act.

If eligible for the exemption from North Dakota income tax, can the civilian spouse stop the withholding of North Dakota income tax from his or her wages?

Yes. An eligible civilian spouse can stop the withholding of North Dakota income tax from his or her exempt wages by completing Form NDW-M and giving it to the employer. A copy of the civilian spouse's dependent military ID card must be attached to Form NDW-M. Form NDW-M is valid only for the calendar year for which it is completed. If the civilian spouse is still eligible for the exemption, the civilian spouse must file a new Form NDW-M for each year for which he or she wants to continue the exemption from North Dakota withholding. Form NDW-M is available on the North Dakota Office of State Tax Commissioner's web site at www.nd.gov/tax. Click on Income Tax Withholding > Forms > Form NDW-M.

If a civilian spouse's wages are exempt from North Dakota income tax, does the civilian spouse have to file a North Dakota income tax return?

No, provided the civilian spouse and the servicemember have no other income that is taxable by North Dakota. However, if any North Dakota income tax was withheld from the civilian spouse's exempt North Dakota wages, a North Dakota individual income tax return should be filed to claim a refund of the withheld amount.

There would be a requirement to file a North Dakota individual income tax return if either the civilian spouse or servicemember have other income that is taxable by North Dakota. Other types of income that are taxable by North Dakota include:

- A servicemember's non-military compensation for work performed in North Dakota (on or off of a military installation).
- Income from real and tangible personal property located in North Dakota, such as rental income, royalties from mineral interests, and gain from the sale or exchange of the property.
- Net income from a trade or business conducted in North Dakota.
- Income from gambling activity carried on in North Dakota.
- Other income having a source in North Dakota, except compensation for military service, interest, dividends, and gains from the sale of intangible property (e.g., stocks and bonds), and retirement plan payments.