

SPouses of Active Duty Military Members

This publication is designed to provide general information with respect to the Arizona income tax treatment of spouses of active duty military members. For information about the Arizona income tax treatment of active duty military members, see the department's brochure, Pub 704, "Taxpayers in the Military."

Arizona Tax Treatment of Spouses of Members of the Armed Forces for Tax Years 2009 and Later

On November 11, 2009, President Obama signed into law the Military Spouses Residency Relief Act (PL 111-97). This act amended the Servicemembers Civil Relief Act (SCRA) to grant several new privileges to the spouses of military service members.

The new law allows a military service member's spouse to keep a tax residence throughout the marriage, even if the spouse moves into another state, so long as the spouse moves into the state to be with a service member who is in the state because of military orders. The act also effectively allows income from personal services to be sourced to a state other than the state in which the services were performed.

To aid in understandability in this brochure, the department is using the term "residence" not only in places where the usage is consistent with the standard legal definition of that term but also in places where the term "domicile" would be more technically accurate.

- Q1.** As the spouse of an active duty military member, what does this mean to me?
- A1.** Under the new federal law, you may keep a previous residence under defined circumstances, or you may choose to become a resident of the new state. It also means that if you get a job while you are living in Arizona that your income from personal services performed in Arizona may be exempt from Arizona tax.
- Q2.** When will the relief provided under the Military Spouses Residency Relief Act apply?
- A2.** The relief will apply to taxable years 2009 and later. It does not affect income taxes imposed or paid for taxable years 2008 or earlier.
- Q3.** Who is eligible for relief under the Military Spouses Residency Relief Act?
- A3.** The spouse of an active duty military member who meets all of the following criteria is a qualifying spouse eligible for relief under the Military Spouses Residency Relief Act.
- The active duty military member is present in Arizona in compliance with military orders.

- The spouse is in Arizona solely to be with the active duty military member.
- The spouse maintains residence in another state, which is the same state of residence as the military member.

- Q4.** What type of income is eligible to be exempt from Arizona income tax under the Military Spouses Residency Relief Act?
- A4.** Income eligible to be exempt from Arizona income tax under the Military Spouses Residency Relief Act is wages, tips, or commissions you earned as an employee for services performed in Arizona.
- Q5.** What will cause a spouse of a military member to no longer be eligible for relief under the Military Spouses Residency Relief Act?
- A5.** Conditions that will cause the spouse to no longer be eligible for relief include the following.
- The service member leaves the service.
 - Divorce.
 - Physical separation due to duty changes. For example, the service member's orders move him or her to a location outside the state where the spouse is allowed to join the military member but the spouse chooses not to join the military member.
 - The spouse commits an action that clearly establishes Arizona as his or her state of residence. Such an action would include filing a court action, such as a claim for divorce or applying for certain state benefits which are available only to Arizona residents.
- Q6.** If a service member deploys to a war zone or other location where the spouse is not allowed to follow, will the spouse become ineligible for relief under the Military Spouses Residency Act?

A6. No.

Claiming a Refund of Amounts Withheld for 2009

- Q7.** If I am a qualifying military spouse and my 2009 wages are exempt from Arizona income tax, how can I claim a refund for amounts withheld during 2009?
- A7.** As an eligible spouse, you may claim a refund of wage withholding for taxable year 2009 by filing a 2009 Arizona individual nonresident income tax return (Form 140NR). When filing the 2009 Form 140NR, the qualifying spouse should enter the exempt wages on Form 140NR, page 2, line B4, in the column labeled "2009 Federal", but

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should not enter those wages in the column labeled “2009 Arizona.”

Arizona Withholding

- Q8.** As a spouse of an active duty military member, can I just pick a state of residence for Arizona withholding purposes?
- A8.** No. To become a resident of a state you must have physical presence in that state and show intent to become a resident of that state. If you have never lived in a state, you cannot simply tell your Arizona employer that you are now a resident in another state and are now exempt from withholding. You must be able to show that you had the residence in the other state before moving into Arizona. You must be able to prove that the residence existed by going through Arizona’s already existing list of facts and circumstances, or “proofs of intention” that will demonstrate residence. For more information about residency for Arizona income tax purposes, see Q&A number 15.

Qualifying Nonresident Spouse of an Active Duty Military Member — Working in Arizona

- Q9.** If my wages are exempt from Arizona tax, will I be subject to Arizona withholding?
- A9.** No. Even though Arizona taxes must be withheld from income earned for services performed in Arizona, the Military Spouses Residency Relief Act provides that such income earned by a qualifying spouse is not deemed to be income from services performed in Arizona. Therefore, that income would not be subject to Arizona withholding.
- Q10.** If my wages are exempt from Arizona tax, what do I need to do so that Arizona taxes are not withheld from my wages?
- A10.** If you are a qualifying spouse, and you do not want to have Arizona income tax withheld from your wages for services performed in Arizona, you must complete Arizona Form WECM, *Withholding Exemption Certificate for Military Spouses*. When you complete Arizona Form WECM, you must attach a copy of your spouse’s latest leave and earnings statement (LES) to Form WECM and you must allow your employer to make a copy of your military ID, which identifies you as a spouse of a service member. You must give the completed Arizona Form WECM to your employer. You should also keep a copy of the completed Arizona Form WECM for your records.

Unqualified Nonresident Spouse of an Active Duty Military Member – Working in Arizona

- Q11.** If I am a resident of State X living in Arizona solely to be with my active duty military spouse who is stationed in Arizona in compliance with military orders and my spouse is a resident of State Y, will my wages earned for services performed in Arizona be subject to Arizona withholding?
- A11.** Yes. Arizona taxes must be withheld from income earned for services performed in Arizona. Since you are not a qualifying spouse (because you and your spouse are residents of different states), you are not eligible for relief under the Military Spouses Residency Relief Act.

Arizona Resident Spouse of Active Duty Military Member – Working in Other State

- Q12.** If I am an Arizona resident who is living in another state solely to be with my active duty military member spouse, and I have a job in that state, can I have my employer withhold Arizona income tax from my wages?
- A12.** Although Arizona income tax is not required to be withheld from wages earned for services performed outside of Arizona, you may ask your employer to withhold Arizona income tax from your wages. Your employer may voluntarily agree to withhold Arizona income taxes from your wages for services performed in another state. Use Arizona Form A-4V to request voluntary withholding of Arizona income tax from wages earned for services performed in another state.
- Q13.** If I am an Arizona resident who is living in another state solely to be with my active duty military member spouse, and I have a job in that state, what should I do if my employer will not agree to withhold Arizona income tax from my wages?
- A13.** As an Arizona resident, your income earned in another state is subject to Arizona income tax. If your employer will not withhold Arizona income tax from your wages earned in another state, you may make voluntary estimated income tax payments to Arizona even though you may not be required to make estimated payments to Arizona. Use Form 140ES to make Arizona estimated income tax payments. Individuals that meet an income threshold (\$150,000 for married taxpayers filing a joint return) are required to make Arizona

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estimated payments. For more information about Arizona estimated income tax payments, see Arizona Form 140ES.

Residency for Arizona Income Tax Purposes

Q14. In 2009, I was an Arizona resident when I married an active duty military member who is a nonresident of Arizona and I am now living outside of Arizona to be with my military spouse who is stationed in another state in compliance with military orders. Will I continue to be an Arizona resident for income tax purposes?

A14. Yes. Beginning with 2009, for Arizona purposes, an individual who was an Arizona resident when he or she married an active duty military member is considered to be an Arizona resident regardless of where the individual is living. That individual would continue to be an Arizona resident until a change of residence is established.

Q15. Can an Arizona resident who is the spouse of an active duty military member change his or her residency to another state, or can a nonresident spouse of an active duty military member change his or her residency to Arizona? If so, how?

A15. Yes, it is possible for a spouse of an active duty military member to change residency.

The question of residency for state income tax purposes cannot be answered by a general rule but depends largely on the circumstances of each case.

An Arizona resident who is the spouse of an active duty military member continues to be a resident for state income tax purposes, even when temporarily absent from the state to be with his or her military spouse who is in another state in compliance with military orders. However, it is possible for an Arizona resident who is the spouse of an active duty military member to change residency by showing evidence of definite intent to change. Examples of actions that are considered in determining a person's change of residency include the following:

- Physical presence of yourself, and your spouse and children, if any, in the new locality.
- Registering to vote in the location of the new residence and notifying voter registration officials in the old locality of your change of residence.
- Location of bank accounts and business connections in new locality.
- Purchase of a home in new locality and/or

sale of an old home in former locality.

- Payment of personal or real property taxes in new locality.
- Payment of state income taxes in new locality.
- Registration of automobile in the new locality.
- Applying for or renewing a driver's license in new location and relinquishing your old one.
- Consistent use of new location permanent address on all appropriate records and correspondence.

The determination of residency is dependent on physical presence and an intent to abandon the former residence and remain in the new residence for an indefinite period of time. A new residence can only come into being when both of these criteria coexist. For more information about residency for Arizona income tax purposes, see Arizona Department of Revenue individual income tax procedure ITP 92-1.

Q16. During 2008, I moved into Arizona to be with my nonresident military spouse who is in Arizona in compliance with military orders. During 2008, I became an Arizona resident, but my spouse did not. My military member spouse kept a previous residence that my spouse established in another state. I have never lived in my spouse's state of residence. For Arizona income tax purposes, now that the Military Spouses Residency Relief Act has passed, can I just change my state of residence to be the same as my spouse's state of residence?

A16. No, the Military Spouses Residency Relief Act does not apply to 2008 or prior years. Once you became an Arizona resident during 2008, you continue to be an Arizona resident until a change of residence is established. To become a resident of another state you must have physical presence in that state and show intent to become a resident of that state. For more information about residency for Arizona income tax purposes, see Q&A number 15.

Q17. During 2008, I moved into Arizona to be with my nonresident military spouse who is in Arizona in compliance with military orders. During 2008, I became an Arizona resident, but my spouse did not. My military member spouse kept a previous residence that my spouse established in another state. Prior to moving to Arizona, I was a resident of my spouse's state of residence. For Arizona income tax purposes, now that the Military

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Spouses Residency Relief Act has passed, can I just change my state of residence back to my spouse's state of residence?

- A17.** No, the Military Spouses Residency Relief Act does not apply to 2008 or prior years. Once you became an Arizona resident during 2008, you continue to be an Arizona resident until a change of residence is established. To become a resident of another state you must have physical presence in that state and show intent to become a resident of that state. For more information about residency for Arizona income tax purposes, see Q&A number 15.
- Q18.** During 2009, I moved to Arizona to be with my nonresident military spouse who is in Arizona in compliance with military orders. Even though I got an Arizona driver's license and registered my car in Arizona, can I keep my previous residence that I established in another state prior to moving to Arizona?
- A18.** Yes, since the Military Spouses Relief Act is effective for 2009, you do not have to change your state of residence to Arizona. For Arizona income tax purposes, you may keep your previous state of residence that you established prior to moving to Arizona to be with your spouse in compliance with military orders.
- Q19.** I was a resident of State X when I married an active duty military member who was a resident of State Y. My military member spouse is still a resident of State Y. I moved from State X to live in Arizona to be with my active duty military spouse who is stationed in Arizona in compliance with military orders. Under the new law, can I just adopt my spouse's State Y as my state of residence because my military spouse is a resident of State Y?
- A19.** No, under the new law, you remain a resident of State X. Because you are living in Arizona, you can choose to become a resident of Arizona. You cannot become a resident of State Y merely because your military member spouse is a resident of State Y. To become a resident of State Y, you must have physical presence in State Y and show intent to become a resident of State Y. For more information about residency for Arizona income tax purposes, see Q&A number 15.
- Q20.** As a spouse of an active duty military member, can I just inherit the residence of the service member upon marriage?
- A20.** No. The spouse does not "inherit" the residence of the service member upon marriage. To become a

resident of a state you must have physical presence in that state and show intent to become a resident of that state. For more information about residency for Arizona income tax purposes, see Q&A number 15.

Arizona Income Tax Returns

- Q21.** Who must file an Arizona income tax return?
- A21.** An individual is required to file an Arizona income tax return if he or she has for the taxable year:
- An Arizona adjusted gross income of \$5,500 or more if single, unmarried head of household or married filing a separate return.
 - An Arizona adjusted gross income of \$11,000 or more if married filing a joint return.
 - Gross income of \$15,000 or over, regardless of the amount of taxable income.

For filing purposes, figure your gross income the same as you would figure your gross income for federal income tax purposes. Then, you should exclude income Arizona law does not tax. For example, income Arizona law does not tax includes interest from U.S. government obligations and active duty military pay. Additionally, starting with 2009, in some cases, income earned for services performed in Arizona by an Arizona nonresident spouse of an active duty military member may be exempt from Arizona tax.

Arizona Resident Spouse

Arizona Resident Living in Arizona with Arizona Resident Military Spouse Stationed in Arizona

- Q22.** I am an Arizona resident and I am married to an active duty military member who is an Arizona resident stationed in Arizona in compliance with military orders. I am living in Arizona with my spouse. What income tax form should we file, and what income should we report on that form?
- A22.** An Arizona resident is taxable on all income from wherever derived, unless the income is specifically excluded from Arizona taxation. You do not have to file an Arizona income tax return if the only income you and your spouse had for the taxable year is compensation your spouse received for active duty military service and there was no Arizona income tax withheld from that pay. However, if you or your spouse had any other income, and meet the Arizona filing requirements, you must file an Arizona return using Form 140. Only one return is required if you file as married filing jointly. You must report

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all income from all sources, including your spouse's active duty military pay. Because Arizona does not tax your spouse's active duty military pay, you should subtract the amount of active duty military pay that you included in your federal adjusted gross income. If filing separate returns, each spouse must report his or her separate income (if any) and one-half of community income.

Arizona Resident Living in Arizona with Arizona Nonresident Military Spouse Stationed in Arizona

Q23. I am an Arizona resident and I am married to an active duty military member who is an Arizona nonresident who is stationed in Arizona in compliance with military orders. I am living in Arizona with my spouse. What income tax form should we file, and what income should we report on that form?

A23. You do not have to file an Arizona income tax return if the only income you and your spouse had for the taxable year is compensation your spouse received for active duty military service. However, an Arizona resident is taxable on all income from wherever derived, unless the income is specifically excluded from Arizona taxation. If you had any income or if your military spouse had any Arizona source income, you must file an Arizona return if you meet the filing requirements. If you want to file a joint Arizona income tax return, you must file using Form 140NR. On page 2 of Form 140NR, in the "federal" column, you should report all income from everywhere and in the "Arizona" column, you should report all of your income from everywhere and your nonresident military spouse should only report income derived from Arizona sources. Your military spouse should not enter any amount of military compensation in the "Arizona" column. If filing separate returns, you must file using Form 140 and your spouse must file using Form 140NR. On these returns, each spouse must report his or her separate income (if any) taxable to Arizona and one-half of community income taxable to Arizona.

Arizona Resident Living in Other State with Arizona Nonresident Military Spouse Stationed in that Other State

Q24. I am an Arizona resident and I am married to an active duty military member who is an Arizona nonresident who is stationed outside of Arizona. I am living in the state in which my spouse is stationed solely to be with my spouse. What

income tax form should we file, and what income should we report on that form?

A24. You do not have to file an Arizona income tax return if the only income you and your spouse had for the taxable year is compensation your spouse received for active duty military service. However, an Arizona resident is taxable on all income from wherever derived, unless the income is specifically excluded from Arizona taxation. If you had any income or if your military spouse had any Arizona source income, you must file an Arizona return if you meet the filing requirements. If you want to file a joint Arizona income tax return, you must file using Form 140NR. On page 2 of Form 140NR, in the "federal" column, you should report all income from everywhere and in the "Arizona" column, you should report all of your income from everywhere and your nonresident military spouse should only report income derived from Arizona sources. Your military spouse should not enter any amount of military compensation in the "Arizona" column. If filing separate returns, you must file using Form 140 and your spouse must file using Form 140NR. On these returns, each spouse must report his or her separate income (if any) taxable to Arizona and one-half of community income taxable to Arizona.

Nonresident Spouse

Arizona Nonresident Living in Arizona with Arizona Resident Military Spouse Stationed in Arizona

Q25. I am an Arizona nonresident who is living in Arizona solely to be with my spouse who is an active duty military member who is stationed in Arizona in compliance with military orders. My military spouse is an Arizona resident. What income tax form should we file, and what income should we report on that form?

A25. You do not have to file an Arizona income tax return if the only income you and your spouse had for the taxable year is compensation your spouse received for active duty military service and there was no Arizona income tax withheld from that pay. If you had any income from an Arizona source (including any income you earned for personal services performed in Arizona), or if your spouse had any income in addition to his or her military income, you must file an Arizona income tax return if you meet the Arizona filing requirements. Since you and your spouse are residents of different states, any income you earned for personal services performed in Arizona

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is subject to Arizona income tax. If you are required to file an Arizona income tax return and you want to file a joint Arizona income tax return, you must file using Form 140NR. On page 2 of Form 140NR, you must report all income from everywhere. Report all of your income in the "federal" column. In the "Arizona" column you must include your Arizona source income and your spouse's military income. Because Arizona does not tax your spouse's active duty military pay, you should subtract the amount of your spouse's active duty military pay that you included in your Arizona gross income (the amount included in the "Arizona" column) as an "other subtraction from income" on Form 140NR, page 2, Part D. If filing separate returns, you must file using Form 140NR and your spouse must file using Form 140. On these returns, each spouse must report his or her separate income (if any) taxable to Arizona and one-half of community income taxable to Arizona.

Arizona Nonresident Spouse in Arizona with Arizona Nonresident Military Spouse Stationed in Arizona - Both Residents of the Same State

Q26. I am an Arizona nonresident married to an active duty military member who is an Arizona nonresident stationed in Arizona in compliance with military orders. I am living in Arizona solely for the purpose of being with my military spouse. My military spouse and I are both residents of the same state. What income tax form should we file, and what income should we report on that form?

A26. You do not have to file an Arizona income tax return if your only income for the taxable year is income you earned for personal services performed in Arizona and there was no Arizona income tax withheld from that income, and your spouse's only income for the taxable year is compensation received for active duty military service. If Arizona tax was withheld from your income for services performed in Arizona you must file an Arizona income tax return to claim any refund you may be due from that withholding. You must also file an Arizona income tax return if you have any other Arizona source income or if you military spouse has any Arizona source income and you meet the Arizona filing requirements. If you are required to file an Arizona income tax return, you must file using Arizona Form 140NR.

Arizona Nonresident Living in Arizona with Arizona Nonresident Military Spouse Stationed in Arizona - Residents of Two Different States

Q27. I am an Arizona nonresident married to an active duty military member who is an Arizona nonresident stationed in Arizona in compliance with military orders. I am living in Arizona solely for the purpose of being with my military spouse. My military spouse and I are residents of two different states. What income tax form should we file, and what income should we report on that form?

A27. You do not have to file an Arizona income tax return if the only income you or your spouse had during the year was your spouse's military income. However, if you or your spouse had any Arizona source income (including any income you earned for personal services performed in Arizona), you must file an Arizona income tax return if you meet the Arizona filing requirements. Since you and your spouse are residents of different states, any income you earned for personal services performed in Arizona is subject to Arizona income tax. If you are required to file an Arizona income tax return you must file using Form 140NR.

For Additional Information, call:

Phoenix.....(602) 255-3381
Toll free from area codes 520 & 928
.....(800) 352-4090

For Hearing Impaired - TDD only:

Phoenix.....(602) 542-4021
Toll free from area codes 520 & 928
.....(800) 397-0256

Or Write to:

Arizona Department of Revenue
Taxpayer Information & Assistance
1600 W Monroe Phoenix AZ 85007

For Related Tax Information:

Internet www.azdor.gov

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