

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100173	Nonresident Military Spouse Withholding Exemption - Common Questions

State of Wisconsin
Department of Revenue

Nonresident Military Spouse Withholding Exemption

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

(Military Spouses Residency Relief Act, Public Law 111-97)

Federal law allows a military servicemember's spouse to keep a tax domicile throughout the marriage, even if the spouse moves into another state, as long as the spouse moves into the other state to be with a servicemember who is in the state because of military orders. The stated purpose of the law is to eliminate the burden of filing multiple part-year and nonresident income tax returns. The law allows income from self-employment and wages for services performed in Wisconsin (but not other income, such as income from the rental or sale of property located in Wisconsin or certain gambling winnings) to be sourced to a state other than the state in which the income from self-employment and wages are earned.

1. Who is eligible?
2. How does the servicemember's spouse claim a refund for Wisconsin income taxes withheld during 2019?
3. What does the servicemember's spouse need to do in order to not have Wisconsin income taxes withheld from wages during 2020?
4. Must the servicemember and spouse reside together in Wisconsin?
5. May the spouse claim a new state of domicile after moving into Wisconsin and be eligible for the exemption?
6. What income is eligible for the exemption?
7. What causes the spouse to no longer be eligible for the exemption?
8. How does the servicemember's spouse notify the employer that he/she is no longer eligible for the exemption?

1. **Who is eligible?**

A spouse of a servicemember may be exempt from Wisconsin income tax on income from self-employment and wages for services performed in Wisconsin if all of the following are true:

1. The servicemember is present in Wisconsin in compliance with military orders
2. The spouse is in Wisconsin solely to be with the servicemember
3. The spouse maintains a domicile (legal residence) in another state

If the spouse meets the above requirements, the spouse is entitled to a refund of any taxes paid to Wisconsin through withholding and estimated payments in 2019. The spouse will pay tax to the state of his/her domicile for 2019, if the state has an income tax.

2. **How does the servicemember's spouse claim a refund for Wisconsin income taxes withheld during 2019?**

The servicemember's spouse must file a 2019 [Form 1NPR](#) (income tax return for nonresidents and part-year residents of Wisconsin) to claim a refund of Wisconsin income taxes withheld. See [page 16](#) of the 2019 Form 1NPR instructions. Fill in "15" in the Special Conditions box on page 1 of the Form 1NPR. If more than one Special Condition applies to the servicemember or spouse, put "99" in the box, and list the separate code numbers on the line next to the box. Do not include Wisconsin wages on page 1, column B, line 1. Report Wisconsin withholding on page 3, line 59. Fill in the rest of the form.

3. **What does the servicemember's spouse need to do in order to not have Wisconsin income taxes withheld from wages during 2020?**

To claim an exemption from Wisconsin withholding, the nonresident spouse of the servicemember must file Wisconsin [Form W-221, Nonresident Military Spouse Withholding Exemption](#), with his/her employer. It is not necessary for this form to be filed annually. It remains in effect until revoked (see below).

4. **Must the servicemember and spouse reside together in Wisconsin?**

Yes. The servicemember and spouse must reside together in Wisconsin for the spouse to be eligible to be exempt from Wisconsin income tax on income from self-employment and wages for services performed in Wisconsin. The servicemember and spouse may be domiciled in different states.

5. **May the spouse claim a new state of domicile after moving into Wisconsin and be eligible for the exemption?**

No. The spouse must have established a domicile in a state other than Wisconsin prior to moving to and residing in Wisconsin with the servicemember spouse in order to qualify for the exemption.

The spouse must be able to show that he/she established a domicile in another state before moving into Wisconsin and the spouse must maintain the earlier domicile while residing in Wisconsin with his/her servicemember spouse.

6. **What income is eligible for the exemption?**

- o Wages for services performed in Wisconsin
- o Income from self-employment for services performed in Wisconsin
- o Pass-through entity income unless the pass-through entity has income from Wisconsin sources
- o Real estate rental income from property not located in Wisconsin

- o Royalty income
- o Investment income

7. What causes the spouse to no longer be eligible for the exemption?

- o The servicemember leaves military service
- o The servicemember and spouse are divorced or separated
- o Physical separation due to duty changes where the spouse is allowed to follow but chooses not to
- o The spouse takes an action that clearly establishes Wisconsin as his/her state of domicile

Examples:

- o Filing a court action
- o Accepting in-state tuition
- o Applying for certain state benefits such as tax credits available only to Wisconsin domiciliaries

8. How does the servicemember's spouse notify the employer that he/she is no longer eligible for the exemption?

The servicemember's spouse must notify the employer that he/she is no longer eligible for the exemption by completing Wisconsin [Form W-221](#), *Nonresident Military Spouse Withholding Exemption*, and submitting it to the employer. There is a check box on the form for the spouse to indicate that he/she no longer qualifies for the exemption. The nonresident spouse will also have to complete Wisconsin [Form WT-4](#), *Wisconsin Withholding Exemption Certificate*, and submit it to the employer so that the correct amount of Wisconsin income tax can be withheld from wages.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of October 22, 2019: Section 71.01, Wis. Stats., and 50a U.S. Code § 571.

Laws enacted and in effect after October 22, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to October 22, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

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