

**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
100170	Individual Income Tax Military - Common Questions

State of Wisconsin
Department of Revenue

Individual Income Tax Military

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.

1. Does Wisconsin tax military retirement income?
2. Does Wisconsin exempt any portion of military pay?
3. Are Wisconsin residents serving in the armed forces liable for Wisconsin income taxes? What if the person is stationed outside Wisconsin or overseas?
4. Can a Wisconsin resident serving in the armed forces be taxed by any other state on military pay?
5. Is a legal resident of another state, who is stationed in Wisconsin on military orders, liable for Wisconsin income taxes on military pay?
6. Can a Wisconsin resident in the armed forces change his or her legal residence (domicile) to another state? If so, how?
7. I am a Wisconsin resident in the military. My spouse is not a Wisconsin resident and has no Wisconsin income. Which tax return do I file for Wisconsin?
8. If I am a Wisconsin resident in the armed forces or a legal resident of another state stationed in Wisconsin on military orders, is my spouse liable for Wisconsin income taxes?
9. I am in the military and stationed outside Wisconsin. I remain a Wisconsin resident. My spouse, who is also from Wisconsin, is living with me outside Wisconsin. My spouse is not in the military but is earning income outside Wisconsin. Is my spouse still considered a Wisconsin resident and required to pay taxes to Wisconsin on income earned outside Wisconsin?
10. I am in the military and a resident of Minnesota in 2019. My spouse and I are married on July 1, 2019. We move to Virginia pursuant to military orders on October 1, 2019. My spouse makes an election under the federal Veterans Benefits and Transition Act of 2018 to change legal residency from Wisconsin to Minnesota. How is my spouse's income reported on Form 1NPR?
11. I am a nonresident service member stationed in Wisconsin. My spouse and I own rental property in Wisconsin and are required to file a Wisconsin return. We wish to file a Form 1NPR using the married filing joint status. Does any of my military compensation get reported on the Form 1NPR?

12. I am in the military and stationed outside the United States. Can I claim the armed forces member credit?
 13. I am living in another state while in the military. I maintain my Wisconsin residency, but my personal residence during the tax year is located outside Wisconsin. Can I use the rent I paid on my personal residence located outside Wisconsin to calculate the school property tax credit on my Wisconsin income tax return?
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1. Does Wisconsin tax military retirement income?

No. All retirement payments received from the U.S. military retirement system (including payments from the Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan) are exempt from Wisconsin income tax.

Defense Finance and Accounting Service (DFAS) only pays retirement income to military retirees and their surviving spouses and other family members. Therefore, retirement payments from this payer are always exempt from Wisconsin income tax.

2. Does Wisconsin exempt any portion of military pay?

Military pay that is exempt for federal tax purposes is also exempt for Wisconsin. For example, military pay that qualifies for the federal combat pay exclusion is also exempt for Wisconsin tax purposes.

Note: A qualified hazardous duty area (the Sinai Peninsula of Egypt) is treated in the same manner as if it were a combat zone for purposes of the exclusion of certain combat pay of members of the armed forces.

In addition, if you were a member of the Reserves or National Guard and served on active duty, you may subtract any military pay that is included on your W-2 and meets all of the following:

- Received from the federal government
- Received after being called into active federal service or into special state service authorized by the federal Department of Defense
- Paid to you for a period of time during which you were on active duty

CAUTION: The subtraction only applies to members of the Reserves or National Guard who are called into active federal service under 10 USC 12302(a) or 10 USC 12304 or into special state service under 32 USC 502(f). However, it does not apply to pay that members of the Reserves and National Guard receive for their weekend or two-week annual training. It also does not apply to a person who is serving on active duty or full-time duty in the active guard reserve (AGR) program.

3. Are Wisconsin residents serving in the armed forces liable for Wisconsin income taxes? What if the person is stationed outside Wisconsin or overseas?

Yes. Wisconsin residents in the armed forces are liable for Wisconsin income taxes on their entire annual Wisconsin net taxable income, regardless of the income source. If a Wisconsin resident is serving in the armed forces outside Wisconsin, including overseas, the person is liable for Wisconsin income taxes on the entire annual Wisconsin net taxable income, wherever

earned, just as if the person was physically present in Wisconsin throughout the year. Some military pay may be exempt from Wisconsin income tax. See Question and Answer 2 for more information.

4. Can a Wisconsin resident serving in the armed forces be taxed by any other state on military pay?

No. Under the federal Servicemembers Civil Relief Act, a Wisconsin resident in the armed forces cannot be taxed on military pay by any other state. However, a Wisconsin resident can be taxed as a nonresident by another state on income, other than military pay, earned from employment or property in that state. In such a case, a tax credit would usually be allowed by Wisconsin.

5. Is a legal resident of another state, who is stationed in Wisconsin on military orders, liable for Wisconsin income taxes on military pay?

No. However, this person is liable for Wisconsin income taxes on any income, other than military pay, from employment in Wisconsin, a business conducted in Wisconsin, property located in Wisconsin, a Wisconsin state lottery or a multi-jurisdictional lottery ticket purchased in Wisconsin, Wisconsin pari-mutuel wager winnings and purses, or winnings from a Native American casino or bingo hall located in Wisconsin. The person must file a Wisconsin tax return if his or her gross income from Wisconsin sources is \$2,000 or more.

6. Can a Wisconsin resident in the armed forces change his or her legal residence (domicile) to another state? If so, how?

Yes, a person can abandon his or her Wisconsin legal residence (domicile) and establish a legal residence in another state. A Wisconsin legal resident (domiciliary) who enters the armed forces remains a Wisconsin legal resident unless positive action is taken to abandon Wisconsin residency and establish legal residence in another state. Changing legal residence requires all of the following:

- Physical presence in the new locality
- An intent to remain there permanently or indefinitely and take actions that show that intent
- An intent to abandon the old legal residence and take actions that show that intent

Actions which express intent may include, but are not limited to:

- Changing legal documents, such as a will or insurance policies, to reflect the new legal residence
- Changing home of record upon reenlistment
- Registering to vote in the new locality
- Paying state taxes in the new locality
- Applying for a driver's license in the new state of residence and relinquishing the Wisconsin driver's license
- Registering a car in the new state of residence and relinquishing Wisconsin car registration
- Purchasing a home in the new state of residence and selling a Wisconsin home
- Consistently using the new permanent address on all appropriate records and correspondence

Moving from one duty station to another does not by itself constitute a change of legal residence. Filing the correct military papers to change your state of residency by itself does not constitute legally changing your state of residency. If you are unclear about your situation,

you should contact the department for further clarification before you change your state of residency with the military.

Persons claiming change of legal residence (domicile) from Wisconsin to another state should file a "Legal Residence (Domicile) Questionnaire" with the Wisconsin Department of Revenue.

7. I am a Wisconsin resident in the military. My spouse is not a Wisconsin resident and has no Wisconsin income. Which tax return do I file for Wisconsin?

In this situation you have two options. You can file a Wisconsin Form 1 with a filing status of married filing separately. Under this option, you show only your income on the Form 1. However, your tax may be higher than if you filed as married filing jointly.

The other option is to file a Wisconsin [Form 1NPR](#), which is the income tax form for part-year residents and nonresidents. Under this option you can file a joint return with your spouse even though your spouse is a nonresident. If you use Form 1NPR, your spouse's income will not be taxed. However, your spouse's income is used in calculating the ratio of your Wisconsin income to the combined federal income of you and your spouse. This ratio is then used to determine your Wisconsin tax. See the Wisconsin [Form 1NPR Instructions](#) for more information. You should compute your tax liability under both options and then file under the option that is most advantageous to you.

8. If I am a Wisconsin resident in the armed forces or a legal resident of another state stationed in Wisconsin on military orders, is my spouse liable for Wisconsin income taxes?

The federal Veterans Benefits and Transition Act of 2018 allows a military service member's spouse to:

- Keep his or her legal residence for tax purposes so long as the spouse is absent from the state solely to be with the service member serving in compliance with military orders, or
- Elect to use the same legal residence for tax purposes as the service member.

If your spouse is a legal resident of Wisconsin, he or she is liable for Wisconsin income taxes as any other resident, regardless of where he or she resides.

If your spouse is a nonresident of Wisconsin, his or her income from services performed (for example, wages or services from self-employment) in Wisconsin is not taxable to Wisconsin as long as the nonresident spouse is in Wisconsin solely to be with the service member who is serving in Wisconsin in compliance with military orders. However, he or she is liable for Wisconsin income taxes on income from a business conducted in Wisconsin, property located in Wisconsin, a Wisconsin state lottery or a multijurisdictional lottery ticket purchased in Wisconsin, Wisconsin pari-mutuel wager winnings and purses, or winnings from a Native American casino or bingo hall located in Wisconsin.

Note: Even though the nonresident spouse's income may not be taxable to Wisconsin, it would be taxable to the nonresident spouse's state of legal residence.

9. I am in the military and stationed outside Wisconsin. I remain a Wisconsin resident. My spouse, who is also from Wisconsin, is living with me outside Wisconsin. My spouse is not in the military but is earning income outside Wisconsin. Is my spouse still considered a Wisconsin resident and required to pay taxes to Wisconsin on income earned outside Wisconsin?

Your spouse is a Wisconsin resident unless your spouse has taken steps to change his/her domicile to another state. If your spouse meets the following three requirements, your spouse would not be considered a Wisconsin resident and would not be required to file Wisconsin income tax returns. Your spouse must have all of the following apply:

- a. Take actions to abandon the Wisconsin domicile
- b. Be physically present in the new state of residence
- c. Take actions to establish a new domicile in the new state of residence

If your spouse does not meet all three of these requirements, your spouse would still be considered a Wisconsin resident and would be required to file Wisconsin income tax returns. A Wisconsin resident's world-wide income is reportable to Wisconsin.

Note: If your spouse is a Wisconsin resident and is living in another state solely to be with you (the service member) and you are there in compliance with military orders, income from services performed by the spouse are not taxable to the other state. The income is taxable only to Wisconsin.

10. **I am in the military and a resident of Minnesota in 2019. My spouse and I are married on July 1, 2019. We move to Virginia pursuant to military orders on October 1, 2019. My spouse makes an election under the federal Veterans Benefits and Transition Act of 2018 to change legal residency from Wisconsin to Minnesota. How is my spouse's income reported on Form 1NPR?**

Income received by the nonresident spouse is only taxable to Wisconsin if it is considered income from Wisconsin sources (e.g., wages earned in Wisconsin). Income which is not taxable to Wisconsin should not be included in the Wisconsin column of Form 1NPR. However, these amounts are still included in the federal column of Form 1NPR.

11. **I am a nonresident service member stationed in Wisconsin. My spouse and I own rental property in Wisconsin and are required to file a Wisconsin return. We wish to file a Form 1NPR using the married filing joint status. Does any of my military compensation get reported on the Form 1NPR?**

No. The federal Servicemembers Civil Relief Act (Public Law 108-189) precludes any tax jurisdiction from using military compensation of a nonresident service member to increase the tax liability imposed on other income earned by the nonresident service member or spouse subject to tax by the jurisdiction. This means that not only do you not report the nonresident service member military income in the Wisconsin column (column B, line 1) of the Form 1NPR, but you also do not include it in the Federal column (column A, line 1). The service member should fill in "09" in the "Special Conditions" box on Form 1NPR and write the amount of military compensation received on the line next to the box.

12. **I am in the military and stationed outside the United States. Can I claim the armed forces member credit?**

A member of the U.S. armed forces on active duty who receives military pay from the federal government while stationed outside the United States may qualify for the armed forces member credit. The tax credit equals the amount of military pay for services performed while stationed outside the United States, up to a maximum credit of \$300. For a married couple filing a joint return, if both spouses qualify for the credit, each may claim up to \$300. Part-year residents and nonresidents of Wisconsin are not eligible for the credit.

Members of the National Guard ordered to active duty in the U.S. armed forces are eligible for this credit provided they were stationed outside the United States and received their military pay from the federal government.

Note: You cannot claim the armed forces member credit if you were a member of the Reserves or National Guard and claimed an exclusion from income for your active duty military pay. The exclusion applies to certain members of the Reserves or National Guard who were called into active federal service under 10 USC 12302(a) or 10 USC 12304 or into special state service under 32 USC 502(f).

13. I am living in another state while in the military. I maintain my Wisconsin residency, but my personal residence during the tax year is located outside Wisconsin. Can I use the rent I paid on my personal residence located outside Wisconsin to calculate the school property tax credit on my Wisconsin income tax return?

Yes, you can use the rent you paid on your principal home, even if it is located outside Wisconsin, to calculate the school property tax credit. However, you may **not** use rent paid for housing that is exempt from property tax, such as military housing or certain university-owned housing.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of October 31, 2019: Sections 71.01, 71.02, 71.03, 71.04, 71.05 and 71.07, Wis. Stats., secs. Tax 2.01, 2.08 and 3.04, Wis. Adm. Code, 10 U.S. Code §§ 12302 and 12304, 32 U.S. Code § 502, and 50 U.S. Code § 4001.

Laws enacted and in effect after October 31, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to October 31, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

WISCONSIN DEPARTMENT OF REVENUE

Individual Income Tax Assistance

PO Box 8949

Madison, WI 53708-8949

Phone: (608) 266-2486

Fax: (608) 267-1030

Email additional questions to DORIncome@wisconsin.gov

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