

Military personnel filing information



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www.oregon.gov/DOR

Military personnel are usually considered to be domiciled in the state where they joined the service. Military assignment alone does not change domicile.

As a member of the armed forces, you may establish a new domicile during a tour of military duty if you meet certain requirements.

This information will help you decide how to file your Oregon individual income tax return.

Nonresidents stationed in Oregon

Oregon doesn't tax your military pay if you're a nonresident stationed in Oregon. If you're married and your spouse is a nonresident who only came to Oregon to be with you while you are stationed here, then Oregon doesn't tax your spouse's income from services performed in Oregon. It is not considered Oregon-source income.

You, and your spouse, don't need to file an Oregon return unless you had other income that was from an Oregon source or had Oregon tax withheld from your pay. Examples of Oregon-source income include:

- Wages from a job you held during off-duty hours, or
- Earnings from an Oregon business or rental property.

Note: Interest income received by a nonresident from an Oregon bank account generally is not taxable by Oregon.

If you or your spouse had Oregon withholding, you should file to claim a refund. You may also want to stop withholding Oregon taxes if your income is not taxable to Oregon.

How to file. Use Form 40N. If you filed a joint federal return, file a joint Oregon return. Enter all wages (including your military income) on line 8 in the federal column only. Do **not** enter your **eligible military pay** in the Oregon column. Do **not** enter your **nonresident spouse's income** from services performed in Oregon (wages) in the Oregon column, if the income is not taxed by Oregon because your spouse is only in Oregon to be with you while you are stationed here. Report any income taxable by Oregon on the form.

On line 37F, subtract the military wage income you reported in the federal column on line 8F and identify with subtraction code 319. On line 37S, enter zero. It is important to enter your military pay this way because it affects the amount of deductions and credits you're entitled to claim. Do **not** subtract your **spouse's income** on line 37F or 37S. Write "Military Nonresident" at the top of your Form 40N in blue or black ink.

National Guard and armed forces reserves. Members of the National Guard or reserves who are nonresidents are treated the same as any other nonresident military member working in Oregon. See **Nonresidents stationed in Oregon** above.

Example 1: Selina is a nonresident stationed in Oregon on active duty. She has no other Oregon-source income. She does not have any Oregon income tax withheld from her military pay. Selina is not required to file an Oregon return.

Example 2: Jared is a nonresident stationed in Oregon on active duty. In his off-duty hours, he works part-time for an Oregon employer. Because Jared has Oregon income other than his military wages, he will file Oregon Form 40N. For instructions on how to complete an Oregon Form 40N, see **Nonresidents stationed in Oregon**.

Example 3: Lisa is a nonresident stationed in Oregon on active duty. Her husband, Randy, came to Oregon to be with her while she is stationed here. Lisa and Randy are originally from Colorado and have moved here because of her military orders. Randy works for an Oregon employer. When Lisa and Randy fill out their Oregon Form 40N, they will not include Lisa's military pay or Randy's wages in the Oregon column. They have no other Oregon-source income, so they will receive a refund of all of the Oregon tax withheld from Lisa and Randy's wages. If required by Colorado, Lisa and Randy will file and pay taxes to Colorado on their income.

Oregon residents stationed outside Oregon

Military personnel who enter the armed forces from Oregon do not lose their Oregon residence or “domicile” merely by being stationed outside Oregon. However, for income tax purposes, if you meet certain requirements you may be considered a nonresident and will not have to pay Oregon tax on your military pay.

Requirements. If you meet all three of the following requirements, you are treated as a nonresident for Oregon tax purposes:

1. You did not have a permanent residence in Oregon for yourself or your family during any part of the tax year, and
2. Your permanent residence was outside Oregon during the entire tax year, and
3. You spent less than 31 days in Oregon during the tax year.

If you meet these three nonresident requirements but have Oregon income tax withheld from your military pay, you should file an Oregon nonresident tax return to get a refund of withholding.

You will owe Oregon tax only if you had income from another Oregon source. This income may be from an Oregon property sale, a business, or rental property located in Oregon.

How to file. Use the same procedure described previously under “How to file” for nonresidents stationed in Oregon.

If you do not meet all three requirements above, your military pay and all other income is subject to Oregon tax. You must file an Oregon individual income tax return. If you have active duty pay, you need to file Form 40. See below for the active duty pay subtractions you may be able to claim.

Withholding exemption. You have the option to stop Oregon withholding from your military active duty pay if all of the following are true:

- You had a right to a refund of all 2009 Oregon income tax withheld because you had no tax liability, and
- You expect a refund of all 2010 Oregon income tax withheld because you think you won’t have any tax liability, and
- You expect to be stationed outside of Oregon all of 2010.

If all of the above are true and you do not want Oregon tax withheld from your military active duty pay,

you must file a second Form W-4. This second Form W-4 is for Oregon tax purposes only and is in addition to your federal Form W-4.

When completing a Form W-4 for Oregon only, write “exempt” on line 7. At the top, write “For Oregon Only—Stationed Outside Oregon” in blue or black ink. Give this Form W-4 to your pay clerk.

If you file a joint return and your spouse, who is also an Oregon resident, had income from a source outside of Oregon, you must include this income on your Oregon Form 40. However, you may be eligible for a credit for income taxes paid to another state. For more information, go to our website or call us.

Active duty pay subtractions

You may qualify for more than one subtraction for U.S. military active duty pay. To be eligible for the subtractions, the active duty pay must be included in federal adjusted gross income (AGI). Guard and reserve annual training, weekend drills, and inactive duty training are considered active duty.

The Oregon military active duty pay subtractions are:

- 1. Active duty outside Oregon.**¹ As of August 1, 1990, you can subtract active duty pay earned anywhere outside Oregon until the date the president sets as the end of combat zone activities. The date was not set when this material was printed. You are not required to be stationed in a designated combat zone to be eligible for this subtraction.
- 2. Active duty in Oregon.*** You may subtract up to \$6,000 of active duty pay earned in Oregon. Each spouse receiving active duty pay may claim the subtraction up to a limit of \$6,000 each (\$12,000 total on a joint return).

** For an additional National Guard and reservist military service pay subtraction, see information on page 3.*

Total subtraction. You may qualify for more than one military active duty pay subtraction. However, your total subtraction can’t be more than the total active duty pay included in federal AGI. The following examples show the active duty pay subtractions described above.

1 If the president sets a date for the end of combat zone activities before the end of the year, please contact us in Salem at 503-378-4988 or toll-free from an Oregon prefix at 1-800-356-4222. You may be eligible for a subtraction of pay received in the year of initial entry or year of discharge for active duty pay earned outside Oregon under ORS 316.680(1)(c)(B).

Example 3: Seth, an Oregon resident, enlisted in the Navy. He earned \$10,000 of active duty pay in Spain and \$8,000 of active duty pay inside Oregon during the year. He included the \$18,000 in his federal AGI. Seth's total active duty pay subtraction is \$16,000. Seth can subtract the \$10,000 earned outside Oregon and \$6,000 of his active duty pay earned in Oregon. Seth will file Oregon Form 40 and claim his military pay subtraction on line 18.

Example 4: Brett is an Oregon resident and files jointly with his wife who lives and maintains a residence in Oregon. Brett served in a designated combat zone for five months this year and earned \$8,000 in combat pay. He served in Germany for the rest of the year and earned \$15,000 of active duty pay. The president did not declare an end to combat zone activities this year. Because Brett excluded his combat pay on his federal return, he cannot subtract it on his Oregon return. Therefore, Brett's Oregon subtraction is limited to the \$15,000 active duty pay earned outside Oregon and included in federal AGI. Brett and his wife will file Oregon Form 40 and claim the subtraction on line 18.

National Guard and reservist active duty pay subtraction

Answer the following questions to help you determine if you can claim this subtraction:

- Were you a member of the military reserve forces at any time during the year?
- Were you required to be away from home overnight for at least three consecutive weeks?

If you answered "yes" to both questions, you can subtract all military service pay you earned while you served in Oregon away from home. This subtraction is in addition to any active duty pay subtraction that you are eligible to receive.

Example 5: Gertrude and Merlin are married, filing a joint return. Both are Oregon residents. Gertrude was on active duty overseas (not in a combat zone) this year. She had \$21,000 active duty pay. Merlin served in the Oregon National Guard and was away from home overnight from April to December. He served in Oregon. Merlin earned \$700 military service pay for his weekend drills from January to March, and \$15,000 while away from home from April to December.

Gertrude and Merlin will include \$36,700 of military wages in their federal AGI. On their Oregon return, Gertrude will subtract all \$21,000 of her active duty pay. She earned all her military wages outside Oregon. Merlin will subtract his drill pay of \$700. He will also subtract all \$15,000 of his overnight pay. All

his military service pay was earned in Oregon and he served more than three consecutive weeks away from home. Combined, Gertrude and Merlin have a military subtraction of \$36,700. They will file Oregon Form 40 and claim the subtraction on line 18.

Copy of federal return

When filing Form 40 or Form 40N, include a copy of your federal Form 1040, 1040A, or 1040EZ, whichever is applicable. This is required even if you owe no Oregon tax or are only requesting a refund of tax withheld.

Filing and payment date

The due date for filing a calendar year return and payment of the tax is April 15. If the 15th falls on a Saturday, Sunday, or legal holiday, the due date is the next working day of the month. If you are outside the United States on April 15, the due date is June 15.

If you owe tax on your Oregon income tax return, you must pay the entire amount by the due date. Interest and penalty will be added to all unpaid balances.

Extension for filing your return

You can get an extension to file your return but not to pay your tax. You must pay the entire tax by the due date to avoid interest and penalty charges.

You are allowed the same extension period for Oregon as allowed for your federal return. Do you need an extension to file only your Oregon return? Or, do you have a federal extension but need to make a payment to Oregon with your extension? Use Oregon Form 40-EXT. Go to our website to download the form or call us to order the form.

Were you stationed in a combat zone or contingency area? Did you receive additional time to file your federal return and pay your 2009 tax? If so, Oregon allows the same additional time to file and pay your Oregon tax. Write "Combat Zone" in blue or black ink at the top of the return.

Interest and collections

- If you owe taxes while on active duty (Title 10), you may qualify for a reduced interest rate while on active duty and up to six months after. The interest rate limit is 6 percent. File a claim for a reduced rate of interest by writing to the department within six months after your active duty service has ended. Include a copy of orders showing your active duty status and dates.

- If your active duty service (Title 10) has materially affected your ability to pay your Oregon tax debt, you may qualify for relief of interest and collection activity while on active duty and up to six months after. File a claim for relief by writing to the department within six months after your active duty service has ended. Relief may not be available for the period prior to receiving your request. Include a copy of orders showing your active duty status and dates.
- You may qualify for relief of interest and collection activity under Oregon law if you meet the following requirements:
 - You have a tax liability that came due while on active duty under Title 10, and
 - You have been on active duty for more than 90 consecutive days, and
 - Your active duty service (Title 10) occurred on or after September 11, 2001, and
 - You notify us within six months after your active duty service has ended.
- Guard members called into active state service by the governor under Title 32 may qualify for relief of interest and collection activities on any tax owed prior to active state service. Send a written request for relief to the department within six months after the active state service has ended. Include a copy of your orders.

To get relief, you have to notify us that you are on active duty or send a written request. Relief may not be available for the period prior to receiving your notification. Contact the department for more information.

Service members who died while active duty (Title 10)

The Department of Revenue will cancel the Oregon personal income tax liability of eligible service members who died on active duty. The service member is eligible for a refund of Oregon tax if the service member:

- was on active duty under Title 10 at time of death, and
- was on active duty for 90 consecutive days or more at time of death, and
- had an Oregon personal income tax liability or other eligible tax liability.

Here are instructions to file a claim for an eligible service member:

- File an Oregon return for the tax year, if not already filed. Write “KIA—active duty” on the top of the return and also on the line for “total tax.” Include Form W-2.

- File an Oregon Amended Schedule if a return has already been filed. Write “KIA—active duty” on the top of the schedule and on the line for “total tax.” File a separate amended return for each year affected.
- Include a sheet showing the tax liability before any amount is forgiven, and the amount to be forgiven.
- Include Oregon Form 243, Claim to Refund Due a Deceased Person with the amended return or schedule if there is no court-appointed or certified personal representative.
- Include a copy of the certification from the Department of Defense (Form DoD 1300, Report of Casualty).
- Include documentation showing the service member was on active duty (Title 10) for 90 consecutive days or more at the time of death.
- Attach a copy of the service member’s original Oregon return behind the Oregon Amended Schedule. If you don’t have a copy of the original return, contact us. The department may be able to provide you with a copy.
- If the service member’s federal return was amended, include a copy of the 1040X.

Joint filers. If the eligible service member filed a joint return, determine his or her separate tax liability using the following method:

1. Figure the service member’s share of adjusted gross income.
2. Divide by the total joint adjusted gross income. This is the service member’s share of the joint adjusted gross income.

Multiply the joint tax liability by the percentage determined in step 2. This is the service member’s share of the joint tax debt, the amount eligible for cancellation.

Claims may be filed for each open year that the taxpayer was on active duty.

Taxpayer assistance

General tax information www.oregon.gov/DOR
 Salem 503-378-4988
 Toll-free from an Oregon prefix 1-800-356-4222

Asistencia en español:

Salem 503-378-4988
 Gratis de prefijo de Oregon..... 1-800-356-4222

TTY (hearing or speech impaired; machine only):

Salem 503-945-8617
 Toll-free from an Oregon prefix 1-800-886-7204

Americans with Disabilities Act (ADA): Call one of the help numbers for information in alternative formats.