

### Military personnel filing

**Purpose:** The intent of this Oregon Revenue Bulletin (ORB) is to provide guidance for military members and their spouses on Oregon filing requirements and federal laws.

**Tax program:** Personal income tax

**Statutes and rules:** [ORS 316.027, 316.048, 316.117, 316.119, 316.127, 316.680\(1\)\(c\)\(A\) & \(B\), and 316.789 to 791](#); [OAR 150-316.127\(1\), 150-316.680\(1\)\(c\)-\(A\)&\(B\), and 150-316.789 to 791](#).

#### Definitions

**Domicile** is a tax-law concept. It's the place you consider your home and plan to return to after any absence, no matter how long you're gone. If you're in the military, your domicile typically is the state you lived in when you joined the service. Domicile doesn't change because of military orders. Your domicile remains the same unless you abandon your old domicile, acquire a new one, and actually reside in the new domicile. If you've done these, your domicile may be different from the one you had when you joined the military. Spouses don't always have the same domicile.

**Exempt income for spouses of military members** is income earned from performing a service, such as wages, that federal law doesn't allow a state to tax when a spouse meets certain criteria. This exemption only applies to a spouse who is domiciled in another state and not a military member. The state where you are domiciled may tax your income. The federal law is the [2009 Military Spouses Residency Relief Act](#).

To qualify for the exemption for income earned from services performed in Oregon, you must:

- Be domiciled outside Oregon;
- Be married to a military member stationed in Oregon who is domiciled outside Oregon; and
- Live in Oregon only to be with your spouse.

If you're a spouse of a military member and domiciled in Oregon and stationed in another state, you may qualify for this exemption in the state where you work or reside.

**Military pay** is pay for military service, such as:

- federal or state active duty and full-time reserve duty
- drills and training (all types)
- bonuses

**Oregon-source income** generally includes:

- Income earned from services performed in Oregon (wages, commissions, etc), but does not include compensation for service in the Armed Forces.
- Unemployment or severance pay based on Oregon employment.
- Income from Oregon property (rental income, gain on a sale, Oregon Lottery, etc).
- Income from businesses operated in Oregon (Schedule C, Schedule E, etc).
- Retirement income if domiciled in Oregon.

Oregon residents generally are taxed on all income from all sources.

**Residency** is where your home is located and isn't always the same as your domicile. You may have more than one home or residence, but you can't have more than one domicile. Here are some basic definitions that may help military members. See 'Residency' in Publication 17-1/2 for more information and examples to help you determine your residency status.

**Foreign nonresidents** are persons domiciled in Oregon taxed as nonresidents while living in a foreign country. To qualify you must meet the 'physical presence' or 'bona fide residence' test. See 'Residency' in Publication 17-1/2. If you meet one of these tests, file using Form 40N if you are outside the country for the entire year and Form 40P the year you leave or return.

**Military nonresident** is a military member domiciled in another state who is stationed in Oregon. This is also a military member who meets the special-case Oregon resident criteria for the entire year (see below). If you need to file, use Form 40N and write 'military nonresident' at the top.

**Permanent residence (place of abode)** is a dwelling maintained and used by you or your spouse. It does not include property you rent to others or a vacation cottage [OAR 150-316.027(1)].

**Special-case Oregon residents** are persons domiciled in Oregon who are taxed as nonresidents because they and their family meet **all** of the following requirements for the tax year:

- Maintain a permanent residence outside Oregon.
  - If you and your family are stationed outside Oregon (not including temporary assignments), you're considered to have a permanent residence outside Oregon.
- Don't have a permanent residence in Oregon.
- Spend 30 days or less in Oregon during the year.

If you qualify as a special-case Oregon resident for the year and need to file, file as a nonresident and use Form 40N. Otherwise, file using Form 40 if you are domiciled in Oregon.

### Filing requirements and flow charts

The flow charts at the end of this ORB may help you determine if you or your spouse need to file an Oregon return and which form to file, especially if you are domiciled or stationed outside Oregon.

### Extensions to file

If you were in a combat zone and qualified for more time to file your federal return **and** pay taxes, Oregon allows you the same time to file **and** pay. Write "combat zone" at the top of your return.

All other extensions are only extensions to file and **not** extensions to pay. Pay by the due date (usually April 15) to avoid penalties and interest. If you file a federal extension, you don't need to file anything with Oregon unless you owe tax. If you owe tax or need to file an extension for Oregon only, you must file Form 40-EXT. See [Form 40-EXT](#) for more information.

### Form 40N instructions for military nonresidents

Enter all income in the federal column of Form 40N. **Don't** enter your exempt military pay or spouse's exempt earned income from services in the **Oregon column**, line 8S. Report income taxable by Oregon in the Oregon column.

Figure and enter your military pay subtraction on Form 40N, line 37F, using code 319. Don't enter a subtraction in the Oregon column, line 37S, if your military pay isn't taxable to Oregon.

### Military pay subtraction

You may subtract:

- Military pay you earned while on duty outside Oregon\*\*,
- Military pay you earned while on duty outside Oregon for the year you entered or were discharged from the military.
- Military pay you earned while away from home overnight for at least 21 consecutive days while on National Guard or Reserve duty, and
- Up to \$6,000 of military pay you earned while on duty in Oregon that doesn't otherwise qualify for a subtraction.

If you and your spouse are both in the military and file a joint return, each of you must figure your own subtraction amounts and then add them together to enter only one subtraction amount on your return. Your total military pay subtraction can't be more than your taxable military pay. If you file Form 40N or 40P, your subtraction in each column can't be more than the military pay included in that column.

\*\* This pay will not be eligible for subtraction if the President terminates combatant activities in the Persian Gulf Desert Shield area, which has not occurred as of the date of this publication.

### Oregon tax withheld

If your employer withheld Oregon taxes, you must file a tax return to receive a refund. If Oregon taxes were withheld from your military pay and you **weren't domiciled in Oregon**, you must correct your state of domicile with your military finance office. Your state of domicile may tax your wages.

If you're domiciled in Oregon, you don't need Oregon taxes withheld from your pay if you're stationed outside Oregon for the entire year and your pay is eligible for the subtraction. To do this, complete a federal Form W-4 with your military finance office. Write "For Oregon only—stationed outside Oregon" on the Form W-4 and write "exempt" on line 7. This generally won't affect your federal tax withholding. Complete a new Form W-4 if you return to Oregon or your pay is no longer eligible for a subtraction. Changes to the tax withheld for Oregon only, usually can't be submitted electronically.

If you're the spouse of a military member stationed in Oregon and you qualify for exemption under the federal 2009 Military Spouses Residency Relief Act, you aren't required to have Oregon taxes withheld from your Oregon wages. To do this, complete a federal Form W-4 with your employer. Write "For Oregon only—exempt military spouse" on the Form W-4 and write "exempt" on line 7. This generally won't affect your federal tax withholding.

Your employer may require you to provide proof that you qualify for the exemption and your state of domicile may tax your wages.

### Nonresident National Guard and Reserves

If you're a member of the National Guard or Reserves and you're a **nonresident** of Oregon, you're treated the same as any other nonresident military member for the purposes of state taxes. You may be required to file if you have Oregon taxes withheld from your pay or have other Oregon-source income.

### **Oregon Youth Challenge employees**

You may subtract up to \$6,000 of your Oregon Youth Challenge program wages using subtraction code 345. This is in addition to the military pay subtraction if you qualify.

### **Interest and collections**

If you owe taxes while on federal active duty (Title 10) or active state service (Title 32), you may qualify for a reduced interest rate, interest relief, or a suspension of collection activity. [Write us](#) as soon as possible to see if you qualify because we may not be able to grant relief before you notify us. Include a copy of your orders that show your dates of federal active duty or state active service.

### **Death while on active duty**

If a service member dies while on federal active duty (Title 10) for 90 consecutive days or longer, Oregon will cancel their Oregon personal income tax for the period they were on active duty. For joint returns, you must calculate the service member's share of the tax eligible for cancellation.

The service member's family or estate may be eligible for a refund of the cancelled tax. Generally you must claim a refund within three years from the original due date (usually April 15) or the date the original return was filed. For more information, see the military information in our [Publication 17-1/2](#).

### **Military retirees**

If you receive military retirement pay, you may qualify for a federal pension subtraction. See the tax return instructions for more information. If you are a special-case Oregon resident, your pension remains taxable as Oregon-source income.

### **Additional information**

See military personnel filing information and residency in our [Publication 17-1/2](#) for examples and additional information. You can find all instructions and forms at [www.oregon.gov/dor/PERTAX](http://www.oregon.gov/dor/PERTAX).

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### **Effect of this document**

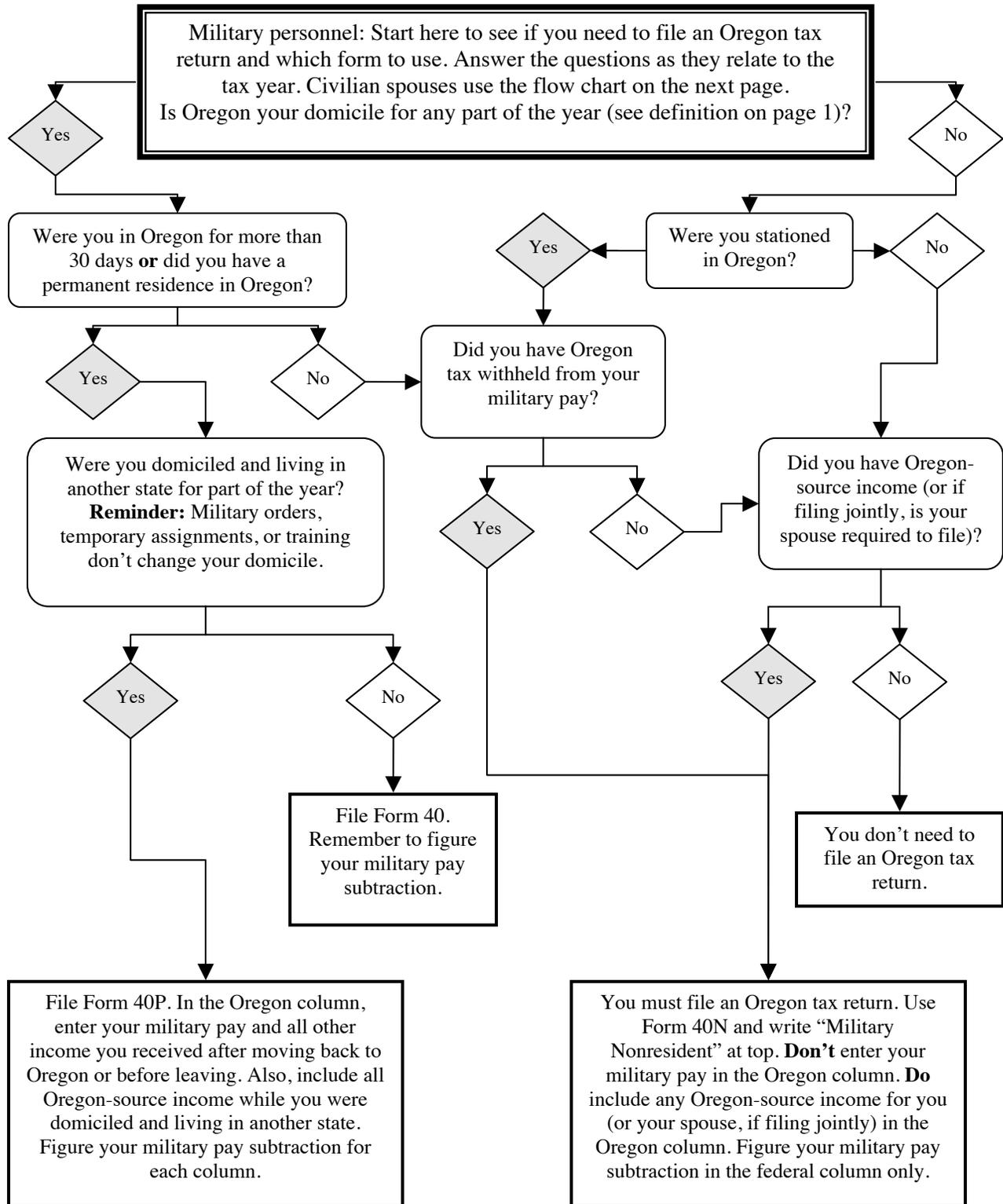
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Anyone using these publications should be alert for changes that may result from legislative action, court decisions, Attorney General opinions, or from enactments or amendments to Oregon Revised Statutes or Oregon Administrative Rules.

**For more information**, visit [www.oregon.gov/dor](http://www.oregon.gov/dor).

Have a suggestion for a future ORB topic? E-mail us, [corp.tax.library@state.or.us](mailto:corp.tax.library@state.or.us).

*Issued [date]*



### Spouses of Military Personnel Flow Chart— Filing requirements and exempt income instructions

