

General Information

Active members of the U.S. Armed Forces, including those serving in combat zones, and their spouses receive special tax benefits. This publication explains those benefits as they apply to Utah income tax.

Residency issues addressed in this publication are effective for tax years beginning with 2018.

Definitions

~~**Residency.** Exceptions to the regular Utah residency rules apply to service members and their spouses. See Residency, below.~~

Non-resident Service Member. A service member who is a resident of another state, even if the service member is stationed in Utah.

Non-Utah Active Duty Military Wages. Active duty income received for military service which is not sourced to Utah, reported on form W-2.

Service Member. An active duty member of the U.S. Armed Forces, including those serving overseas or in a combat zone. This includes National Guard members who are called to active service by the President of the United States or the Secretary of Defense for a period of more than 30 consecutive days and supported by federal funds.

Spouse of a Service Member. The spouse of an active duty member of the U.S. Armed Forces. If the spouse is also a military service member, then the spouse is entitled to the tax benefits of a service member.

State of Residence. The state of legal residence the military has recorded as a service member's tax home, regardless of where the service member is stationed or deployed.

U.S. Armed Forces. Commissioned officers, warrant officers and enlisted personnel in all regular and reserve units under control of the Secretaries of Defense, Army, Navy, Air Force and the Coast Guard. Does not include members of the U.S. Merchant Marine or the American Red Cross.

Residency

Federal law defines the residency of service members and their spouses. See 50 U.S.C. 4001(a).

Service Member

~~A service member's For Utah income tax purposes, a service member's residency for Utah income tax purposes is the state of legal residency as recognized by the U.S. Department of Defense their state of residence as recognized by the U.S. Department of Defense.~~

Spouse of a Utah-resident Service Member's Spouse

For income tax purposes, a service member's spouse may choose to:

1. use their natural state of residency, or
2. use the service member's state of residence.

The spouse may choose the service member's state of residence even if the spouse does not live in that state.

~~The spouse of a Utah-resident service member is a Utah resident for Utah income tax purposes, UNLESS:~~

- ~~1. the spouse is a non-resident and is legally separated or divorced from the service member on the last day of the year;~~
- ~~2. the spouse is a non-resident whose filing status is "married filing separately" on their federal income tax return for the year; or~~
- ~~3. the spouse is also a service member and their state of legal residency as recognized by the U.S. Department of Defense is not Utah.~~

Spouse of a Nonresident Service Member

~~The **Utah-resident spouse** of a non-resident service member remains a Utah resident for Utah income tax purposes until they are no longer a Utah resident under Utah domicile law (see Utah Code §59-10-136).~~

~~The **non-resident spouse** of a non-resident service member is subject to Utah domicile law (see Utah Code §59-10-136) and may become a Utah resident for Utah income tax purposes, UNLESS:~~

- ~~1. the service member is in Utah under current military orders;~~
- ~~2. the spouse and the service member are residents of the same state outside Utah; and~~
- ~~3. the spouse is in Utah solely to be with the service member.~~

Utah-taxable Income

Utah treats military pay the same as the IRS. All income included in federal adjusted gross income is automatically included in Utah income. Income that is exempt from federal taxation is also exempt for Utah purposes.

Utah Resident Service Members and Spouses

Utah residents must file a Utah income tax return if they are required to file a federal income tax return. All of a Utah resident's income is taxable in Utah. A Utah resident's active duty military pay is only taxable in Utah. A Utah resident with other sources of income taxed by another state may claim a credit for those taxes on their Utah return. See Utah form TC-40S.

Nonresident Service Members

A nonresident service member does not pay Utah income tax on active duty military pay even if earned while stationed in Utah.

Nonresidents must file a Utah income tax return only if they have Utah-taxable income. Examples include non-military wages earned in Utah, income from rentals or sales of property in Utah, and Utah investment income. See Utah Code §59-10-117.

To file a Utah individual income tax return as a nonresident service member:

1. Include your non-Utah active duty military wages on Line 8 of the Utah TC-40 return.
2. Report your non-Utah active duty military wages on Utah form TC-40A, Part 2, **using subtraction code 82**.
3. Report your non-Utah active duty wages on Utah form TC-40B lines 1 and 32 in Column B-Total.

Nonresident Spouses of Nonresident Service Members

All income of a ~~nonresident~~ service member's nonresident spouse is exempt from Utah income tax ONLY IF: ~~the spouse qualifies as a nonresident. See Spouse of a Nonresident Service Member under Residency, above, for qualifications.~~

1. the spouse and the service member are residents of the same state outside Utah;
2. the service member is in Utah under current military orders; and
3. the spouse is in Utah solely to be with the service member.

NOTE: A qualified nonresident spouse should file a federal W-4 form with their employer marked "Utah Only - Exempt military spouse" to end Utah withholding on their income.

When reporting a qualified nonresident spouse's income:

1. Include all of the spouse's income on line 8 of the Utah TC-40 return.
2. Report the subtraction on Utah form TC-40A, Part 2, **using subtraction code 88**.
3. Report all of the spouse's income on schedule TC-40B in Column B-Total. If the income was from a Utah source, also report it in the Utah column. Subtract the income included in each column on line 32.

~~A non-qualified spouse must report all their income on the Utah return. Do not use Line 8 of the return and schedule TC-40A, Part 2 to subtract income as a nonresident military spouse. Include only Utah source income in the Utah column of Utah form TC-40B.~~

One Spouse is a Utah Resident and the Other is a Nonresident

If one spouse is a full-year Utah resident and the other is a full-year non-resident, they may file married filing separate Utah income tax returns if they file a married filing joint federal return. ~~The A Utah~~ non-resident spouse is not required to file a Utah return unless the spouse has Utah income.

Use the *Special Instructions*, below, to file a married filing separate Utah return when you filed a married filing joint federal return.

DO NOT use the special instructions unless you meet all the following conditions:

1. You are a service member or the spouse of a service member.
2. You have filed a married filing joint federal income tax return.
3. You are a full-year resident.
4. Your spouse was not a Utah resident at any point during the year.

~~Review Residency, above, to make sure you understand your residency status.~~

Special Instructions

1. Complete a federal return "as if" you were filing separately.

DO NOT file the "as if" return with the IRS. Use this return ONLY to complete these special instructions.

2. Determine your allocation percentage:

- A. Adjusted gross income on your married filing joint federal return _____
- B. Utah resident's federal adjusted gross income only _____
- For a full-year Utah resident spouse, federal "as if" adjusted gross income.
 - For a nonresident spouse who has Utah income and must file a Utah return, federal adjusted gross income.
- C. **Allocation percentage** _____
- divide line B by line A and carry to four decimal places)
3. Follow the line-by-line instructions in the Individual Income Tax book to complete Utah form TC-40, **with the following exceptions:**
- Box 1 Filing Status** – Enter a "9." This code is not shown on the return but is valid for this special calculation.
- Line 4 Federal Adjusted Gross Income** – Enter the federal "as if" adjusted gross income from the allocation percentage, above.
- Line 5 Additions to Income** – Multiply each addition to income by the allocation percentage, above. Enter the additions on TC-40A, Part 1, and carry the total to TC-40, line 5.
- Line 7 State tax refund included on federal form 1040** – Multiply any state income tax refund on federal form 1040, Schedule 1, line 10 by the allocation percentage, above.
- Line 8 Subtractions from Income** – Except for codes 82 and 88, multiply each subtraction from income by the allocation percentage, above. Enter the subtractions on TC-40A, Part 2, and carry the total to line 8.
- If filing for the service member:
- a. Subtract the total military pay earned while not a Utah resident that was included in federal adjusted gross income on TC-40A, Part 2, using code 82.
 - b. Code 88 is not allowed.
- Line 11 Utah personal exemption** – Multiply the number of qualifying dependents from line 2c by the allocation percentage, above. Then multiply the result by \$565.
- Line 12 Federal standard or itemized deductions** – Multiply the deduction claimed on your married filing joint federal income tax return by the allocation percentage, above.
4. Complete Utah form TC-40B using the amounts from your "as if" married filing separate federal return.
5. Complete the rest of the Utah return.
6. If filing a paper return, attach a copy of both your married filing joint federal return and your "as if" married filing separate federal return. You do not need to include federal 1040 schedules and supporting documents.

Utah Combat-related Death Tax Credit

For tax years beginning on or after Jan. 1, 2010, a military service member who dies as a result of military service in a combat zone may claim a nonrefundable tax credit equal to their tax liability in the year of death.

See instructions and worksheet in the *Individual Income Tax* book.

Service that Qualifies for a Filing Extension

Utah allows personnel serving in a combat zone or contingency operation the same filing extension allowed by the IRS. See IRS Publication 3, *Armed Forces' Tax Guide* (irs.gov/publications/p3/index.html).

If you qualify for combat zone relief, you may notify us of your status through a special e-mail address: combatzone@utah.gov. Provide your name, stateside address, date of birth and date of deployment to the combat zone. You, your spouse or an authorized representative may make this notification.

The Tax Commission cannot provide tax account information by e-mail. Therefore, we will reply to any questions within two business days by regular mail to the address we have on record. We may provide general answers to questions regarding the status of individual combat zone updates via e-mail.

Signing Returns

You (and your spouse, if filing a joint return) must sign the return. You may also authorize someone to sign for you by granting a power of attorney.

Rules about filing Utah returns follow federal rules for a military spouse who is serving overseas, in a combat zone or in a qualified hazardous duty area, or is in missing status or incapacitated, or who died during the year. See IRS Publication 3 for details.

Where to Get Help

If you have other questions about Utah's treatment of military personnel, please contact:

Utah State Tax Commission

210 N 1950 W

Salt Lake City UT 84134

801-297-7705, phone

1-800-662-4335, ext. 7705 (outside the Salt Lake area)

801-297-6357, fax

taxmaster@utah.gov

See filing examples online at **incometax.utah.gov**.

Find federal tax information in:

- *Soldiers' and Sailors' Civil Relief Act of 1940*, United States Code, Title 50, Section 573.
- *Utah Service Members' Civil Relief Act*, Utah Code, Title 39, Chapter 7.