



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

# FISCAL NOTE

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<b>Drafting Number:</b>	LLS 19-0403	<b>Date:</b>	January 17, 2019
<b>Prime Sponsors:</b>	Sen. Crowder Rep. Landgraf	<b>Bill Status:</b>	Senate SVMA
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**Bill Topic:** INCOME TAX RESIDENCY PRESUMPTION FOR MILITARY SERVICE

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**Summary of Fiscal Impact:** **No fiscal impact.** This bill codifies the Department of Revenue's current practice of requiring taxpayers to provide certain evidence in order to claim the Reacquisition of Colorado Residency During Active Duty Service state income tax subtraction.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** This fiscal note reflects the introduced bill.

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## Summary of Legislation

This bill codifies the Department of Revenue's (DOR) current practice of requiring taxpayers to provide certain evidence in order to claim the Reacquisition of Colorado Residency During Active Duty Service state income tax subtraction.

Under the bill, and consistent with current DOR practice, an active duty military member is presumed to have had a state of legal residence in a state other than Colorado if the individual is stationed in another state and provides one of the following documents:

- a military state of legal residence certificate, commonly known as a federal DD Form 2058, indicating the taxpayer's residency in a state other than Colorado;
- a federal W-2 form indicating a state other than Colorado;
- proof of voter registration in a state other than Colorado;
- notification to the State of Colorado of the taxpayer's intent to make the other state the individual's state of legal residence; or
- a last will and testament indicating residency in a state other than Colorado.

## Background

Beginning in tax year 2016, qualifying active duty military members who reacquire residency in Colorado are not required to pay state income taxes on their active duty military income. These service persons may either subtract compensation received from their taxable income or may elect not to withhold state income taxes on the wages earned from active duty.

To qualify for the income tax subtraction, Colorado must be the active duty member's home of record and the member must change his or her state of legal residence to Colorado on or after January 1, 2016. If an active duty member were to change his or her legal state of residence from Colorado, to another state, and back to Colorado anytime on or after January 1, 2016, he or she may qualify.

A home of record is the state in which the service member resided at the time he or she first joined the military. The home of record generally does not change unless erroneously or fraudulently recorded initially.

A service person's state of legal residence, or domicile, determines the state in which he or she must abide and pay state taxes, if required. It is the place where a service person intends to live after they separate or retire from the military, and may or may not be the same as their home of record. Under federal law, service persons may not change their state of legal residence for tax purposes alone, and must actually reside in the state or provide evidence of intent to make the state his or her permanent home.

Under current law, to claim the income tax subtraction, taxpayers must be able to provide evidence of intent to make Colorado one's legal state of residence. Evidence of intent includes one or more of the following actions made in Colorado:

- registering to vote;
- purchasing residential property or an unimproved residential lot;
- titling and registering automobile(s);
- notifying the state of previous legal residence of the change in residency; or
- preparing a new last will and testament, that indicates Colorado as the state of legal residence.

This bill clarifies the documentation required for proof of residency in the state the taxpayer is leaving to move to Colorado. In tax year 2017, 46 taxpayers claimed the income tax subtraction.

### **Assessment of No Fiscal Impact**

The bill primarily affects a small group of taxpayers claiming the subtraction for the first time. A taxpayer is only required to prove eligibility to the Department of Revenue in the first tax year they claim the subtraction. The Department of Revenue's current practice is to require the documentation listed under this bill. The bill will have no impact on revenue, expenditures, or workload of any state agency or local government. For this reason, the bill is assessed as having no fiscal impact.

### **Effective Date**

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

### **State and Local Government Contacts**

Information Technology

Military Affairs

Personnel

Revenue