

MANUAL: Personnel
Chapter Series CC--Commissioned Corps Personnel Manual
Part 2--Commissioned Corps Personnel Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC22--Pay and Allowances
Subchapter CC22.7--Deductions and Collections from Pay
Personnel INSTRUCTION 3--Withholding of State Income Tax

CONTENTS

<u>Section</u>	<u>Subject</u>	<u>Page</u>
A.	Purpose and Scope	1
B.	Authority	1
C.	Applicability	2
D.	State Income Tax Liability	2
E.	State Income Tax Withholding	3
Exhibit I	States With Which Secretary of Treasury Has Entered Into Agreements for Withholding State Income Tax	5
Exhibit II	Form DD 2058 "State of Legal Residence Certificate"	6
Exhibit III	IRS Form W-4 "Employee's Withholding Allowance"	7

Section A. Purpose and Scope

This INSTRUCTION sets forth the requirement and procedures for withholding State income tax from the pay of PHS commissioned officers.

Section B. Authority

1. 5 U.S.C. 5517 and Executive Order No. 11997 dated June 22, 1977, provide for withholding State income taxes from the compensation of Federal

employees and members of the Armed Forces [11]/ if an agreement has been entered into between the Secretary of the Treasury and the proper official of the State. These agreements constitute the basis by which Federal agencies withhold State taxes from the compensation of members of the Armed Forces. The regulations governing such withholding are in 31 C.F.R. 215. These regulations prescribe the requirements for entering into agreements between the Secretary of the Treasury and the States.

2. 5 U.S.C. 5516 (47 D.C. Code 15862) directs the Secretary of the Treasury and an official of the District of Columbia to enter into an agreement for withholding District of Columbia income taxes from the compensation of Federal employees and members of the Armed Forces.
3. Executive Order No. 11997 also states "any agreement affecting members of the armed forces shall also provide that the head of an agency may rely on the certificate of legal residence of a member of the armed forces in determining his or her residence for tax withholding purposes."

Section C. Applicability

1. The provisions of this INSTRUCTION apply to all PHS commissioned officers serving on active duty, and inactive reserve officers in inactive duty training with pay status.
2. These provisions do not apply to retired PHS commissioned officers or annuitants of PHS commissioned officers. For information on withholding of State tax from the pay of retired officers, see INSTRUCTION 9, Subchapter CC23.8, of this manual.

Section D. State Income Tax Liability

1. The Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. App. 574) provides, in effect, that for purposes of State income tax liability, a member of the military service shall not be regarded as having lost his/her residence or domicile in his/her "home" State solely because the member is absent under military or naval orders; nor shall the member be regarded as having acquired a residence or domicile in any other State solely because of such absence. It also provides that a State (other than "home" State) cannot tax the income of a member of a military service merely because the member resides and/or performs his/her official duty there.

1/ For this purpose the PHS Commissioned Corps functions in the manner of the Armed Forces.

2. Public Law 94-278, April 22, 1976, states: "Active service of commissioned officers of the Service [1]/ shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all rights, privileges, immunities and benefits now or hereinafter provided under the Soldiers' and Sailors' Civil Relief Act of 1940.

Section E. State Income Tax Withholding

1. Exhibit I lists the States which have entered into withholding agreements with the Secretary of the Treasury under the authority cited in Section B, and the District of Columbia which has also done so. Under the terms of these agreements and, if appropriate under those State tax laws, State taxable wages of officers whose legal residence is within one of the listed States will be accumulated and reported to the applicable State. (NOTE: No State income tax is legislated in those States so designated in Exhibit I. Consequently State income tax will not be withheld from the officer's pay whose legal residence is in a State so identified.)
2. Form DD 2058, "State of Legal Residence Certificate" (Exhibit II), shall be used (1) to determine State of legal residence for purposes of tax withholding, (2) to record changes in the State of legal residence and, (3) to notify the tax authorities of an officer's previous State of legal residence/domicile of the change in State of legal residence/domicile. For those States listed in Exhibit I as having entered into agreements with the Secretary of the Treasury, a certificate of tax withholding for that particular State must also be completed by the officer who claims legal residence in that State. Such a certificate may be obtained from the taxing authorities in that State. If such a certificate is not available from the State, IRS Form W-4, "Employee's Withholding Allowance Certificate," may be used if a change is made in the form to indicate that it applies to State tax rather than Federal tax (See Exhibit III). The completed Form DD 2058 should be submitted with the appropriate State tax withholding certificate to:

Commissioned Personnel Operations Division/OPM/OM
Compensation Branch/Active and Retired Pay Section
Room 4-50 Parklawn Building
Rockville, MD 20857

The amount of tax deducted from the officer's pay will be in accordance with the withholding schedule prescribed by each State, based on the number of exemptions claimed by the officer on the appropriate State withholding exemption certificate.

1/ Public Health Service

3. If no form specifying a State for State income tax withholding purposes is completed by an officer on call to duty, no State tax will be withheld. However, the amount of State taxable wages will be recorded and reported to the State listed as "home of record" upon call to duty.

4. Personnel records (including payroll records) are subject to the provisions of the Privacy Act of 1974. INSTRUCTION 7, Subchapter CC26.1, "Rights, Responsibilities and Personnel Records of PHS Commissioned Officers Under the Privacy Act," of this manual, sets forth the procedures to be followed in the maintenance of these records. The applicable systems of records are: 09-90-0017, "Pay, Leave, and Attendance Records, HHS/OS/ASPER"; and 09-37-0002, "PHS Commissioned Corps Personnel Records, HHS/OASH/OM."

EXHIBIT I

Jurisdictions With Which the Secretary of the Treasury has Entered
Into Agreements for Withholding State Income Tax

Alabama	Kansas	New Mexico
Arizona	Kentucky	New York
Arkansas	Louisiana	North Carolina
California	Maine	Ohio
Colorado	Maryland	Oklahoma
Delaware	Massachusetts	Oregon
District of Columbia	Michigan	Pennsylvania
Georgia	Minnesota	Rhode Island
Hawaii	Mississippi	South Carolina
Idaho	Missouri	Utah
Illinois	Montana	Vermont
Indiana	Nebraska	Virginia
Iowa	New Jersey	West Virginia
		Wisconsin

Jurisdictions With No State Income Tax

Alaska	New Hampshire	Tennessee
Connecticut	North Dakota	Texas
Florida	Puerto Rico	Washington
Nevada	South Dakota	Wyoming

EXHIBIT II

STATE OF LEGAL RESIDENCE CERTIFICATE		
DATA REQUIRED BY THE PRIVACY ACT OF 1974		
AUTHORITY:	Tax Reform Act of 1976, Public Law 94-455.	
PURPOSE:	Information is required for determining the correct State of legal residence for purposes of withholding State income taxes from military pay.	
ROUTINE USES:	Information herein will be furnished State authorities and to Members of Congress.	
MANDATORY OR VOLUNTARY DISCLOSURE:	Disclosure is voluntary. If not provided, State income taxes will be withheld based on the tax laws of the State previously certified as your legal residence, or in the absence of a prior certification, the tax laws of the applicable State based on your home of record.	
NAME (Last, first middle initial)		SOCIAL SECURITY NUMBER (SSN)
LEGAL RESIDENCE/DOMICILE (City or county and State)		
INSTRUCTIONS FOR CERTIFICATION OF STATE OF LEGAL RESIDENCE		
<p>The purpose of this certificate is to obtain information with respect to your legal residence/domicile for the purpose of determining the State for which income taxes are to be withheld from your "wages" as defined by Section 3401(a) of the Internal Revenue Code of 1954. PLEASE READ INSTRUCTIONS CAREFULLY BEFORE SIGNING.</p> <p>The terms "legal residence" and "domicile" are essentially interchangeable. In brief, they are used to denote that place where you have your permanent home and to which, whenever you are absent, you have the intention of returning. The Soldiers' and Sailors' Civil Relief Act protects your military pay from the income taxes of the State in which you reside by reason of military orders unless that is also your legal residence/domicile. The Act further provides that no change in your State of legal residence/domicile will occur solely as a result of your being ordered to a new duty station.</p> <p>You should not confuse the State which is your "home of record" with your State of legal residence/domicile. Your "home of record" is used for fixing travel and transportation allowances. A "home of record" must be changed if it was erroneously or fraudulently recorded initially.</p> <p>Enlisted members may change their "home of record" at the time they sign a new enlistment contract. Officers may not change their "home of record" except to correct an error, or after a break in service. The State which is your "home of record" may be your State of legal residence/domicile only if it meets certain criteria.</p> <p>The formula for changing your State of legal residence/domicile is simply stated as follows: <u>physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile.</u> In most cases, you must actually reside in the new State at the time you form the intent to make it your permanent home. Such intent must be clearly indicated. Your intent to make the new State your permanent home may be indicated by certain actions such as: (1) registering to vote; (2) purchasing residential property or an unimproved residential lot; (3) titling and registering your automobile(s); (4) notifying the State of your previous legal residence/domicile of the change in your State of legal residence/domicile; and (5) preparing a new last will and testament which indicates your new State of legal residence/domicile. <u>Finally</u>, you must comply with the applicable tax laws of the State which is your new legal residence/domicile.</p> <p>Generally, unless these steps have been taken, it is doubtful that your State of legal residence/domicile has changed. Failure to resolve any doubts as to your State of legal residence/domicile may adversely impact on certain legal privileges which depend upon legal residence/domicile including among others, eligibility for resident tuition rates at State universities, eligibility to vote or be a candidate for public office, and eligibility for various welfare benefits. If you have any doubt with regard to your State of legal residence/domicile, you are advised to see your Legal Assistance Officer (JAG Representative) for advice prior to completing this form.</p>		
I certify that, to be best of my knowledge and belief, I have met all the requirements for legal residence/domicile in the State claimed above and that the information provided is correct.		
I understand that the tax authorities of my former State of legal residence/domicile will be notified of this certificate.		
SIGNATURE	CURRENT MAILING ADDRESS (Include ZIP Code)	DATE

DD FORM 2058
1 FEB 77

EXHIBIT III

STATE OF _____

Form **W-4**
(Rev. January 1983)

Department of the Treasury—Internal Revenue Service
Employee's Withholding Allowance Certificate

OMB No. 1545-0010
Expires 8-31-85

1 Type or print your full name		2 Your social security number	
Home address (number and street or rural route)		3 Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate Note: If married, but legally separated, or spouse is a nonresident alien, check the Single box.	
City or town, State, and ZIP code			
4 Total number of allowances you are claiming (from line F of the worksheet on page 2)		\$ _____ 	
5 Additional amount, if any, you want deducted from each pay			
I claim exemption from withholding because (see instructions and check boxes below that apply):			
a <input type="checkbox"/> Last year I did not owe any Federal income tax and had a right to a full refund of ALL income tax withheld, AND		Year	
b <input type="checkbox"/> This year I do not expect to owe any Federal income tax and expect to have a right to a full refund of ALL income tax withheld. If both a and b apply, enter the year effective and "EXEMPT" here . . . ▶		Year	
c If you entered "EXEMPT" on line 6b, are you a full-time student?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Under the penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate, or if claiming exemption from withholding, that I am entitled to claim the exempt status.			
Employee's signature ▶		Date ▶	
7 Employer's name and address (Employer: Complete 7, 8, and 9 only if sending to IRS)		8 Office code	9 Employer identification number