

## CGFS Charleston: Knowledge Base article KB39479

Note: Bear in mind that some of the links in the article may be accessible only when logged on to the State Department OpenNet.

### • Question

What is the Department's responsibility for withholding District of Columbia and State income taxes from employees' pay

### • Answer

The Department's responsibility regarding withholding of District of Columbia and State income taxes is outlined in [Department Notice 2014 11 016](#). In addition to this notice, the Department would like to provide the following information:

#### **Basis for Tax Election and Reporting**

Each agency is required to withhold District or State income taxes from the compensation of employees who are subject to such taxes and whose regular place of Federal employment is within the District or State. Generally, an employee's regular place of employment is their official duty station. Therefore, in order to ensure compliance with these requirements, for employees whose official duty station is in the United States, the Department will evaluate District or State income tax elections based on the employee's official duty station, unless the employee can establish to the satisfaction of the Department that s/he is not subject to income taxes in that location.

The Department will evaluate the relationship between the employee's official duty station state and his/her state of residence to determine compliant state income tax election and reporting. If an employee's official duty station state is the same as his/her state of residence, state income tax election will be based on his/her official duty station. If an employee's official duty station state differs from his/her state of residence, the Department will withhold state income taxes for the employee's official duty station state, unless the employee can establish to the satisfaction of the Department that s/he is not subject to income taxes in his/her official duty station state.

An employee can establish this by either:

1. Submitting a certificate for withholding of income taxes for another State, which meets one of the following three requirements
  - a. The employee resides in that State, that State has a reciprocal taxation agreement with the employee's official duty station, and that State is within reasonable commuting distance of the employee's official duty station<sup>1</sup>; or,
  - b. The Bureau's Executive Director certifies that it is the State where the employee's duties are actually performed (rather than in his/her official duty station)<sup>2</sup>, or,
  - c. The employee resides in that State, that State is a reasonable commuting distance from the State the employee's Bureau's Executive Director certifies is where the employee's duties are actually performed (rather than in his/her official duty station), and the State of residence has a reciprocal taxation agreement with the State where the employee's duties are actually performed<sup>3</sup>.

**Note:** State-specific certificates for withholding of income taxes can be found on the [Bureau of Labor Statistic's](#) website.

2. Submitting a certificate of non-residence or certificate of exemption from withholding for his/her station location which meets both of the following requirements<sup>4</sup>

- a. The exemption certificate is supported by documentation establishing that the employee resides in a State that does not have an income tax; *and*,
- b. The State in which the employee resides is within reasonable commuting distance of his/her official duty station or his/her Bureau's Executive Director certifies that the employee's duties are actually performed in the state in which the employee resides (or a reasonable commuting distance from that State) rather than in his/her official duty station. See footnotes 1-4 for reference.

### **<sup>1</sup>States within Reasonable Commuting Distances**

To see whether an official duty station state and state of residence have a reciprocal agreement and have been determined by the Department to be within a reasonable commuting distance, please access the [State Income Tax Evaluation spreadsheet](#) and select the employee's official duty station state and state of residence. The Department will withhold state income taxes based on the employee's state of residence, if reciprocity exists between the two states, the states are within a reasonable commuting distance, and the employee provides supporting documentation as outlined in [How is a State Residence/Domicile Change Payroll Employee Action Request \(PEAR\) submitted to American Payroll](#) (36515). Otherwise, the Department will withhold state income taxes based on the employee's official duty station state.

### **<sup>2</sup>Outlier Employees**

In certain situations, an employee's official duty station on file is not where the employee actually performs his/her official duties. In these instances, the Department will withhold state income taxes based on the state in which the employee actually performs his/her official duties, if the employee provides a letter from their [Bureau's Executive Director](#) as outlined in [How is a State Residence/Domicile Change Payroll Employee Action Request \(PEAR\) submitted to American Payroll](#) (36515). *Note: Please refer to the below "Outlier Employees and Reciprocal Taxation Agreements" section for guidance on a specific deviation.*) Otherwise, the Department will withhold state income taxes based on the employee's official duty station state.

### **<sup>3</sup>Outlier Employees and Reciprocal Taxation Agreements**

If it is established that an employee's official duty station state is different from the state in which s/he actually performs his/her official duties, state income tax withholding will be based on the location in which s/he actually performs his/her official duties, unless reciprocity exists between the employee's actual work state and his/her state of residence and the states have been determined to be within a reasonable commuting distance. To see whether an actual work state and state of residence have a reciprocal agreement and have been determined by the Department to be within a reasonable commuting distance, please access the [State Income Tax Evaluation spreadsheet](#) and select the employee's actual work state and state of residence. The Department will withhold state income taxes based on the employee's state of residence, if reciprocity exists between the two states, the states are within a reasonable commuting distance, and the employee provides supporting documentation as outlined in [How is a State Residence/Domicile Change Payroll Employee Action Request \(PEAR\) submitted to American Payroll](#) (36515) Otherwise, the Department will withhold state income taxes based on the state in which the employee actually performs his/her official duties.

### **<sup>4</sup>Exemption from State Income Taxation**

The Department will not withhold state income taxes if an employee can provide documentation establishing to the satisfaction of the Department (refer to [How is a State Residence/Domicile Change Payroll Employee Action Request \(PEAR\) submitted to American Payroll](#) (36515)) his/her residence in an income tax-free state that is within a reasonable commuting distance from the employee's official duty station state or the state in which s/he performs his/her official duties.

**Note:** *Foreign Service members cannot claim exemption from state income taxes based on the nature of their appointment in the Foreign Service. The Servicemembers Civil Relief Act (SCRA) specifies that neither an individual nor his/her spouse shall lose/acquire “a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.” As the term “servicemember” for purposes of this act means a member of the uniformed service, the SCRA is not applicable to members of the Foreign Service.*

Because employees whose official duty stations are located overseas are not residing domestically, their state income tax election should be based on their state of domicile. The Department will not adjudicate state income tax elections based on domicile, as it is the employee’s responsibility to accurately elect state income taxes while overseas. However, upon the employee’s return to a domestic assignment, the Department will evaluate the employee’s state tax withholding election based on his/her new official domestic duty station (using the procedures outlined above). If a Foreign Service member wishes to update his/her state income taxes before s/he returns to a domestic assignment, s/he should provide documentation supporting tax election based on his/her state of domicile.

**Supporting Regulations:**

- [Department Notice 2014 11 016](#) New Procedures for Withholding and Reporting Employees' State and District of Columbia Income Taxes
- [TFM Vol 1 Part 3 Chapter 5000](#) Withholding of District of Columbia, State, City, and County Income or Employment Taxes
- [5 USC 5516](#) Withholding District of Columbia income taxes
- [5 USC 5517](#) Withholding State income taxes
- [31 CFR 215.7](#) Money and Finance: Treasury - Compliance by Agency
- [50 USC 4001](#) Residence for tax purposes
- [50 USC 3911](#) Servicemembers Civil Relief General Provisions - Definitions
- [10 USC 101](#) Organization and General Military Powers - Definitions