

Native American Veterans Income Tax Settlement Fund

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This publication issued jointly by the Arizona Department of Revenue and the Arizona Department of Veterans' Services is intended to provide general information about the Native American Veterans Income Tax Settlement Fund. For complete details, refer to Arizona Laws 2016, Chapter 125, § 19-29. In the case of inconsistency or omission in this publication, the language of the Arizona law will prevail.

Background

On November 22, 2000 the United States Justice Department issued a memo declaring that the taxation and withholding of state income taxes from active duty military pay of Native Americans domiciled on their reservation was impermissible. The United States Department of Defense began mandatory Arizona income tax withholding on all active duty military pay on September 1, 1993 and continued withholding Arizona income tax through December 31, 2005. Beginning January 1, 2006 Arizona no longer taxed active duty military pay and therefore discontinued state income tax withholding on this type of income. The Native American Veterans Income Tax Settlement Fund was established on July 1, 2016 to refund Arizona income tax erroneously withheld from Native Americans who served in the military while claiming tribal land as their domicile from September 1, 1993 through December 31, 2005. During the 2017 Arizona legislative session House Bill 2158 was introduced to amend the original legislation when it was discovered the Department of Defense may have withheld Arizona income tax prior to September 1, 1993. Effective August 9, 2017 refunds may be claimed for years 1977 through 2005.

Q1. Why was the Native American Veterans Income Tax Settlement Fund established?

A1. Arizona income tax may have been withheld from Native American active duty military pay in years 1977 through 2005. Those tax years are currently closed by the statutes of limitations. Therefore, in an effort to refund Arizona income tax withholding from active duty military pay of Native Americans veterans domiciled on their reservation, the Arizona legislature established the Native American Veterans Income Tax Settlement Fund.

Q2. What years did the Department of Defense withhold Arizona income tax from active duty military pay?

A2. The Department of Defense may have withheld Arizona income tax from 1977 through 2005. Arizona entered into an agreement with the United States Department of Defense to withhold Arizona income tax from active duty military pay beginning September 1, 1993. Arizona continued to withhold income tax on active duty military pay through 2005. Beginning January 1, 2006 Arizona no longer subjected active duty military pay to its income tax and accordingly stopped withholding state income tax. After the Native American Veterans Income Tax Settlement Fund was established it was discovered the Department of Defense may have withheld Arizona income tax prior to September 1, 1993. As a result, the Native American Veterans Income Tax Settlement Fund was amended to allow refunds for years 1977 through 2005.

Q3. How much money is allocated to the Native American Veterans Income Tax Settlement fund?

A3. The Arizona Legislature allocated two million dollars to fund. Of the two million dollars 5 percent is allocated to the Department of Veterans' Services and 5 percent is allocated to Department of Revenue to cover administrative costs.

Q4. What years are refunds available?

A4. Refunds may be claimed for years 1977 through 2005. Mandatory withholding of Arizona income taxes by the Department of Defense on active duty military pay did not begin until September 1, 1993, however there may have been withholding prior to that date.

Q5. May I amend my old Arizona state income tax returns to recover my Arizona income tax withholding for years 1977 through 2005?

A5. No, 1977 through 2005 are closed tax years under Arizona's statute of limitations. The only way to recover withholding from tax years 1977 through 2005 is by making a claim under the Native American Veterans Income Tax Settlement Fund.

Q6. How long is the Native American Veterans Income Tax Settlement Fund open?

A6. The Native American Veterans Income Tax Settlement Fund was established July 1, 2016. The Department of Veterans' Service may not accept claims after December 31, 2019. The Department of Revenue will not grant refunds after June 30, 2021. Any money

left in the Native American Veterans Income Tax Settlement Fund on July 1, 2021 will be swept into the general fund.

Q7. What does the claimant have to demonstrate?

A7. Produce DD-214 or other proof of military service provided by the United States Department of Defense, B. Sign a statement declaring they were an enrolled member of their tribe while serving in the military, C. Produce evidence of domicile while serving in the military, D. Show Arizona income tax was withheld (W-2) and E. Sign a statement that the Arizona income tax was not refunded.

Q8. What must a claimant do in addition to the general requirements if the veteran is deceased?

A8. In addition to the requirements listed in Question and Answer #7 above, a claimant who is a surviving spouse or personal representative must produce the veteran's death certificate to make a claim. A personal representative must also sign a statement confirming they are the decedent's personal representative and produce a copy of the claimant's appointment. If the claimant is a not a surviving spouse or personal representative they must sign a statement that the estate is worth less than \$30,000, that 30 days have passed since the decedent's death and that they are the rightful successor.

Q9. How does the application process work?

A9. The claimant sends their completed forms along with any relevant paper work to the Department of Veterans' Services. Veterans' Services has 210 days to accept or reject the claim. Claims accepted by the Department of Veterans' Services are then sent to the Department of Revenue. The Department of Revenue has 210 days to approve or reject claims. The Department of Revenue will issue refunds to claimants with valid claims.

Q10. What forms are used to make a claim?

A10. Arizona Form NASF is used for general claims, Arizona Form NASF-D is an additional form for claimants if the veteran is deceased and Arizona Form NASF-RS is a form used to substantiate the veteran's residency.

Q11. Where do I find the application forms?

A11. The application forms are available to download online at <https://dvs.az.gov> or <https://www.azdor.gov>

Q12. Where do I mail my completed forms?

A12. Arizona Department of Veterans' Services
Attention: NASF
3839 N. 3rd Street, Suite 209
Phoenix, AZ 85012

Q13. Who may make a claim?

A13. Native American veterans who had Arizona income tax withheld from their active duty military pay while domiciled on their reservation. If the veteran is deceased the surviving spouse or personal representative may make a claim. If anyone other than the surviving spouse or personal representative (e.g., child of the veteran) makes a claim they must show the value of decedent's estate was less than \$30,000.

Q14. How are claims paid?

Q14. On a first-come, first-served basis until the fund is exhausted.

Q15. Is interest paid on the refunds?

A15. Yes, settlement payments shall include interest computed on a daily basis from the date of a timely filed return.

Q16. Are refunds subject to setoffs?

A16. Yes, the refunds are subject to setoffs consistent with A.R.S. § 42-1122. Examples of setoffs would include back taxes, overdue child support and unpaid court fees.

Q17. What if I do not have my DD-214 or other proof of military service?

A17. Arizona Form NASF includes a check box allowing the claimant to authorize the Arizona Department of Veterans' Services to obtain their DD-214 or other proof of military service on their behalf from the United States Department of Defense. Please attach and sign Form SF-180 and attach it to your application.

Q18. What if I do not have my old W-2's?

A18. Arizona Form NASF includes a check box allowing the claimant to authorize the Arizona Department of Revenue to obtain prior year W-2's on their behalf from the United States Department of Defense.

Q19. What if I had Arizona withholding from my active duty military pay while I was domiciled on my reservation, but did not file an Arizona income tax return for those years?

A19. Even if you did not file an Arizona return during those years you are still eligible for a refund of your active duty military pay withholding including accrued interest, however any refunds paid are subject to setoffs consistent with A.R.S. § 42-1122.

Q20. What if my claim is denied?

A20. If the claim is denied by the Arizona Department of Veterans' Services the appealed case will go to the Office of Administrative Hearings. If the claim is denied by the Department of Revenue the appealed case will be considered a contested case heard by the Department of Revenue's Hearing Officer.

Q21. What is the status of my refund claim?

A21. If the application for refund is still being processed at Arizona Department of Veterans' Services the contact information is

Arizona Department of Veterans' Services
Attention: NASF
3839 N 3rd Street, Suite 209
Phoenix, AZ 85012
Phone Number: 602-234-8432
Email Address: NASF@AZDVS.GOV

If the application for refund is being processed by the Arizona Department of Revenue the contact information is

Arizona Department of Revenue
Attention: NASF
1600 W Monroe, Mail Code 1400
Phoenix, AZ 85007-2650
Phone Number: 602-716-6027
Email Address: NASF@azdor.gov

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