

REFERENCE TITLE: Native American veterans; tax refund

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2323

Introduced by

Representatives Borrelli, Andrade, Benally, Bolding, Cardenas, Hale,
Larkin, Rios, Senators Begay, McGuire, Miranda, Pancrazi: Representatives
Ackerley, Campbell, Cobb, Fann, Finchem, Lawrence, Livingston, Mitchell,
Norgaard, Pratt, Shope, Senator Dial

AN ACT

RELATING TO NATIVE AMERICAN VETERANS; APPROPRIATING MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Findings and intent

3 A. Native American veterans of the armed forces of the United States
4 who were domiciled within the boundaries of their tribal lands or of their
5 spouse's tribal lands while on active military service may have been exempt
6 from paying income tax to this state, but may have had state income taxes
7 mistakenly withheld from their military pay.

8 B. Native American veterans may be barred from claiming refunds of
9 those erroneously withheld tax payments due to the passage of time or by the
10 difficulty in meeting the strict legal standards of proof of entitlement to
11 refunds.

12 C. The intent of this act is to establish a process to enable these
13 Native American veterans to recover the state income taxes that were
14 erroneously withheld from their military pay.

15 Sec. 2. Definitions

16 In this act, unless the context otherwise requires:

17 1. "Claimant" means a person who files a claim for an income tax
18 settlement refund under this act, either a Native American veteran or, if the
19 veteran is deceased, the veteran's surviving spouse, personal representative,
20 executor or other official representative of the estate, as designated
21 pursuant to applicable state or tribal law or tradition.

22 2. "Domicile" means a true, fixed and permanent established home in
23 which an individual resides or to which an individual intends to return after
24 a temporary definite or indefinite absence.

25 3. "Fund" means the Native American veterans' income tax settlement
26 fund established by this act.

27 4. "Native American" means an individual Native American Indian who is
28 duly registered on the tribal rolls of the tribe for whose benefit an Indian
29 reservation was established.

30 5. "Tribe" means any organized nation, tribe, band or community that
31 is recognized as a Native American tribe by the United States department of
32 the interior and includes any entity formed under tribal law.

33 6. "Veteran" means a Native American citizen of the United States who
34 was enlisted, drafted, inducted or commissioned and who was accepted for and
35 assigned to active duty in the armed forces of the United States.

36 Sec. 3. Native American veterans' income tax settlement fund;
37 exemption from lapsing

38 A. The Native American veterans' income tax settlement fund is
39 established consisting of monies appropriated by the legislature and other
40 monies donated or accruing to the fund. Monies in the fund are continuously
41 appropriated to the department of revenue for the purposes of this act and as
42 provided by subsection C of this section.

43 B. The department of revenue shall administer the fund. On notice
44 from the department, the state treasurer shall invest and divest monies in

1 the fund as provided by section 35-313, Arizona Revised Statutes, and monies
2 earned from investment shall be credited to the fund. Monies in the fund are
3 exempt from the provisions of section 35-190, Arizona Revised Statutes,
4 relating to lapsing of appropriations, except that unexpended and
5 unencumbered monies remaining in the fund on June 30, 2021 revert to the
6 state general fund.

7 C. Five percent of the monies in the fund at the beginning of each
8 fiscal year are appropriated separately to both the department of revenue and
9 the department of veterans' services for administrative costs incurred under
10 this act during the fiscal year. Any unexpended and unencumbered balance of
11 either appropriation remaining at the end of the fiscal year reverts to the
12 fund.

13 Sec. 4. Income tax settlement claims; requirements; procedure;
14 approval or denial of claim

15 A. A Native American veteran or, if the veteran is deceased, the
16 veteran's surviving spouse, personal representative, executor or other
17 official representative of the estate, as designated pursuant to applicable
18 state or tribal law or tradition, may file a claim for a settlement payment
19 for any period of active duty in the armed forces of the United States during
20 which the veteran:

21 1. Was an enrolled member of a Native American tribe.

22 2. Maintained a domicile within the boundaries of the veteran's
23 reservation or the reservation of the veteran's spouse or within the
24 boundaries of lands held in trust by the United States for the benefit of the
25 veteran, the veteran's spouse or the tribe of the veteran or spouse.

26 3. Had Arizona state income tax withheld from his or her active duty
27 military pay and the amount withheld:

28 (a) Has not already been refunded to the veteran or the deceased
29 veteran's estate.

30 (b) Cannot be claimed as a refund by filing a state income tax return
31 because the period for filing a claim for refund has lapsed under the
32 applicable statute of limitations.

33 B. The claim for a settlement payment must include evidence of the
34 veteran's eligibility for and the amount of the claim as follows:

35 1. The claimant must provide a copy of the veteran's certificate of
36 release or discharge from active duty (DD Form 214) or other proof of service
37 provided by the United States department of defense and approved by the
38 department of veterans' services. If a claimant does not have a copy of the
39 veteran's DD Form 214 or other proof of service, the claimant may request
40 that the department of veterans' services request the veteran's DD Form 214
41 or other proof of service from the United States department of defense.

42 2. The claimant must provide a statement, signed by the claimant, that
43 the veteran is or was duly registered on the tribal rolls of a Native

1 American tribe during the period or periods of the veteran's active duty in
2 the armed forces.

3 3. The claimant must provide evidence of domicile within the
4 boundaries of the veteran's reservation or the reservation of the veteran's
5 spouse or within the boundaries of lands held in trust by the United States
6 for the benefit of the veteran, the veteran's spouse or the tribe of the
7 veteran or spouse during the taxable years the state income tax was withheld
8 from active duty military pay. If the veteran's address shown on the
9 veteran's DD Form 214 or other proof of service:

10 (a) Is on the veteran's tribal land, that evidence is sufficient for
11 the purposes of this paragraph.

12 (b) Is not on the veteran's tribal land or if the veteran has no
13 DD Form 214 and the claimant cannot otherwise establish that the veteran's
14 domicile was on the veteran's tribal land, the claimant must provide a signed
15 statement, under penalty of perjury, that the veteran was domiciled on tribal
16 land during the period or periods the state income tax was withheld. The
17 statement must include the veteran's address on the tribal land for each
18 period, and an official designated by the tribe must attest that each address
19 is on tribal land.

20 4. The claimant must provide evidence of the amount of state income
21 tax withheld from active duty military pay by providing copies of the United
22 States internal revenue service Form W-2 covering active duty military pay
23 for the year or years during which state personal income tax was
24 withheld. If the claimant does not have copies of the applicable Form W-2
25 for one or more of those years, the claimant may request that the department
26 of revenue obtain the veteran's Form W-2, or other withholding information in
27 a form approved by the department of revenue, from the United States
28 department of defense.

29 5. The claimant must provide a signed statement attesting, under
30 penalty of perjury, that the veteran has not received a refund of the state
31 income tax withheld for the years for which the claimant is filing a claim
32 for a settlement payment.

33 C. A claim for settlement payment under this act must be filed by the
34 eligible Native American veteran or, if the veteran is deceased, by the
35 veteran's surviving spouse, successor or other personal representative. The
36 following apply if the claim is made for a deceased veteran:

37 1. The claimant must include a copy of the veteran's death certificate
38 or other proof of death.

39 2. If the veteran's estate exceeds thirty thousand dollars, only the
40 surviving spouse, personal representative, executor or other official
41 representative of the estate, as designated pursuant to applicable state or
42 tribal law or tradition, may file the claim.

43 3. If the claimant is a successor who is not the surviving spouse,
44 personal representative, executor or other official representative of the

1 estate, the claimant must include a dated and notarized statement, signed
2 under penalty of perjury, that:

3 (a) The value of the entire probate estate of the deceased veteran,
4 wherever located, minus liens and encumbrances, does not exceed thirty
5 thousand dollars.

6 (b) At least thirty days have elapsed since the veteran's death.

7 (c) The successor is entitled to receive the settlement payment.

8 4. If the claimant is a personal representative, executor or other
9 official representative of the estate, the claimant must include:

10 (a) A signed, dated and notarized statement that the claimant has been
11 duly appointed as the personal representative, executor or other
12 representative of the veteran's estate pursuant to applicable state or tribal
13 law or tradition.

14 (b) A copy of the claimant's appointment.

15 D. A claim for a settlement payment shall be denied for any amount of
16 withholding tax that can be claimed as a refund by filing a state income tax
17 return pursuant to title 43, Arizona Revised Statutes. A state income tax
18 return may be filed by a veteran to claim the refund by the later of December
19 31 of the year three years after:

20 1. The veteran separated from military service.

21 2. The year in which Arizona withholding tax was withheld from the
22 veteran's active duty pay.

23 E. A claim for a settlement payment must be made on a claim form
24 prescribed by the department of revenue and filed with the department of
25 veterans' services.

26 F. The department of veterans' services shall not accept claims
27 submitted from and after December 31, 2019.

28 G. Within two hundred ten days after receiving a complete and correct
29 claim form, the department of veterans' services shall determine whether the
30 claim meets the requirements of subsection B, paragraphs 1, 2 and 3 of this
31 section, transmit qualifying claim forms to the department of revenue and
32 notify the claimant of the department's approval or denial. The failure of
33 the department of veterans' services to respond within two hundred ten days
34 after receiving a complete and correct claim form is considered to be a
35 denial.

36 H. Within two hundred ten days after receiving the claim form from the
37 department of veterans' services, the department of revenue shall determine
38 whether the claim meets the requirements of subsection B, paragraphs 4 and 5
39 of this section and notify the claimant and the department of veterans'
40 services of its approval or denial. The failure of the department of revenue
41 to respond within two hundred ten days after receiving the claim form is
42 considered to be a denial.

1 Sec. 5. Payment of claims; computation of interest

2 A. The department of revenue shall:

3 1. Pay approved claims under this act from the Native American
4 veterans' income tax settlement fund on a first-come, first-served basis
5 until the fund is exhausted or until there are no further approved claims to
6 pay.

7 2. Pay approved claims in the same manner as refunds granted under
8 section 42-1118, Arizona Revised Statutes. Payments made pursuant to this
9 act are subject to setoff as provided by section 42-1122, Arizona Revised
10 Statutes.

11 B. Settlement payments under this act shall include interest computed
12 on a daily basis from the date of withholding through the date the payment
13 warrant is issued at the rate determined under section 6621 of the internal
14 revenue code, as defined by section 42-1201, Arizona Revised Statutes, on the
15 date of withholding. The date of withholding is determined as follows:

16 1. For withholding that occurred over an entire calendar year,
17 one-twelfth of the amount withheld during the year is considered to have been
18 paid on the last day of each calendar month of the year.

19 2. For withholding that occurred over a period of less than an entire
20 calendar year, the amount withheld during the period shall be divided by the
21 number of full and partial months in the period. The resulting amount is
22 considered to have been paid on the last day of each calendar month during
23 the period.

24 Sec. 6. Appeals of agency decisions

25 Notwithstanding any other administrative proceedings established by law
26 or by rule, all appealable agency actions, as defined by section 41-1092,
27 Arizona Revised Statutes, and contested cases, as defined by section 41-1001,
28 Arizona Revised Statutes, shall be governed by title 41, chapter 6, article
29 10, Arizona Revised Statutes.

30 Sec. 7. Administrative rules

31 The director of the department of revenue and the director of the
32 department of veterans' services shall collaborate in adopting any additional
33 administrative rules that are considered to be necessary to administer this
34 act.

35 Sec. 8. Annual reports

36 The director of the department of revenue shall report the following
37 information to the senate appropriations and finance committees and to the
38 house of representatives appropriations and ways and means committees on or
39 before October 1 in each of years 2017 through 2021:

40 1. Estimates of the amount of state income tax withholdings subject to
41 payments under this act.

42 2. The number of Native American veterans affected by withholdings
43 subject to payments under this act.

1 3. Expenditures from the Native American veterans' income tax
2 settlement fund during the previous fiscal year.

3 4. Anticipated expenditures from the Native American veterans' income
4 tax settlement fund during the current fiscal year.

5 5. Anticipated appropriations to the fund necessary to meet expected
6 payments in the next fiscal year.

7 Sec. 9. Appropriation

8 The sum of \$1,000,000 is appropriated from the state general fund in
9 fiscal year 2016-2017 to the Native American veterans' income tax settlement
10 fund for the purposes described in section 3 of this act.

11 Sec. 10. Repeal

12 This act is repealed from and after December 31, 2021.