

Nebraska Income Tax for U.S. Servicemembers, Their Spouses, and Civilians Working with U.S. Forces

Overview

The federal Servicemembers Civil Relief Act (SCRA) provides that compensation received by a servicemember from his or her uniformed service can be taxed only by the state in which the servicemember has his or her legal residence. The place of residence at the time of entry into the service is presumed to be the state of legal residence or domicile, and remains so until legal residence in another state is established. The SCRA provides that if the spouse is a resident of the same state as the servicemember, the income earned by the spouse while accompanying and supporting the servicemember in another state is only taxable in the state of legal residence.

Nebraska recognizes the Internal Revenue Service (IRS) designations of “combat zones” and allows the same income exclusions, filing extensions, suspension of audits, collection activities, and notices for servicemembers outside the U.S. Also, Nebraska extends the same provisions to civilians working with the U.S. Forces in combat zones, as allowed to civilians for federal tax purposes.

Individuals who retire from the uniformed service of the U.S. on or after July 18, 2012 are allowed to make a one-time election, within two years of their retirement date, to exclude a portion of their income received as a military retirement benefit.

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (Department) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.



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Terms

Domicile. Domicile is the place an individual intends to have as his or her true, fixed, and permanent home. Even if the individual is absent at times, domicile is the place to which the individual intends to return. Actual residence is not necessarily domicile. An individual establishes domicile in Nebraska on the date he or she arrives in the state for other than temporary or transitory purposes. Once domicile is established, it remains the individual's domicile until it is abandoned. Domicile in Nebraska is abandoned when an individual leaves the state with no intention of maintaining his or her true, fixed, and permanent home in Nebraska; and establishes a domicile in another state while present in the other state for other than temporary or transitory purposes.

Military Retirement Benefit. Military retirement benefit is defined as "retirement benefits that are periodic payments attributable to service in the uniformed services of the U.S. for personal services performed by an individual prior to his or her retirement." Military retirement benefits [for purposes of the military retirement benefit exclusion provided in [Neb. Rev. Stat. § 77-2716\(14\)](#)] do not include annuity payments to a spouse, former spouse, or child that are based on another individual's military service. They also do not include payments received by a former spouse of a retired military member, under a final decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement pursuant to a decree dividing military retirement pay.

Nonresident. A servicemember and his or her spouse, whose legal residence or domicile at the time of entry into service is a state other than Nebraska, is a nonresident of Nebraska unless the individual elects Nebraska as his or her state of legal residence.

Partial-Year Resident. A partial-year resident is an individual who is a resident for part of the year, but less than the entire year. To be a partial-year resident, a taxpayer must change domicile during the year, either moving into or out of Nebraska.

Resident. A resident is an individual whose domicile is Nebraska, or an individual who is physically present in this state and maintains a permanent place of abode within this state for an aggregate of more than six months. Nebraska residence will be determined by Nebraska law. If an individual maintains a permanent place of abode in Nebraska and is present in Nebraska for at least 183 days during the tax year, that individual is a Nebraska resident even if domiciled in another state. For this purpose, Nebraska considers any part of a day spent in Nebraska as a full day spent in the state.

Retirement Date. Your retirement date is the date you separated from the military. If you reentered the military after your initial separation date, your retirement date is your most recent separation date.

Servicemember. Servicemember means a member of the U.S. Uniformed Services, including: the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

Spouse. For the purposes of this information guide, spouse refers to a servicemember's spouse, who is not a servicemember, and who has the same legal residence or domicile as the servicemember. If the spouse does not have the same legal residence as the servicemember, the provisions under "Servicemember's Spouse with a Different Legal Residence or Domicile" in this information guide apply.

Taxable Nebraska Source Income. Taxable Nebraska source income is all income earned in Nebraska from the conduct of a trade or business, from real or personal property, or from civilian employment by the servicemember or any dependent (other than a spouse). "Civilian employment" includes working for a non-appropriated fund activity, such as post exchanges, military stores, or officers' clubs, whether located on or off the military installation. Prizes awarded in a lottery game conducted pursuant to the Nebraska Lottery Act or under the Nebraska Charitable Gaming Act are also taxable Nebraska source income.

Uniformed Service. Uniformed service means:

- ❖ Active duty, as defined in 10 U.S.C. § 101(d)(1) (for servicemembers in the Army, Navy, Air Force, Marine Corps, or Coast Guard);
- ❖ Service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. § 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds (for servicemembers in the National Guard);
- ❖ Active service (for servicemembers who are commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration); and
- ❖ Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause (for all servicemembers).

Residence

Servicemember and Spouse. The place of residence at the time of entry into the service is presumed to be the state of legal residence and remains so until legal residence in another state is established. A servicemember's assignment, such as moving to a new location for a limited period of time under a temporary duty (TDY) assignment or physical presence in a state under a permanent change of station (PCS) order, does not automatically change the servicemember's or spouse's legal residence or establish domicile.

Nebraska's 183-day residence provision does not apply to a servicemember or spouse. A servicemember or spouse, however, may choose to change his or her legal residence. Unless the servicemember or spouse produces adequate evidence of his or her intent to change his or her legal residence (see **Changing Residency Status** below), the SCRA prevents a change in legal residence solely because of physical presence in a state.

A servicemember can show intent to change domicile by completing the State of Legal Residence Certificate, DD Form 2058.

Servicemember's Spouse with a Different Legal Residence or Domicile. A servicemember's spouse with a different legal residence or domicile than the servicemember is not protected by the SCRA from a change in residence for state tax purposes. Instead, once the spouse is present in this state, the following can result:

- ❖ If the spouse has been in Nebraska for the entire year and maintains a permanent place of abode in Nebraska, he or she is a resident;
- ❖ If the spouse has been in Nebraska for 183 days and maintains a permanent place of abode, he or she is a resident; or
- ❖ If the spouse has been in Nebraska for less than 183 days, he or she is a nonresident, unless he or she chooses to change his or her domicile to this state and file an individual income tax return as a partial-year resident for the period of time spent in this state.

Changing Residency Status. To make a change of legal residence, an individual must have a physical presence in the new state, show intent to establish residence in that state, and abandon the prior state of domicile.

Note: Requirements for establishing residency vary by state. Contact the state where you are establishing residency to determine these requirements.

Generally, intent to change domicile can be shown by a combination of the actions listed below.

- ❖ Purchasing a home in another state for use as a principal residence.
- ❖ Paying taxes as a resident of another state.
- ❖ Obtaining a driver's license as a resident of another state.

- ❖ Registering a motor vehicle as a resident of another state.
- ❖ Completing DD Form 2058.
- ❖ Obtaining a hunting or fishing permit as a resident of another state.
- ❖ Registering to vote in another state.

Filing Requirements

Residents. All residents required to file a federal income tax return must file a [Nebraska Individual Income Tax Return, Form 1040N](#). This includes all Nebraska servicemembers, spouses, and other military dependents who are domiciled in Nebraska (or who are legal residents of Nebraska, including those living outside Nebraska).

The entire federal adjusted gross income (AGI) of a resident, as adjusted for state tax purposes, is subject to tax in Nebraska. There is no adjustment for compensation received by a resident servicemember for his or her uniformed service or for income earned outside Nebraska. Instead, a credit is allowed on Form 1040N for income taxes paid to another state. Complete a [Credit for Tax Paid to Another State, Nebraska Schedule II](#), to claim this credit and attach a copy of the signed and dated return filed with the other state.

A spouse, who accompanies a resident servicemember to another state, must report income that is earned in the other state to Nebraska. The other state does not have authority to tax the spouse's income, so there will not be a credit allowed for tax paid to another state by the spouse. Since most out-of-state employers will not withhold for Nebraska, the resident spouse will need to consider making [estimated income tax payments](#) to Nebraska during the year.

Nonresidents. All nonresidents with taxable Nebraska source income who are required to file a federal return must file a Nebraska return. The compensation received by a nonresident servicemember for his or her uniformed service: (a) is exempt from Nebraska tax; (b) should be reported on [Nebraska Adjustments to Income for Nebraska Residents, Partial-Year Residents, and Nonresidents, Nebraska Schedule I](#) as an adjustment decreasing federal AGI; and (c) may be excluded from gross income on [Computation of Nebraska Tax for Partial-Year Residents and Nonresidents, Nebraska Schedule III](#) when computing the tax on Nebraska source income.

A spouse, who accompanies a nonresident servicemember to Nebraska in support of the servicemember and who is employed in Nebraska, does not have [taxable Nebraska source income](#). The spouse must provide any employer in Nebraska with a completed [Nebraska Nonresident Employee Certificate, Form 9N](#), showing that the income is not subject to Nebraska income tax withholding. The employer may not be required to withhold tax for the spouse's state of legal residence. The spouse should contact his or her state of residence to determine if he or she needs to make estimated income tax payments. If the spouse's employer has questions, they should contact the Department.

A nonresident servicemember's spouse who wants to prove to a Nebraska employer his or her eligibility under the SCRA may make a copy of his or her military dependent identification documents to give to the employer. For more information, go to our [website](#).

Partial-Year Residents. Partial-year residents must file a Nebraska income tax return if they have Nebraska source income as defined above. This applies to a servicemember, a spouse who has a different legal residence or domicile than the servicemember to whom he or she is married, and other military dependents.

A nonresident or partial-year resident filing a married, filing jointly return (as explained below) can deduct compensation received by the servicemember for his or her uniformed service while a nonresident on the Nebraska Schedule I. The Wage and Tax Statement, Federal Form W-2 that attributes the income to a state other than Nebraska, issued by the federal government to the servicemember, must be attached to Form 1040N. Adjustments cannot be made for income earned in another state. Complete Nebraska Schedule III to report any income received from Nebraska sources.

Nonresidents and partial-year residents must compute their Nebraska tax on the Nebraska Schedule III. The tax liability of any nonresident or partial-year resident is a percentage of a resident's liability on the same amount of income, excluding compensation received by the servicemember for his or her uniformed service while a nonresident. All of the nonresident's or partial-year resident's income, including income from another state (but not including compensation received by the servicemember for his or her uniformed service while a nonresident), is used in calculating the tax on Nebraska source income.

Use Tax. An individual must report and pay use tax on purchases from out-of-state retailers of property or services that are delivered or used in Nebraska, and which would be subject to sales tax if purchased in Nebraska, even if the purchase of the property or services is exempt in the other state.

Purchases made from commissaries, base exchanges, ships' stores, or voluntary, unincorporated organizations of personnel of any branch of the U.S. military by any person authorized to make these purchases are exempt from sales and use taxes.

Filing Status

Married, Filing Jointly. A married, filing jointly Nebraska return must be filed when a married, filing jointly federal return has been filed, and:

- ❖ **Both the servicemember and spouse are residents** for the entire year; or
- ❖ **Both the servicemember and spouse are nonresidents** for the entire year, and the servicemember has Nebraska source income.

Joint Return by Election. This election may be made if one taxpayer, for any part of the year, is a Nebraska resident (partial-year or full-year) while the other taxpayer is a nonresident. A married, filing jointly return must have been filed federally. By making this election, both taxpayers are taxed as residents or partial-year residents for the period either taxpayer was a resident. Any compensation received by a servicemember for his or her uniformed service while a nonresident is not taxed by Nebraska. For example, when a married, filing jointly return is filed for tax year 2016, the nonresident can deduct compensation received by the servicemember for his or her uniformed service on Nebraska Schedule I, line 22. Attach Federal Form W-2 identifying the compensation received from the servicemember's uniformed service as attributable to a state other than Nebraska. All other income is subject to Nebraska tax.

Revocation of the Election. When one spouse is a resident and the other is not, the election to file a married, filing jointly return and be taxed as residents or partial-year residents may be revoked by both taxpayers at any time during which a claim for refund can be filed (see the section called "Statute of Limitations" at the end of this guide). The election can be changed for other taxable years only if the federal filing status is changed. The revocation of the election is effective only when all the following conditions have been satisfied:

- Both taxpayers file married, filing separately Nebraska returns. The taxpayer whose Social Security number was listed first on the original married, filing jointly return files an [Amended Nebraska Individual Income Tax Return, Form 1040XN](#). The taxpayer whose Social Security number was listed as the spouse's number on the original married, filing jointly Nebraska return files a [Nebraska Individual Income Tax Return, Form 1040N](#);
- A copy of the married, filing jointly federal return actually filed with the IRS is attached to each Nebraska return;
- A copy of a federal return for each taxpayer computed as if married, filing separately federal returns had been filed, is attached to each Nebraska return;
- Each Nebraska return includes the full names and Social Security numbers of both taxpayers; and
- Each Nebraska return is signed by both taxpayers.

Compliance with all of these conditions is an agreement that both taxpayers are jointly and separately liable for any tax due, and that any refund due at the time of filing the Nebraska returns may be paid to both taxpayers jointly, or to either taxpayer.

Married, Filing Separately. Servicemembers must file married, filing separately Nebraska returns when married, filing separately federal returns were filed, and the servicemember either is a Nebraska resident or the servicemember has Nebraska source income. Spouses must file married, filing separately Nebraska returns when married, filing separately federal returns were filed and the spouse is a Nebraska resident.

Other military dependents must file separate Nebraska returns when separate federal returns were filed, and the dependent is a resident or the dependent has Nebraska source income.

Married, filing separately Nebraska returns must also be filed when one taxpayer is a resident or partial-year resident while the other taxpayer is a nonresident and, although a married, filing jointly federal return was filed, they did not elect to file a married, filing jointly Nebraska return. The resident taxpayer must file a return when he or she receives any income, regardless of where that income is earned. The nonresident taxpayer must file when he or she has Nebraska source income. If both are nonresidents of Nebraska, even if not residents of the same state, married, filing separately Nebraska returns are not allowed if a married, filing jointly federal return was filed.

The married, filing separately Nebraska return must include all income that would be properly included in a married, filing separately federal return. Income from jointly held property is presumed to belong equally to the owners, and when owned by a married couple, one-half of the income from the jointly held property would be reportable by each taxpayer.

The taxpayer claiming military dependents as exemptions on a married, filing separately Nebraska return must have earned more than half of the income used to support the family. For example, if a couple has three children, a taxpayer earning one-third of the income cannot claim any of the family's three children. Support payments are presumed to go to all children equally.

Itemized deductions for joint expenses, such as mortgage interest, that are paid out of jointly-owned funds, are presumed to be deductible equally by the taxpayers. The deductions based on income are divided between the taxpayers according to the ratio between each income item and total income. Deductions that relate to a specific person, such as medical expenses or professional association dues, may only be deducted by the person who incurred the expense.

A taxpayer required to itemize deductions under the federal rules for married, filing separately returns may use the larger of the itemized deductions or the Nebraska standard deduction.

The credit for child and dependent care expenses cannot be taken by a person filing a married, filing separately return, unless the taxpayer's federal return was filed as married, filing separately and the credit was allowed on that return.

Adjustments to income, such as an IRA deduction, can only be taken if they would be allowable for that taxpayer.

Additional information for married, filing separately returns can be obtained by referring to the instructions for the federal return.

Combat Zones

Nebraska recognizes the IRS designation of "combat zones." This includes **Combat Pay** exclusions related to operations such as those authorized by the President. The wages shown on a servicemember's Federal Form W-2 should not include combat pay.

In most cases, Nebraska law is the same as federal law on income exclusions, filing extensions, suspension of audits and collections activities, and suppression of notices for servicemembers outside the U.S. This includes those individuals serving in a designated combat zone, contingency operation, or in a qualified hazardous duty area.

Federal Filing Extensions Allowed. Nebraska will allow the same extensions for income tax return filing as the federal government. No penalty or interest will be charged or assessed during this period. Taxpayers filing a joint return with servicemembers or affected support personnel (see **Civilian Taxpayers** below) are also covered by this provision. For paper filers, print the geographic area or military operation name and deployment dates in bold letters at the top of any return or extension request filed. Electronic filers should use the same designation as required by the IRS and follow the guidelines found in IRS Publication 3, Armed Forces' Tax Guide, at irs.gov.

Civilian Taxpayers. Civilian taxpayers serving in a combat zone in support of the U.S. Forces should note their special work status on returns filed. This would include merchant marines serving aboard vessels under the operational control of the Department of Defense, American Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the U.S. Forces in support of those forces. For paper filers, print the geographic area or military operation name and deployment dates in bold letters at the top of any return or extension request filed. Electronic filers should use the same designation as required by the IRS and follow the guidelines found in IRS Publication 3, Armed Forces' Tax Guide, at irs.gov.

Reserve And National Guard Pay

Income received for state service in the Nebraska National Guard is taxable by Nebraska regardless of the residence of the servicemember. This income, if subject to federal withholding, is also subject to Nebraska withholding. If a nonresident of Nebraska is called to federal active duty from the National Guard, this federal active duty income is deducted on Nebraska Schedule I.

Income earned for service in the reserves of any branch of the U.S. military is compensation received by a servicemember for his or her uniformed service. This income is taxable only by the servicemember's state of legal residence. It is subject to withholding by the state of legal residence.

Any deduction allowed on the federal return, before the calculation of federal AGI, to National Guard and Reserve members for overnight transportation, meals, and lodging expenses for travel more than 100 miles to attend National Guard and Reserve meetings is also allowed for Nebraska purposes.

Reservists not serving in a combat zone, but called to active duty, may be able to qualify for a deferment of payment on their back taxes, without interest, if their ability to pay has been severely impaired. Even in those instances where they do not meet this test, an interest rate of six percent, or the state rate if lower, on taxes owed before they entered active service may be available upon request. For information on requesting deferment, contact the Department's Taxpayer Assistance Section at the telephone numbers listed below or send an [email](#).

Powers of Attorney

If acting on behalf of someone serving in a combat zone, and there is no power of attorney specifying the handling of Nebraska tax matters, a general power of attorney, or statement signed by the person serving in the combat zone, will be accepted. The general power of attorney or statement must grant the authority to act on behalf of the person serving in the combat zone even though Nebraska tax matters are not specified. A copy of the general power of attorney or statement must be attached to the tax return.

If it is not possible for the spouse of a servicemember in a combat zone to obtain that person's signature on a joint return, power of attorney, or other signed authorization to act on his or her behalf, a written statement filed with the return explaining that the servicemember is in a combat zone will be accepted. The statement must be signed by the taxpayer filing the tax return and attached to the tax return.

Back Taxes, Audit, or Correspondence

The Department will defer payment of back taxes, without interest or penalty, and suspend any audit activity for at least 180 days following a servicemember's departure from a combat zone. This also includes civilians serving in support of the U.S. Forces.

If a tax notice or similar correspondence is received from the Department, the servicemember/civilian or his or her authorized representative should contact the Department at one of the numbers listed below. When contacting the Department, please provide the following information:

- ❖ Name and Social Security number;
- ❖ Branch of service;
- ❖ Unit name and number;
- ❖ Mailing and/or permanent address; and
- ❖ A copy of any correspondence received from the Department.

Decedents

The Department has adopted the Combat Zone Forgiveness and the Terroristic or Military Action Forgiveness provisions adopted by the IRS. If either of these tax-forgiveness provisions applies to a prior year's tax that has already been paid, and the period for filing a refund has not expired, the tax will be refunded; if any tax is still due, it will be canceled.

If a servicemember dies in a combat zone or in a terroristic or military action, use the following procedures in filing a claim for tax forgiveness:

- ❖ File [Nebraska Form 1040N](#) if a Nebraska individual income tax return has not been filed for the tax year (Federal Form W-2 must accompany the return); or
- ❖ File [Nebraska Form 1040XN](#) if a Nebraska individual income tax return has already been filed (a separate Form 1040XN must be filed for each year in question).

For paper filers, print the name of the combat zone or terroristic or military action in bold letters at the top of page 1 of the return. Electronic filers should use the same designation as required by the IRS and follow the guidelines found in IRS Publication 3, Armed Forces' Tax Guide, at irs.gov.

An attachment should accompany any return or claim and should include a computation of the decedent's tax liability and the amount that is to be forgiven. For married, filing jointly returns, follow the guidelines in IRS Publication 3. A certification of death from the Department of Defense or the U.S. State Department must accompany all returns for decedents.

Statute of Limitations

A claim for refund must be filed within two years of the time the tax was paid, or within three years of the time the original tax return was filed. The refund is limited to the amount paid during the preceding two or three-year period, respectively. Payments made before the due date of the return are considered to have been made on the due date.

Abatement of Penalty or Interest

Abatement of penalty or interest is allowed in limited situations. Request abatements by filing a [Request for Abatement of Penalty, Form 21](#) after paying the underlying tax and interest, or [Request for Abatement of Interest, Form 21A](#), with the Department.

Military Retirement Benefit Exclusion

[Neb. Rev. Stat. § 77-2716\(14\)](#) allows an individual who retires from the uniformed services of the U.S. on or after July 18, 2012 to make a one-time election to exclude from Nebraska taxable income a portion of his or her income received as a military retirement benefit that is included in federal adjusted gross income (AGI) for tax years beginning on or after January 1, 2015.

An individual must make the election within two years after his or her retirement from the uniformed services, even if he or she does not begin receiving military retirement benefits immediately upon

retirement. The individual may elect to:

Option 1. Exclude 40% of his or her military retirement benefit income for seven consecutive taxable years, beginning with the year in which the election is made; or

Option 2. Exclude 15% of his or her military retirement benefit income for all taxable years, beginning with the year in which he or she turns 67 years of age.

Once an election is made, it cannot be changed.

Making the Election. An individual who retires from the uniformed services of the U.S. on or after July 18, 2012, may make the election to exclude a portion of his or her military retirement benefit by filing an [Election to Exclude Military Retirement Benefits From Nebraska Taxable Income, Form 1040N-MIL](#), with the Department, within two years after the retirement date. Official documentation, including information to show that the individual retired and the separation date from the military is required when filing Form 1040N-MIL. A copy of a DD Form 214, DD Form 215, DD Form 363, or NGB Form 22 must be attached to verify the individual's retirement date. Official retirement orders will be accepted if one of the above forms is not available. Please send the most recent form issued after your last separation date.

If both spouses retire from the uniformed services of the U.S., each may make his or her own election to exclude a portion of his or her military retirement benefit. As long as each election is made within two years from the individual's retirement date, the elections may differ as to when they are made and which option is selected.

What is Excludable? An individual may elect to exclude a portion of his or her military retirement benefit only to the extent it is included in the individual's federal AGI and attributable to the individual's service in the uniformed services of the U.S.

Limitation on 40% Exclusion. The law provides that the exclusion of 40% of an individual's military retirement benefit begins in the year in which the election is made. An individual will have to carefully plan when to make the election in order to maximize the exclusion period, while still ensuring that the election is made within the required two years from the date of retirement.

An individual who retires from the uniformed services of the U.S., but who does not begin receiving military retirement benefits immediately upon retirement, still must make the election to exclude a portion of his or her military retirement benefits within two years after his or her retirement date. An individual who elects to exclude 40% of his or her military retirement benefits may lose one or more years of the exclusion because he or she is not receiving military retirement benefits in one or more of the seven consecutive years following the election.

National Guard. The retirement date for a National Guard member is the date of separation from the military. An individual who retires from the National Guard must make the election to exclude a portion of his or her military benefits within two years of his or her retirement date even though he or she may not begin to receive military retirement benefits until his or her 60th birthday. Because most National Guard members do not begin to receive military retirement benefits until several years after they are required to make this election, very few will receive any tax benefit if they elect Option 1. If the date you expect to begin receiving military retirement benefits is more than seven years after the date you are required to make this election, you will only receive a tax benefit if you elect Option 2.

Resource List:

- ❖ [Authorization to Copy Military Identification \(ID\) Card to Obtain Tax Benefits](#)
- ❖ [Servicemembers Civil Relief Act \(SCRA\)](#)

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800-742-7474 (Nebraska and Iowa), 402-471-5729

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