

## **“Unwrapping” Domicile for Military Spouses**

Unwrapping presents at the holidays is something many people enjoy. However, unwrapping the layers of the law is not always as fun (especially for non-lawyers). This article helps military families unwrap the laws relating to domicile for income tax purposes and how they apply to military spouses.

Researching this issue may seem simple but it is a daunting task filled with potholes. A simple internet search will return a variety of results that are outdated, incorrect, or both. This is true even from seemingly reputable sources. This often leads clients to our office to ask: What domicile can my spouse claim for income tax purposes?

### ***This is easy, don't I just look to the SCRA?***

The Servicemember's Civil Relief Act (SCRA) provided the original rule that a service member does not obtain or lose residency in a particular state solely by their presence there on military orders. This original protection under the SCRA **did not** extend to the spouse of a service member.

In 2009, Congress passed the Military Spouses Residency Relief Act (MSRRA). Through this law, military spouses were permitted to claim the same domicile for tax purposes as their service member spouse. However, under the initial version of the MSRRA, the spouse must have independently established domicile in that jurisdiction to make the claim. Thus, the spouse could not go back and claim the service member's domicile if the spouse had not independently established domicile there.

In 2018, Congress amended the MSRRA to permit a military spouse to claim the domicile of their spouse for tax purposes if (1) the service member was living in a state that is not their domicile, (2) the spouse is in that current state to live with the service member, and (3) both the service member and the spouse claim the same state of domicile. The effect was that a spouse could now claim the domicile of the service member even if they had not independently established domicile there themselves.

The most recent expansion to the domicile rules for service members and their spouses came in 2023 through the Veterans Auto and Education Improvement Act (VAEIA). Through this most recent expansion, the service member and spouse may, but are no longer required to, elect the same state as their domiciles.

### ***That's a lot to unwrap, so what is the current rule?***

Putting together the rules from the SCRA, MSRRA, and the VAEIA, the rule for domicile is now:

A service member and their spouse, for any taxable year of the marriage, may elect as their state of residence for tax purposes:

- (1) the domicile of the service member,
- (2) the domicile of the spouse, OR

(3) the duty station of the service member.

Importantly, the most recent set of changes removes the requirement that the spouse must claim the same domicile as the service member.

***But that is not what I read in my research. Are you sure?***

Yes, this is the rule as it stands at the end of 2024. When doing your own research always be sure to check the dates. The changes in the VAEIA were passed in 2023. Many of the items surfacing in a search may have been drafted before that change was made.

Additionally, the VAEIA may not be the logical place that someone would look for the latest updates to the domicile rule. It is possible that other sources preparing guidance on the rule inadvertently overlooked or missed this important update.

***We talked a lot about domicile. What is that exactly?***

Domicile can be a tricky subject to understand. At its most basic, it is the place you intend to return. In other words, domicile is a state of mind.

There is not one single thing you can do to demonstrate that a particular jurisdiction is your established domicile. However, below are a list of things that are often considered when determining where a person's domicile is:

- Voter Registration
- Driver's License
- Vehicle Registration
- Bank / Financial Accounts
- Ownership of Real Property
- Domicile of your Estate Planning Documents (What state is declared on your Will as your domicile)
- Where you file / pay taxes

You should attempt to have as many of these things done / or established in your chosen domicile. When discussing domicile, the below things often are confused:

- Domicile may or may not be the same as your Home of Record. This depends on whether you established a new domicile after entering service. In other words, your domicile can change, your Home of Record does not.
- Domicile and residence are NOT the same. Residence is a temporary place or home you intend to live in for a period, while domicile is the place you intend to return. You can have many residences, but only one domicile at a time.

Admittedly, domicile can be difficult topic. Reach out to your local Legal Assistance Office if you have questions.

***Just because you and your spouse are not domiciled in your current jurisdiction, don't forget to consult state requirements for additional obligations.***

Even if your spouse is not domiciled in a particular jurisdiction for tax purposes, they may still have to complete certain filings or forms.

For example, here in Maryland, a military spouse with a domicile in different state must file a few forms through their civilian employer to document their exemption.

Maryland requires that:

- MD Form MW507 (Standard Maryland Withholding Exemption Certificate): On this form, the spouse will list the state he/she is claiming domicile and that, as a result, are not subject to withholding under the SCRA as amended by the MSRRA. (Block 8 on the current form)
- MD Form MW507M (Exemption form for Qualified Civilian Spouse of a U.S. Armed Forces Servicemember): Maryland also requires this form be completed by the employee and employer to document qualification

Both forms include instructions, but our office is happy to answer any questions regarding these forms if they apply to your situation.

If you are in a different state be sure to consult their requirements.

**Additional Information or Questions:**

If you need additional information or have questions, please contact the Aberdeen Proving Ground Client Services Division at 410-278-1583 to schedule an appointment. If you are not located at or near Aberdeen Proving Ground, your local Legal Assistance Office can assist you with any questions related to the SCRA or domicile.