

Military Spouses Residency Relief Act (MSRRA)

(2018 Amendment to the Servicemembers Civil Relief Act (SCRA))

1. Purpose. To explain provisions of the MSRRA regarding state tax implications
2. Discussion.

a. On 31 December 2018, President Trump signed The Veterans Benefits and Transitions Act of 2018 (VBTA), Pub. L. No. 115-407. This statute contains an amendment to the SCRA (Title 50, United States Code (U.S.C.), Chapter 50) – Residence of Spouses of Servicemembers for Tax Purposes.

b. The MSRRA, Pub. L. No. 111-97, amended the SCRA in 2009. It granted a substantial benefit to military spouses who were legal residents of, or domiciled in, the same state as the Servicemember. For those spouses, the MSRRA prevented state and local entities from gaining tax jurisdiction over the spouse, if the spouse's presence in the state was due solely to accompanying the Servicemember at the member's duty station. If the MSRRA applied, the spouse's personal property and wages would be sourced to the spouse's state of legal residence or domicile.

Example: A Florida-domiciled Soldier marries another Florida domiciliary in 2016. In 2017 the couple move to Virginia in compliance with PCS orders assigning the Soldier to Fort Lee, where the spouse obtains new employment. In this case the MSRRA causes the wages from the spouse's new job in Virginia to be sourced to Florida, her original state of domicile. Her income is not subject to Virginia income tax or withholding.

c. The effectiveness of this MSRRA provision was limited because it only applied when the Servicemember and spouse had the same state of legal residence or domicile. This is commonly referred to as the "same state rule."

Example: A Florida-domiciled Soldier marries a person domiciled in North Carolina while stationed at Fort Bragg in 2016. In 2017 the couple move to Virginia in compliance with PCS orders assigning the Soldier to Fort Lee, where the spouse obtains new employment. The MSRRA, as it amended the SCRA in 2009, does not apply because the couple do not share the same state of legal residence or domicile. The spouse's wages from her employment at Fort Lee are subject to Virginia income tax. Moreover, after 183 days the spouse becomes a statutory resident of Virginia, and her worldwide income (as opposed to just the wages from her Virginia employment) becomes subject to Virginia income tax.²

² See Code of Virginia Section 58.1-302 (definition of "resident"), and Section 58.1-322 (Virginia taxable income of residents).

d. Section 302 of the VBTA fixes the “same state rule” problem for military Families with split legal residences. The same state rule remains, but now spouses can simply elect to have the same residence for state and local tax purposes as the Servicemember. Following an election, the factors previously used to determine the spouse’s legal residence—such as the spouse’s physical presence in a particular state or the identity of the state in which the spouse maintains a driver’s license, vehicle or voter registrations, or professional licenses—are no longer relevant. In other words, if a Servicemember is a legal resident of a particular state for tax purposes, the spouse can unilaterally elect to also be a resident of that same state.

e. The VBTA was signed on 31 December 2018 – the last day of taxable year 2018. Accordingly, pursuant to Section 302(b), spouses can make this election for state and local returns for taxable year 2018 filed in the 2019 income tax filing season.

Example: A Florida-domiciled Soldier marries a person domiciled in North Carolina while stationed at Fort Bragg in 2016. In 2017 the couple move to Virginia in compliance with PCS orders assigning the Soldier to Fort Lee, where the spouse obtains new employment. The spouse files a 2017 Virginia income tax return because, during that year, the couple did not share the same state of legal residence or domicile and therefore could not invoke the MSRRA. During the 2019 tax filing season, however, the spouse elects to have the same residence of the Soldier for tax purposes under Section 302 of the VBTA. The MSRRA/SCRA applies and the spouse’s wages and other income are no longer taxable by Virginia.

3. ACKNOWLEDGMENT. We have read the above information regarding MSRRA in its entirety. We hereby acknowledge and understand that:

- a. *We alone bear the burden to establish the bona fides of our residence/domicile;*
- b. *We voluntarily make our own election; our tax practitioner has educated us on MSRRA but has not advised us as to which election we should make;*
- c. *We have the opportunity to speak with a legal assistance attorney **prior** to filing our tax return and have elected not to;*
- d. *We are ultimately responsible for the accuracy of any state tax return(s) prepared by the APG Tax Center at our request and any inquiries made by state taxing authorities after the submission of our state return(s). The APG Tax Center will not assist us with inquiries or the amendment of any state return(s) should it later be determined that we were ineligible to file in that state.*

Taxpayer Name _____ Date _____

Spouse’s Name _____ Date _____