



Legal Briefs

From the Fort Knox Legal Assistance Office

THE MILITARY SPOUSES RESIDENCY RELIEF ACT (MSRRA)

WHAT IS THE MSRRA?

On November 11, 2009 President Obama signed the MSRRA into law. The MSRRA amends the Servicemembers Civil Relief Act (SCRA) to provide that the spouse of a military member does not lose nor acquire a residence/domicile* for purposes of income or property taxation merely by reason of being absent or present in a tax jurisdiction of the United States solely to accompany a servicemember on active duty orders *if* the residence/domicile of the servicemember and the spouse are the same. Previously, only the servicemember was granted this protection.

EXPLANATION

A state cannot tax income earned in that state by the military spouse *if* the military spouse and servicemember have *each* established a domicile outside the state and are present in the state solely due to the servicemember being assigned to that state. The MSRRA does not change how domicile is established or maintained—this remains in the control of the states.

Like servicemembers, military spouses cannot simply “pick” a state of legal residence. Domicile is established, not chosen. Military spouses seeking to assert the MSRRA must demonstrate previous or current physical presence in the state they intend to claim *and* an intent to remain or return there permanently. The law does, however, permit military spouses to regain a residence they once had but lost due to their servicemember spouse’s PCS move to another state. Furthermore, the MSRRA protection only exists when the servicemember and the spouse have the same state of legal residence.

A servicemember’s domicile/state of residence differs from their “home of record.” The MSRRA and state taxing authorities are only concerned with a servicemember’s domicile/residence. Servicemembers complete DD Form 2058, “State of Legal Residence Certificate” and file it with their personnel office (S-1) or finance office to declare their residence/domicile. This is what DFAS uses to determine which state income tax rate applies to the servicemember’s military pay. This form does not, by itself, legally change the servicemember’s domicile. Current or previous physical presence in the state is required for declaring the state your domicile, and in most cases you must actually reside in that state at the time you declare your intention of making that state your permanent home or domicile. For more information on the difference between home of record and domicile/residence, see DD Form 2058.

APPLICATION

The MSRRA is effective for tax year 2009 and for future years. This means military spouses filing their 2009 tax return can claim the state of residence of their servicemember spouse *if* they meet the requirements explained above. By doing this, the military spouse may file his or her 2009 tax return as a nonresident of the state which taxed their income throughout the year and seek a refund of those income taxes withheld.

Military spouses should take caution, however—states are likely to question the legitimacy of each individual claim with inquiries into the military spouse's status, the domicile of the servicemember, and the domicile of the spouse. Spouses should be prepared to provide the states with proof substantiating their claim of domicile and SCRA/MSRRA relief from that state's taxation. Again, this includes a) a prior or current residence in the state, b) intent to remain or return to that state as a permanent home, and c) the state must be the same state as the servicemember's domicile. Providing this proof will not always be easy. Furthermore, due to the infancy of the MSRRA, state enforcement mechanisms are unpredictable and remain to be seen. The response among the states is not likely to be uniform. Assuming the servicemember demonstrates sufficient evidence of domicile, the state may conduct a separate inquiry into spouse's right to claim the same domicile. Claims of changed residency that have no basis by the inquiring state will likely be viewed as fraudulent by state taxing authorities and subject the family to significant additional tax penalties and interest.

The MSRRA applies to all income earned by a spouse in a given state, whereas the SCRA applies only to the servicemember's non-military income. A servicemember who is not a resident of the state in which he is physically present but earns non-military income in that state is still subject to that state's taxation on the non-military income earned in that state. In that sense, the MSRRA actually provides more protection to military spouses than the SCRA provides to servicemembers.

Contrary to media reports, neither the SCRA nor the MSRRA exempt a servicemember or spouse who physically reside in a state from complying with that state's driver's license requirements.

EXAMPLE SCENARIOS

a. Soldier is a resident/domiciliary of Texas. The spouse takes the required steps to establish and maintain residency/domicile in Texas as well. Soldier is assigned to Virginia and spouse moves to Virginia to live with the Soldier and gets a job in Virginia. The spouse can assert SCRA and Virginia cannot tax the spouse's income earned in Virginia.

b. Airman is a resident/domiciliary of Texas. He is assigned to Virginia, while in Virginia he meets and marries his spouse who is working in Virginia. The MSRRA does not permit the spouse to claim Texas residency/domiciliary. Virginia can tax the spouse's income.

c. Marine is a resident/domiciliary of Pennsylvania. Her spouse takes the required steps to establish and maintain residency/domicile in Pennsylvania. Marine is assigned to North Carolina and spouse moves to North Carolina to live with the Marine and gets a job in North Carolina. The spouse can assert SCRA and North Carolina cannot tax the spouse's income earned in North Carolina; however, Pennsylvania can tax the income. It is incumbent on the spouse to file Pennsylvania estimated taxes on the income and file a Pennsylvania return.

THE MSRRA AND KENTUCKY

Since the MSRRA was passed so late in 2009, most states did not have the opportunity to update their tax forms. For 2009, those military spouses who fall under this law should file Form 740-NP Kentucky Individual Income Tax Nonresident or Part-Year Resident Return to request a refund of the Kentucky income tax withheld from his or her 2009 pay. The income would not be reported as taxable on the Kentucky income tax return. To assist the department in identifying those returns, please write across the top of the return "MILITARY SPOUSE." For 2010, those military spouses should file a new Form K-4 with his or her employer to claim the exemption from withholding of Kentucky income tax. The updated K-4 Form is available on the Kentucky Department of Revenue's website at <http://www.revenue.ky.gov/forms/curwhfrms.htm>. If you have questions about how the MSRRA applies directly to your income earned in Kentucky, you should contact the Kentucky DOR Taxpayer Assistance Section at (502) 564-4581.

If you have any questions concerning the MSRRA, please contact the Fort Knox Tax Center at (502) 624-0044 or by e-mail at knox.taxcenter@conus.army.mil. Tax Center hours of operation are Mondays 0900 – 1900, Tuesdays, Wednesdays and Fridays, 0900 – 1700, and Thursdays 1300-1700. The Fort Knox Tax Center is located in the basement of Building 1310, Pike Hall at the corner of Knox Street and Third Avenue. The Fort Knox Legal Assistance Office is located on the first floor of Pike Hall.
