

INFORMATION PAPER

DAJA-LA
11 January 2019

SUBJECT: 2018 Amendments to the Servicemembers Civil Relief Act (SCRA)

1. Purpose. To provide information on recent SCRA amendments.

2. Discussion. On 31 December 2018, The Veterans Benefits and Transitions Act of 2018 (VBTA), Pub. L. No. 115-407, was signed by the President. This statute contains four amendments to the SCRA (Title 50, United States Code (U.S.C.), Chapter 50).

a. Termination of Residential Leases of Deceased Servicemembers.

(1) Section 3955 of the SCRA allows Servicemembers to terminate residential and motor vehicle leases upon entering military service, or in connection with Permanent Change of Station (PCS) or certain military deployment orders.

(2) Section 301 of the VBTA extends the benefits of this provision in part to spouses of Servicemembers who die on active duty. The spouse may terminate a residential lease within one year of the Servicemember's death as long as the Servicemember died while in military service or while performing full-time National Guard duty, active Guard and Reserve duty, or inactive-duty training (as defined in 10 U.S.C. 101(d)).

(3) This provision applies to residential leases only and not to vehicle leases.

b. Termination of Multichannel Video Programming and Internet Access Contracts.

(1) Section 3956 of the SCRA allows Servicemembers to terminate cellular or landline telephone contracts upon receipt of military orders to relocate for 90 days or more to a place that does not support the contract.

(2) Section 304 of the VBTA extends this right of termination to internet service and multichannel video programming contracts.

(3) The amendment defines "multichannel video programming service" by referring to 47 U.S.C. 522. The Federal Communications Commission (FCC) currently interprets this definition to include cable and satellite TV providers (e.g. Comcast, Verizon Fios, Direct TV), but not online-only services such as Hulu and Netflix.¹

¹ See 47 CFR 76.71. In 2015 the FCC issued a notice of proposed rule change that would have included Online Video Distributors (OVDs) in the definition of Multichannel Video Programming Distributors

c. Residence of Spouses of Servicemembers for Tax Purposes.

(1) The Military Spouses' Residency Relief Act (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.

(2) 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

(MVPDs). As of the date of this info paper, the proposed rule has not yet been adopted. See 80 FR 2078 (15 January 2015).

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

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(3) 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.

(4) 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.

d. Residence of Spouses of Servicemembers for Voting.

(1) Section 4025 of the SCRA was also amended by the MSRRA in 2009. It allowed spouses domiciled in the same state as the Servicemember to retain their residence for voting purposes. Much like MSRRA’s tax provisions, the “same state rule” prevented MSRRA’s voting provisions from providing relief to many military spouses.

(2) Section 303 of the VBTA amends Section 4025(b) of the SCRA by providing that spouses may also elect to have the same residence as the Servicemember for voting purposes.

(3) This amendment becomes effective 90 days after the date of enactment, or 31 March 2019.

4. For further information regarding the VBTA amendments to the SCRA/MSRRA, contact your servicing Legal Assistance Office.

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