



**Kaiserslautern Legal Services Center
Legal Assistance Information**

Military Spouses Residency Relief Act (MSRRA)



This information paper provides basic information only, and is not intended to serve as a substitute for a personal consultation with a Legal Assistance Attorney. For an appointment to see an attorney, dial DSN 483-8848 or Civilian 0631-411-8848.

President Obama signed the MSRRA on November 11, 2009. This law amends the Servicemembers Civil Relief Act (SCRA) to provide for the ability of some spouses of servicemembers to retain or regain a state of domicile for tax purposes, retroactive to January 1, 2009.

The MSRRA states as follows:

“A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember’s military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.”

The SCRA protects a servicemember’s military pay from income taxation by a state where the servicemember resides or is assigned pursuant to military duties, unless that state is also the servicemember’s state of permanent residence or domicile. The language of the MSRRA mirrors the SCRA protection for servicemembers, while adding applicability to the spouse of a servicemember when the spouse and the servicemember share the same state of domicile.

The MSRRA does not permit a spouse to pick any state of residence to be the same as the servicemember’s state of residence. The spouse must have at one time met requirements of physical presence in the state of residence of the servicemember and be able to show indicia or proof of intent to make or keep the state their permanent home.

Claims of residency are likely to be scrutinized carefully by state taxing authorities for servicemembers and their spouses. Assuming the servicemember demonstrates sufficient evidence of residence or domicile, the state may also seek evidence of the spouse’s claim of domicile. Changes in residency with no basis in fact may be viewed as fraudulent by state taxing authorities and subject the family to significant additional tax penalties and interest.

States are still sorting out the implications of this law on income personal property tax systems. The law is effective for tax year 2009 but was passed late in the tax year. State tax forms for 2009 do not address the MSRRA. Refunds sought by military spouses for withheld

state income taxes may result in inquiries by states concerning domicile claims of both the servicemember and spouse.

Spouses who claim a state of residence other than their state of employment may be required to make estimated tax payments to their resident state during the tax year in order to avoid underpayment penalties.

The MSRRA and SCRA concern a servicemember's military pay and a spouse's pay, but it does not address a servicemember's non-military pay. A servicemember who takes on a second job while stationed outside his or her state of legal residence may have to pay taxes on the income to the state where the pay is earned.

The SCRA and MSRRA do not exempt a spouse who physically resides in a state with complying with that state's driving license requirements.

Check with your servicing Tax Center for updated information concerning implantation of the MSRRA.

SCRA/MSRRA Application

Answer the following to determine applicability of the MSRRA.

What is the servicemember's established state of legal residence? _____

What is the spouse's established state of legal residence? _____

Are they the same?

YES: The spouse can claim the same state of legal of residence for income tax purposes as the servicemember for tax year 2009 and future years.

NO: Was the spouse previously a resident in the servicemember's state of legal residence?

YES: The spouse may be able to claim the same state of legal residence for income taxation purposes as the servicemember for tax year 2009 and future years. The spouse may have to prove residency connections and pay estimated taxes.

NO: The spouse's income will be taxed where earned.

Examples

1. Servicemember is a resident of Texas. The spouse takes required steps to establish and maintain residency in Texas. Servicemember transfers to Virginia with the spouse, and the spouse works in Virginia. The spouse can assert SCRA/MSRRA and Virginia cannot tax the spouse's income earned in Virginia.

2. Servicemember is a resident of Texas, and while assigned to Virginia meets and marries a spouse who lives and works in Virginia. The MSRRA does not permit the spouse to claim Texas residency. Virginia taxes the spouse's income.

3. Servicemember is a resident of Pennsylvania. The spouse establishes and maintains residency in Pennsylvania. Servicemember transfers with the spouse to North Carolina, and the spouse gets a job in North Carolina. The spouse can assert SCRA/MSRRA and North Carolina cannot tax the spouse's income earned in North Carolina. Pennsylvania taxes the income. Spouse must pay estimated taxes on the income and file a Pennsylvania return.

Relevant Terms and Definitions

Residence and **domicile** are interchangeable terms denoting the place where a person has his or her permanent home and to which, whenever absent, they have the intention to return. **Residence** or **domicile** is an established status for which proof may be required. Taxpayers who establish domicile in states without an income tax (Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming) or in states with favorable tax arrangements (New Hampshire and Tennessee) should document and be prepared to show steps taken to establish ties in the new state, and cut ties with the old state.

A person's **state of legal residence** is established by physical presence in the new state with the simultaneous intent of making it their permanent home, and abandonment of the old state of legal residence. Generally you must actually reside in the new state at the time you form the intent to make it your permanent home. You must be able to show indicia of intent.

Home of record is the place from which a servicemember joined the military. A servicemember's home of record cannot be changed once established except where the servicemember performs a reenlistment in the new state and requests a change.

It is possible to join the military from a **home of record** and have a different **state of legal residence** after meeting the physical presence and intent requirements. The two need not be the same.

DD Form 2058, "State of Legal Residence Certificate": Servicemembers submit completed DD Form 2058 to their service to declare or change state of legal residence or domicile. DFAS uses this form to determine state income tax withholding from the servicemember's military pay. This form does NOT, by itself, legally change a servicemember's state of legal residence.