

MILITARY SPOUSES RESIDENCY RELIEF ACT

On November 11, 2009 President Obama signed Public Law 111-97 the “Military Spouses Residency Relief Act.” The law amends the Service members Civil Relief Act (SCRA) to provide certain protections for military spouses with regard to residency, voting, and taxation. MSRRA is effective for 2009, but is not retroactive for 2008. This law does not apply to dependent children.

RESIDENCY: MSRRA amends SCRA to permit a spouse of a servicemember to have the same residency as the service member. Military spouses will need to **verify** residency requirements with their state. Establishing residency may include voting, paying taxes, and registering a vehicle in that state. Spouses will have the option to adopt the state in which they reside or the service member’s state of residence. The law does not permit a spouse to choose any state they desire for residency. The MSRRA does not change how domicile is established, or maintained, and does not provide a means for a spouse to simply choose the same domicile as the Soldier. The spouse must establish residency in the servicemember’s state to exercise this option.

VOTING: MSRRA directs that a military spouse may vote in the service member’s state of residency or the state where the spouse currently resides due to military orders. States will need to develop policies to allow spouses to register to vote if they currently reside outside that state, have never voted in that state before, or do not have a mailing address in the state.

TAXATION: MSRRA states that a military spouse will neither lose nor acquire a residence for tax purposes by entering or leaving a tax jurisdiction while accompanying a service member who is moving as a result of military orders, as long as the residence is the same for husband and wife. The tax provisions in the MSRRA have implications for both state income tax and certain personal property taxes imposed by states and local jurisdictions. Real property taxes (those paid by homeowners) are not affected. This provision of the legislation has generated much excitement for spouses of service members on orders in states other than their home of record, especially if the service member maintains residency in a state with no income tax or where military pay is not taxed when earned outside the state. We encourage military spouses to review the implementation procedures with the taxation department of their home state prior to making any decision to change their legal residence or requesting a refund for state taxes already withheld. Determine whether and how income earned outside the state is subject to taxation. Spouses should not assume their tax status will be the same as the service member’s in their state of residency. Many states exempt military income earned while the service member is on orders out of the state. This exemption will not apply to income earned by the spouse unless the state specifically excludes it through additional legislation.

Each state must decide whether and how military spouses will need to prove residency in the service member's home state prior to claiming an exemption. Proof of residency may include a current driver's license, vehicle registration, and voter's registration.

Remember, Individuals, not employers, are responsible for tax liability. The Department of Defense maintains an accounting system capable of paying all required state taxes through withholding. Many smaller organizations do not have that capability. Military spouses will need to determine their tax liability with the state of residency.

EXAMPLE SCENARIOS:

To understand what has changed and what has not changed due to the enactment of this new law, here are three hypothetical but realistic scenarios.

Servicemember 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.

Servicemember 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.

Servicemember is a resident/domiciliary of Pennsylvania. Her spouse takes the required steps to establish and maintain residency/domicile in Pennsylvania. Soldier is assigned to North Carolina and spouse moves to North Carolina to live with the Soldier 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.

CONCLUSION - PROCEED WITH CAUTION:

The new law is good news for some military families, but because of the way that the law was drafted most military families will not benefit.

A state cannot tax income earned in that state by the military spouse if the military spouse and Soldier both have established domicile outside the state and are present in the state solely due to the Soldier being assigned to that state.

MSRRA does not change how domicile is established, or maintained, and does not provide a means for a spouse to simply choose the same domicile as the Soldier.

A Soldier who is not a domiciliary of the state but earns non-military income in that state is still subject to state taxation on the non-military income earned in the state.

A military spouse cannot simply “pick” a state of legal residence. They must demonstrate physical residence and demonstrate their intent to remain in the state permanently. The protection of the MSRRA only exists when the Soldier and spouse have the same state of legal residence.

Requests to assert SCRA and seek refunds of state income tax withholding will, in all likelihood, be met with inquiries from the states into the military spouse’s status, domicile of the Soldier, and domicile of the spouse. Spouses must be prepared to provide proof substantiating their claim of domicile and SCRA relief from taxation. This will not always be easy or possible.

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

I want to express my gratitude to the papers written and used to prepare this document.

Captain Samuel F. Wright, JAGC, USN (Ret.) (Director of the Servicemembers’ Law Center)
LAW REVIEW 0959 Congress Enacts New Provisions for Military Spouse Voting and Taxation

LTC Janet Fenton, Deputy Chief, Legal Assistance Policy Division, DOD Information paper, undated, SUBJECT: Military Spouses Residency Relief Act (MSRRA)