

Information Paper

DAJA-LA

16 November 2009

SUBJECT: Military Spouses Residency Relief Act (MSRRA)

1. PURPOSE: To explain provisions of the MSRRA regarding state tax implications
2. BACKGROUND:
 - a. On 11 November 2009, President Obama signed the MSRRA. The MSRRA is effective for tax year 2009 and future years.

b. The MSRRA amends the Servicemembers Civil Relief Act (SCRA) to provide that the spouse of a military member does not lose or acquire a residence/domicile for purposes of taxation (both income and personal property) by reason of being absent or present in a tax jurisdiction of the United States solely to be with the Soldier in compliance with the Soldier's military orders if the residence/domicile of the spouse and Soldier is the same.
3. APPLICATION AND EXPLANATION:
 - a. 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.

b. 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.

c. 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.
4. PROCEED WITH CAUTION:
 - a. A military spouse cannot simply "pick" a state of legal residence. They must demonstrate physical residence and indicia of 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.

b. 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.

c. There will probably not be a uniform response from all state taxing authorities or from employers on applying the MSRRA.

d. 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.

5. 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. Soldier 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. Soldier 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.

LTC Janet Fenton
Deputy Chief, Legal Assistance Policy
Division