

INFORMATION PAPER

DAJA-LA
22 December 2009

SUBJECT: Military Spouses Residency Relief Act (MSRRA)

1. PURPOSE: To explain state tax provisions of the MSRRA

2. BACKGROUND:

a. On 11 November 2009, President Obama signed the MSRRA. It is effective for tax year 2009 and future years.

b. The MSRRA amends the Servicemembers Civil Relief Act (SCRA) to provide that a military spouse does not lose or acquire a residence/domicile for tax purposes (both income and personal property) by reason of being absent from or present in a state solely to be with a Soldier spouse who is present in the state on military orders. There is debate on whether the law requires the residence/domicile of the spouse and Soldier to be the same.

3. APPLICATION AND EXPLANATION:

a. The MSRRA does not change the rules on how domicile is established, or maintained, and does not provide a means for a spouse to simply choose the same domicile as the Soldier. To establish a domicile, one needs to be physically present in the state and have the intent to remain there permanently. The intent is demonstrated by taking actions such as: registering to vote; obtaining a driver's license; registering an automobile; purchasing real estate.

b. Under the MSRRA, a state cannot tax a military spouse's income earned in that state 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. Under the SCRA, only a Soldier's military income is exempt from state taxation. A Soldier with a part time job is still subject to state taxation on the non-military income earned in the state. Thus, the MSRRA provides the military Spouse significantly more protection than the SCRA provides to a Soldier.

4. IMPLEMENTATION:

a. State taxing authorities do not have a uniform response on implementing the MSRRA. Some states will require that the Soldier and spouse have the same state of legal residence before they can claim protection of the MSRRA. Other states are taking a broader reading of the statute. Some will aggressively challenge a spouse's residency, others have indicated that they will not. All are very concerned of fraudulent claims.

b. Spouses may not automatically regain a lost residency without complying with the requirements of para 3a. Some spouses will have maintained the indicia of residency (driver's license, voting, etc.) in a prior jurisdiction and thus not have "lost" that prior residency.

c. Spouses who believe they meet the MSRRA provisions and want to request a refund of 2009 state income tax withholding will have to file a state income tax return in accordance with each State's directives. Spouses should be prepared to provide proof substantiating their claim of domicile and MSRRA relief from taxation.

d. Spouses who wish to assert MSRRA exemption from income tax withholding in 2010 and beyond will need to complete a new withholding form with their employer. The states are currently in the process of revising state withholding forms to reflect the MSRRA. Spouses should be prepared to provide their military ID card and in many cases a current LES of the Soldier when completing the state withholding form.

e. 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. Licensing remains a function of state law.

5. CONCERNS:

a. Some states will aggressively challenge spouses' residency claims under the MSRRA.

b. These states may also begin to require additional proof from Soldiers that they have a legitimate claim to residency in another state.

c. There are concerns that states will eliminate recent hard fought gains in benefits to military Families (in-state tuition, unemployment benefits), or refrain from implementing such benefits where such Families do not pay any taxes to that state. Because of these concerns, DoD did not support this legislation.

6. 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 continue to 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 (or have his employer withhold Pennsylvania income tax if the employer has sufficient ties with Pennsylvania) and file a Pennsylvania return.

Prepared by: LTC Janet Fenton