

Military Spouses Residency Relief Act (MSRRA) (Public Law 111-97)

- 1. Background.** The MSRRA changes the basic rules of taxation with respect to military spouses who earn income from services performed in a State in which the spouse is present with the Service member (SM) in compliance with military orders when that State is not the spouse's domicile (legal residence). Under these conditions, the spouse generally will not have to pay income taxes to the current State where income is earned. The spouse, however, would be required to pay income tax to the domiciliary State (assuming that State taxes wages).
- 2. GET HELP!** The law is complicated and fact specific, and because its effect will depend on the interpretations of each State, SMs and their spouses are encouraged to seek more information provided here: <http://www.nationaldefense.org/scra/msrra/>.
- 3. Effective dates.** The law is effective for tax year 2009 and may entitle eligible spouses to a refund of their tax year 2009 withholdings. It may, however, also require some spouses to file tax returns in their State of domicile for tax year 2009, when they might otherwise not have been required to do so. For tax years after 2009, spouses should file new withholding forms with their employer indentifying their domiciliary State. If taxes must be withheld for payment to the domiciliary State and the employer cannot withhold them, then the spouse would have to make estimated quarterly tax payments to the domiciliary State.
- 4. What is domicile (legal residence)?** It is the place that one considers "home," where one has been physically present (generally this means lived) and formed the intent to remain for the indefinite future and return when temporarily absent. Examples of contacts with a particular State that help prove domicile include: where one votes, owns property, holds professional licenses, registers vehicles, holds a driver's license, accepts tax breaks for a declaration of homestead, or indicates where his or her last will and testament should be probated. A determination of domicile will be fact specific. No particular combination of these or other similar contacts will necessarily guarantee proof of domicile. SMs and spouses must look to the appropriate State law. One may abandon an old domicile by being physically present in another State, forming the intent to create a new domicile there, and establishing new contacts with the new domiciliary State.
- 5. Example:** Spouse and SM are domiciled in Texas. SM is reassigned from Texas to Virginia and spouse accompanies SM to Virginia. Prior to the MSRRA, the spouse would have to pay State taxes on income earned from services performed in Virginia, but under the MSRRA, the spouse would not have to pay income tax to Virginia. The spouse, would, however, have to comply with the tax laws of the State of domicile, in this example, Texas. Because Texas has no State income tax, the spouse would pay no State income tax. Had the spouse's domicile been a State with an income tax, then the spouse would have to pay State income tax to that State, even though the income was earned in Virginia. Should the spouse voluntarily remain in Virginia after the SM subsequently transferred outside of Virginia under orders authorizing the spouse to accompany the SM, then the spouse would lose the protections of the MSRRA and would be required to pay income tax to Virginia.
- 6. How is this different from the current rules for Service members?** The rules for spouses and SMs are now very similar. A SM does not pay State taxes on military pay and allowances earned in the State where the SM is assigned (assuming the SM's State of assignment and domicile are not the same). This now applies to accompanying spouses, for *all* income from services performed. Both SMs and spouses are also responsible for complying with the tax laws of their domiciliary State, although such laws may not apply to

both. For example, some States, like New Jersey and Pennsylvania, exempt from taxation the income of their domiciliary SMs that is earned in other States. However, those exemptions do not apply to the spouse. Thus a spouse who was domiciled in New Jersey, but who was living and earning income in Virginia because of the SM's orders would owe taxes to New Jersey.

7. Common misunderstandings and uncertainties.

a. The MSRRA does not allow a spouse to pick or chose a domicile in any State. Domicile is established, not arbitrarily chosen. The spouse must have actually been present in the State, established it as his or her domicile, and maintained it as such by forming and maintaining the necessary contacts. Similarly, the MSRRA does not allow a spouse to “inherit” or assume the military member's domicile upon marriage.

b. The MSRRA does not allow a spouse to recapture an abandoned domicile without physically returning to the abandoned State of domicile and reforming the appropriate intent and demonstrating it by forming new contacts. In other words, having once lived in a State (even if the spouse once established domicile through registering to vote, obtaining a driver’s license, or other actions) will not allow a spouse to now claim the State as his/her domicile unless the spouse has continued to maintain sufficient contacts with the State. Again, this issue can often be complicated and seeking legal advice is encouraged.

c. The MSRRA does not relieve the spouse from paying State income taxes on income other than for services performed in the non-domiciliary State. For example, income from the sale of real property or from rental property *would* be taxable in the State where the property was located, MSRRA notwithstanding. The spouse must also comply with the tax laws of the domiciliary State.

d. It is not clear what the effect of the MSRRA will be: when the spouse lives in the State where the SM is assigned, but works in another State; when the spouse and SM live in a State other than the one to which the SM is assigned; or when the spouse and SM do not hold the same domicile.

f. The MSRRA does not affect whether a spouse must get a driver's license in the non-domiciliary State. That is entirely a function of State law.

8. Other effects of the MSRRA.

a. The MSRRA also exempts non-business personal property (most often automobiles) from taxation in the non-domiciliary State when the property is titled in the spouse’s name or jointly with the spouse and SM. As in the case of income tax, the spouse must be in the non-domiciliary State to accompany the military member on military orders.

b. The MSRRA should make it easier for the spouse to vote in the domiciliary State by absentee ballot. Voting is a very important contact to help prove and maintain domicile.

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