

## TJAGLCS Practice Notes

### *Servicemembers Civil Relief Act*

#### **Staying Connected: “Home of Record” Not Always the Same as “Domicile” Under the Servicemembers Civil Relief Act’s Taxation Protections**

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Most servicemembers are generally familiar with the rule under the Servicemembers Civil Relief Act<sup>1</sup> (SCRA) that military income is taxable only by the servicemember’s state of domicile and not by the state where the servicemember is assigned.<sup>2</sup> The rule derives from section 571 of the SCRA and its predecessor section under the venerable Soldiers’ and Sailors’ Civil Relief Act (SSCRA).<sup>3</sup> Unfortunately, servicemembers and their family members frequently misunderstand the limited scope of taxation protections under the SCRA<sup>4</sup> and fail to grasp the implications of wrongly applying ambiguous and confusing terminology such as “domicile”<sup>5</sup> and “residence.”<sup>6</sup> A recent case in the Oregon Tax Court demonstrates how servicemembers and the states do not always agree on the definitions and use of such terms<sup>7</sup> and underscores the continuing need for servicemembers to consider the potential tax consequences of their connections and associations, or lack thereof, with their home state and their state of assignment.

In *Carr v. Department of Revenue*,<sup>8</sup> the Oregon Tax Court held that a Navy servicemember was not relieved from responsibility to pay Oregon state income tax merely by asserting that his home of record<sup>9</sup> with the Navy was in Nevada. In 1980, Senior Chief Martin Carr<sup>10</sup> enlisted in the United States Navy and listed an address in Nevada as his home of record.<sup>11</sup> He continued to list Nevada as his home of record through twenty-five years of active duty service. From 1993 to 1996,

<sup>1</sup> 50 U.S.C.S. App. §§ 501-596 (LEXIS 2006).

<sup>2</sup> The rule stems from the joint application of two subsections of the SCRA found at 50 U.S.C.S. app. § 571(a) and (b). The first subsection essentially states that a servicemember neither acquires nor loses domicile for taxation purposes solely by being assigned to military duty outside his home state. The second subsection generally asserts the statutory “fiction” that a servicemember’s income is deemed earned in the state of domicile, even though the servicemember is performing duty in another state. The pertinent subsections are as follows:

(a) Residence or domicile. 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 servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(b) Military service compensation. Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

<sup>3</sup> Soldiers’ and Sailors’ Civil Relief Act, 50 U.S.C. app. §§ 501-594 (2000) (current version at 50 U.S.C.S. app. §§ 501-596 (LEXIS 2006)).

<sup>4</sup> For example, servicemembers may wrongly believe that their military income is “exempt from all taxation, to include taxation by their state of domicile,” and that “the SCRA exempts their nonmilitary income from taxation.” See ADMINISTRATIVE & CIVIL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER & SCHOOL, U.S. ARMY, JA 260, THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE 5-3 (Mar. 2006).

<sup>5</sup> Domicile is defined as “[a] person’s true, fixed, principal, and permanent home, to which that person intends to return and remain, even though currently residing elsewhere.” BLACK’S LAW DICTIONARY 501 (7th ed. 1999).

<sup>6</sup> Residence is defined as “[t]he place where one actually lives, as distinguished from a domicile.” BLACK’S LAW DICTIONARY 1310. Residence differs from domicile in that it usually does not require “an intent to make the place one’s home.” *Id.* On the other hand, the term “legal residence” is generally considered to be synonymous with domicile. See *id.* at 907; see also U.S. Dep’t of Defense, DD Form 2058, State of Legal Residence Certificate (Feb. 1977) [hereinafter DD Form 2058] (stating that the terms “legal residence” and “domicile” are essentially interchangeable).

<sup>7</sup> For a detailed discussion of terms commonly used in the military such as “domicile,” “residence,” and “home of record,” and the consequences to servicemembers of the misuse of these terms, see Major Wendy P. Daknis, *Home Sweet Home: A Practical Approach to Domicile*, 177 MIL. L. REV. 49 (2003).

<sup>8</sup> *Carr v. Dep’t of Revenue*, 2005 Or. Tax LEXIS 223 (Or. Tax 2005).

<sup>9</sup> The term “home of record” is generally considered to have no legal significance. It is used to establish military travel and transportation allowances and is not to be confused with a servicemember’s state of legal residence or domicile. See DD Form 2058, *supra* note 6.

<sup>10</sup> Senior Chief Carr’s full military rank is Senior Chief Petty Officer, which is equivalent to the military pay grade E-8.

<sup>11</sup> *Carr*, 2005 Or. Tax LEXIS, at \*1.

Senior Chief Carr was assigned to duty in Portland, Oregon. In 1999, he was reassigned to Oregon, where he resided with his wife.<sup>12</sup> The Carrs' connections to Oregon included purchasing a home in the state in 2001 and registering their vehicles there.<sup>13</sup> Senior Chief Carr was not registered to vote in Oregon, did not have an Oregon driver's license, and stated "unequivocally, and repeatedly" that he had no intention of making Oregon his domicile.<sup>14</sup> Despite this, the State of Oregon assessed personal income taxes against Senior Chief Carr for the 2001, 2002, and 2003 tax years.<sup>15</sup>

At first glance, Senior Chief Carr's connections and associations with Oregon appear to be no different from the actions of thousands of servicemembers throughout the U.S. armed forces with regard to their host (duty) states. It is common for Soldiers, Sailors, Airmen, and Marines to purchase homes and register vehicles in their state of military assignment, but these servicemembers typically still consider themselves "domiciled" for military and tax purposes in their home state. Most of these servicemembers would also honestly assert that upon separating from the military, they intend to return to their home state. This "intention to return" is a key factor when evaluating where a servicemember is domiciled for purposes of the taxation protections of the SCRA. If the common definition of domicile includes an "intent to return and remain,"<sup>16</sup> then the servicemember's stated "intention to return" (the presumptive equivalent of an "intention to remain") goes a long way to support the proposition that the servicemember is still domiciled in his home state. Further, purchasing homes and registering vehicles in the host state are not necessarily determinative. In fact, the Oregon Tax Court specifically stated that the acts of purchasing a home or registering a vehicle are not "conclusive in themselves" to establish that the servicemember had an intention to remain in the host state.<sup>17</sup> So why, despite Senior Chief Carr's lack of stated intent to make Oregon his domicile and his relatively unremarkable connections to Oregon, did the court conclude that he was domiciled in Oregon?

In determining Senior Chief Carr's domicile, the decisive factor for the Oregon court was not his connections *to* Oregon, but rather his *lack of* connections to his purported home state of Nevada. The court found that Senior Chief Carr did not own property in Nevada, did not have a Nevada driver's license, did not vote in Nevada, did not register his vehicles in Nevada, had only some extended family members in Nevada, and did not "speak convincingly of an intention to return to Nevada."<sup>18</sup> These points convinced the court that Senior Chief Carr and his wife had no current connection to the State of Nevada that would support his claim of Nevada domicile.<sup>19</sup> Although the court acknowledged that the Carr's connections to Oregon were "by themselves equivocal,"<sup>20</sup> it stated that those connections (purchasing a home and registering vehicles) "stand . . . as the best indicators of that place which . . . Plaintiffs had the intention to return when they were absent."<sup>21</sup>

The teaching point for legal assistance attorneys advising servicemembers on these issues is that the "bare assertion"<sup>22</sup> of a home of record address is not enough to establish *and maintain* domicile for purposes of taxation protection under the SCRA. Although a servicemember may have entered military service from a certain state and listed that state as the home of record for many years, those facts alone do not establish the servicemember's *current* domicile.<sup>23</sup> Similarly, because a servicemember adopted a new state of domicile during a previous military assignment does not mean that the state will *remain* the state of domicile for future assignments. States such as Oregon<sup>24</sup> will look at all of the servicemember's connections to determine which state is the "strongest of all their associations."<sup>25</sup> As a result, servicemembers seeking to

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<sup>12</sup> Senior Chief Carr apparently remained assigned for military duty in Oregon as the case went up on appeal to the Oregon Tax Court.

<sup>13</sup> *Carr*, 2005 Or. Tax LEXIS, at \*2.

<sup>14</sup> *Id.* at \*1, \*5.

<sup>15</sup> *Id.* at \*1.

<sup>16</sup> BLACK'S LAW DICTIONARY 501 (7th ed. 1999). Also, the Supreme Court has defined domicile as: "A residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." *Mitchell v. United States*, 88 U.S. 350, 352 (1874).

<sup>17</sup> *Carr*, 2005 Or. Tax LEXIS, at \*6.

<sup>18</sup> *Id.* at \*5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at \*6.

<sup>22</sup> *Id.*

<sup>23</sup> The *Carr* court emphasized that "a person can have only one domicile at a time." *Id.* at \*5; see also *In re Estate of Jones*, 182 N.W. 227, 228 (Iowa 1921); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 (1971); BLACK'S LAW DICTIONARY 1310 (7th ed. 1999) (defining residence).

<sup>24</sup> The *Carr* court pointed out that other jurisdictions, such as New Jersey and Minnesota, have applied similar reasoning in evaluating whether a servicemember was domiciled in the state of assignment and not in the home state. *Carr*, 2005 Or. Tax LEXIS, at \*6 (citing *Wolff v. Baldwin*, 9 N.J. Tax 11 (N.J. Tax Ct. 1986) and *U.S. v. Minnesota*, 97 F. Supp. 2d 973 (D. Minn. 2000)).

<sup>25</sup> *Carr*, 2005 Or. Tax LEXIS, at \*5.

maintain a current state of domicile or acquire a new state of domicile would be wise to establish as many connections and associations with that state as possible.<sup>26</sup>

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<sup>26</sup> Common examples of the types of activities a servicemember should consider taking to establish and maintain domicile in a particular state include: purchasing land or a home in the state, registering to vote, registering vehicles, opening a bank or investment account in the state, obtaining a driver's license, joining a church or other service/fraternal organizations, and purchasing a burial plot. *See* Daknis, *supra* note 7, at 78 (providing these and other examples but emphasizing that the list is not exhaustive, and pointing out that the servicemember must also meet the threshold requirement of establishing a physical presence in the state).