

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

- 1. Background.** The MSRRA changes some basic rules of taxation with respect to military spouses who: 1) earn income from services performed in a State in which the spouse is present with their Service member (SM) pursuant to military orders and 2) that State is not the spouse's domicile (legal residence). Under these conditions, the military spouse generally will not have to pay income taxes to that State. Depending on the laws of the domiciliary State, the spouse may be required to pay income tax to the domiciliary State.
- 2. GET HELP!** The law is complicated and fact specific, and because its effect will depend on the interpretations of each of the States, SMs and their spouses are encouraged to seek free, confidential advice from a legal assistance office. Legal assistance offices can be found at <http://legalassistance.law.af.mil/content/locator.php>.
- 3. Effective dates.** The law is effective for tax year 2009 and may entitle eligible spouses for a refund on their 2009 taxes. 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 2010 and beyond, spouses should file new withholding forms with their employer, designating their appropriate domicile state. If the employer cannot withhold taxes for that state, the spouse will have to make estimated quarterly tax payments to that state.
- 4. What is domicile (legal residence)?** It is the place that one considers "home." It is the place where one has 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 State law. One may abandon an old domicile by forming the intent to create a new domicile and by establishing new contacts with the new domicile.
- 5. How is this different from the current rules for Service members?** The rules for spouses and SMs are very similar. Currently a SM would not pay State taxes on military pay and allowances earned in the State where the SM is assigned, provided the State of assignment is not the SM's domicile. However, accompanying spouses would generally have *all* income from services performed in the non-domiciliary States exempted from taxes. SMs are also responsible for complying with the tax laws of their domiciliary State. Note, that some States, like New Jersey and Pennsylvania, do not tax income of SMs domiciled there but who are assigned to some other State and earn their income in that other State. However, those rules would not apply to the spouse. Thus a spouse who was domiciled in New Jersey, but who was living in Virginia because of the SM's orders assigning him or her to Virginia and who earned income from

services provided in Virginia would not have to pay taxes in Virginia but would owe taxes to New Jersey.

6. 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 chosen. The spouse must have actually lived there, 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 physicably returning to live in the previously abandoned State of domicile and reforming the appropriate intent and demonstrating it by forming new contacts.

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* likely 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. Likewise, it is not certain what the effect of the MSRRA will be when the spouse and SM live in a State other than the one to which the SM is assigned.

e. It is not clear whether the spouse and SM must hold the same domicile to be exempt from taxes in the non-domiciliary State.

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 and is not affected by the MSRRA.

7. 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 domicile.