



# Military Spouse Residency Relief Act (MSRRA)

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# Warning!!!

- The applicability of and eligibility under the MSRRA is very fact specific. Many states have differing guidance on the application of the MSRRA.
- These slides are meant to be used for discussion points only and are not to be used or construed as legal advice.
- If you believe the MSRRA may apply to you, you should consult with an attorney before making any changes to withholding or applying for a withholding refund.



# BLUF

- Amends Servicemembers Civil Relief Act effective 2009:
  - Spouse can keep established residence or domicile for purposes of personal, income, or property taxes. (retroactivity for income tax only)
  - Has to be same residence as SM spouse
  - Spouse cannot just “pick” a state of residence
  - Spouse still has to comply with tax laws in residence state
  - States will probably challenge claims of residence



# Text of Amendment:



- “A spouse of 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 spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember’s military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.”



# “Domicile” and “Residence”

- Interchangeable under SCRA
- Denotes a permanent home, a place where intend to return
- SCRA already protects Servicemember (SM) from taxation by state in which serving under orders unless that state is also the SM’s domicile
- Domicile and residence must be established



# Requirements to Establish Domicile/Residence



- Physical presence- must have actually lived there
- Intent to remain for the indefinite future (with intent to return there someday, if temporarily away)



# Some Indicators of Intent



- Real property ownership
- Filing tax returns
- Voter registration
- Vehicle registration
- Notify prior state of residence of the change
- Driver's License
- Will
- Professional License



# Notifying the State



- If you are a qualifying spouse, you can notify the state in which you are residing because of your SM-spouse's orders of another state of domicile/residence.
- State will refund any state tax withholding for 2009.
- Still have to file and pay taxes in the domicile/residence state!!! (if has an income tax)





# The States' Positions



- Most states have issued “W-4” equivalents to comply with requirements
- Most states are requiring alignment of domicile between spouses – some states are still silent on this
- Expect the states to challenge spouse’s domicile/residence claims.
- May also challenge SM’s domicile/residence!



# The Problem with SMs...

- “My LES says Texas. I vote in New York. My car is registered in Virginia. I have a North Carolina Driver’s License. I own a couple of houses in Kentucky...”
- A SM’s indicia of residence should align with a single state!



# Example #1

- SM is a resident/domiciliary of Texas.
- The spouse takes the required steps to establish and maintain residency/domicile in Texas as well.
- SM is assigned to Virginia and spouse moves to Virginia to live with the SM and gets a job in Virginia.
- The spouse can assert MSRRA and Virginia cannot tax the spouse's income earned in Virginia.



# Example #2

- SM is a resident/domiciliary of Texas.
- The spouse takes the required steps to establish and maintain residency/domicile in Texas as well.
- In 2007, SM is assigned to Virginia and spouse moves to Virginia to live with the SM and gets a job in Virginia.
- Spouse has voted in Virginia and has paid Virginia taxes since 2007.
- The spouse probably cannot now assert MSRRA and must still pay Virginia income taxes.



# Example #2A



- SM and spouse move back to Texas.
- Spouse must re-establish her Texas residency!



# Example #3

- SM is a resident/domiciliary of Texas.
- She is assigned to Virginia, while in Virginia she meets and marries her spouse who is working in Virginia.
- The MSRRA does not permit the spouse to now claim Texas residency/domiciliary.
- Virginia can tax the spouse's income.



# Example #4

- SM is a resident/domiciliary of Pennsylvania.
- Her spouse takes the required steps to establish and maintain residency/domicile in Pennsylvania.
- SM is assigned to North Carolina and spouse moves to North Carolina to live with the SM and gets a job in North Carolina.
- The spouse can assert MSRRA 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.



# Example #4A



- SM goes to Korea on an accompanied tour.
- Spouse refuses to go and remains in NC.
- Spouse loses protection! (must be in state pursuant to SM's military orders)





# Virginia guidance

- Applies to income from employment.
- Does not apply to rental income on VA property or military retired pay
- May apply to income from self-employment if business doesn't employ others, has no significant capital assets.
- Does not protect business income from the gross receipts tax



# Virginia Forms

- VA-4 is the “w-4” equivalent and has a section to claim the SCRA exemption from withholding -Gets filed with your employer
- Your employer may not be required to withhold for a different state for you.
- To obtain 2009 refund of VA withholding, spouse must file Form 763-S with supporting documentation



# Maryland Guidance

- Maryland Form MW507 is the “w-4” equivalent – filed with employer
- Administrative Release #1
- For refund for 2009, MD going to treat MSRRA spouse’s income as a deduction on the non-resident 505 form, line 13. See page 4, gg. of the instructions.



# D.C. Guidance



- D-4 is the “w-4” equivalent – filed with employer
- For 2009 refund D-40 individual income tax return. SM and spouse should be deducted on Schedule I, line 15.



# Driver's Licenses

- MSRRA does NOT mean the SM and spouse don't have to comply with state's DL laws
- VA – spouse & children exempt if hold valid DL from another state
- MD - spouse & dependents exempt if hold valid DL from another state
- DC – only SM exempt



# Available Military Legal Assistance Services



- Army
  - Pentagon (703) 571-3114
  - Fort Myer, (703) 696-0761
  - Fort Belvoir, (703) 805-4381
  - Walter Reed, (202) 782-1550
- Air Force
  - Pentagon (703) 571-3114
  - Bolling AFB, (202) 767-5297
  - Andrews AFB, (301) 981-2042
- Marines
  - Henderson Hall, (703) 614-1266
- Navy
  - Navy Yard, (202) 685-5569