



# MSRRA

## MILITARY SPOUSES RESIDENCY RELIEF ACT



Normally, a worker will be taxed by the state in which income is earned. Under longstanding federal law, servicemembers with a domicile in a state other than where they are stationed can't be taxed on military income earned in that state. Federal laws recently changed the location for tax considerations for the spouse and the servicemember to the state of domicile. However, the servicemember still can be taxed by the state on non-military income earned in that jurisdiction.

A spouse who moves to a new state and establishes a new residence and a new life there usually becomes a domiciliary of that new state. The Act allows a servicemember's spouse to keep the same domicile. The spouse may, however, choose to become a domiciliary of the new state.

Under most state laws, a spouse who spends more than 180 to 183 days in a state would be declared to be a resident and could be taxed. Under the Act, a servicemember or a spouse who is domiciled elsewhere for purposes of taxation will not become a resident of the state (and thus could not be taxed), unless he or she chooses to acquire domicile there.

Eligibility requires three factors. The spouse of a servicemember is exempt from income taxation by a state when he or she:

- (1) Currently resides in a state different than the state of domicile;
- (2) Resides in the state solely in order to live with the servicemember;
- (3) The servicemember is present in the state in compliance with military orders

If the spouse meets the above requirements, the spouse is entitled to a refund of any taxes already paid to such state through withholding and estimated payments. The spouse then will pay tax to the state of domicile, assuming that state has an income tax. States with withholdings for the previous year will have eligible spouses file a claim for a refund directly with the state, using existing procedures.

A state's current statutes on domicile are not changed by the Act except that it prohibits a state from automatically claiming a spouse as its domiciliary merely because he or she has moved there to be with a servicemember who is under orders to be in the state.

However: - A servicemember may work in (be stationed in) a state other than the state of residence. Likewise, the spouse may work in a state other than the couple's state of residence. This happens frequently where there are military bases near state lines. State regulations will differ on whether the spouse who works in a state other than the state of residence is eligible under the Act, although existing border state agreements would apply.

The Act applies to wages and other income from services performed in the state. The Act does not apply to other types of income that are not related to services performed, such as income from rental property. Income from a sole proprietorship may be eligible in some circumstances, but generally would not qualify.

Some states require an employee to complete a W-4 or its state equivalent, some allow an employee to use a federal W-4 and write in any necessary changes to allow for state withholding, and some do not use a W-4 at all. Most of those who do not use a W-4 have a special form for the employee who seeks to be exempt from withholding. Whatever form a state uses to deal with withholdings and exemptions will need to be changed, or a new one created. State regulations typically require the W-4 or other withholding form be validated on at least an annual basis.

Common scenarios which will cause the spouse to no longer be eligible include:

- Servicemember leaves the service
- Divorce
- Voluntary physical separation due to duty changes
- The servicemembers orders move him or her to a location outside the state where the spouse is allowed to join him or her but chooses not to
- Spouse commits an action that clearly establishes the state of residence as his or her state of domicile. These would include filing a court action, such as a claim for divorce; accepting in-state tuition; voting; using a property tax homestead exemption; and applying for certain state benefits, such as a tax credit available only to domiciliaries

The following common scenarios that **will not** cause the spouse to become ineligible include:

- Servicemember's deployment to a war zone or other location where the spouse is not allowed to follow. The military treats this as a "travel" or "TDY" situation; the servicemember's orders do not change.



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