

Important Change to the Military Spouse Residency Relief Act

Recent legislation enacted on December 31, 2018 significantly broadens the Service Members Civil Relief (SCRA) rights for spouses of military service members with respect to voting and taxation. The Military Spouse Residency Relief Act (MSRRA) refers to section 302 of the Veterans Benefits and Transition Act of 2018 and allows for spouses to elect to use the same legal residence as the service member during any taxable year of the marriage.

Voting Implications

Should a spouse elect to use the service member's legal residence, the MSRRA allows for spouses to vote in his/her new legal residence effective 90 days after the enactment of this legislation (December 31, 2018). The spouse will be required to register to vote in his/her new state of legal residence.

Tax Filing Implications

For tax filing purposes, the MSRRA is effective for tax year 2018, and thus will allow spouses to elect the residence of the service member when filing their 2018 tax return this spring. The spouse may change his/her legal residence even if the spouse never stepped foot in, established physical presence, or had any other connection to the state where the service member has legal residence or domicile. The previous law required the spouse to have had physical presence in order to claim and maintain legal residence after leaving the state to accompany the service member required to move for military service. Physical presence is no longer required. If you are considering switching your state of legal residence, there are some considerations when filing your 2018 taxes.

Tax Consideration #1: Joint Filing

If the married military couple currently has a split residence, the military spouse can simply elect to have the residence of the service member when filing their state tax return. Thus, there may be only two returns to prepare: one federal return (married filing jointly) and one joint state return for the state of legal residence/domicile of the service member. Military families will no longer have to do a joint federal return and separate state returns if they had different states of legal residence. However, this may not be the case for the 2018 tax season depending on your situation (see Tax Consideration #2 below).

Tax Consideration #2: Filing for Tax Refund

If a spouse is electing to use the service member's resident state for the 2018 tax season, the spouse will still have to file a state return in any state where taxes were withheld during 2018 in order to get those taxes refunded. Each state may have separate requirements to claim a refund for withheld taxes during 2018. For example, the MS Internal Revenue Service (IRS) requires the following to claim a refund of taxes held from your MS income: (1) paper file a joint non-

resident individual income tax return form 80-205; (2) military spouse ID card; (3) service member's driver's license; and (4) DD Form 2058. These items are subject to change.

Tax Consideration #3: Potential Tax Penalties

If a spouse changes his/her legal residency, then the spouse may be liable to pay tax penalties in the new state for underpayment of taxes throughout the 2018 year. It is too early to tell how each state will accommodate this change to the SCRA, and each taxpayer's situation is unique with respect to their state's tax laws and regulations. If a penalty is incurred and the state is unwilling to waive the penalty, the amount of the penalty is an additional factor to consider, along with comparable tax rates, state-specific tax deductions (e.g. deductions for putting money into a 529 plan), etc., when the spouse is deciding whether to elect the residence of the service member or to keep his/her current state residence.

Tax Consideration #4: Updating Your Current Employer

If a spouse elects to change his/her residence, be sure to update your current employer as soon as possible to ensure no more or no less taxes are withheld from your current paycheck. Each state may have separate requirements to claim exemption from paying state taxes. For example, in the state of MS, you must file 2 forms with your employer: (1) DD Form 2018, state of Legal Residence Certificate, and (2) Form 89-350, MS Employee's Withholding Exemption Certificate.

The MSRRA will provide much more flexibility for spouses regarding their choice of legal residency. However, be sure you understand the full implications of changing your legal state of residency before pursuing that option. If you would like more information and to speak to an attorney, please contact the legal office at 662-434-7030.