

Spousal Residency and Taxes—Do You Know the New Rules?

You may by now have heard that your spouse can keep his or her state of residency when you PCS. But what does that really mean?

The Military Spouse Residency Relief Act (MSRRA), Public Law 111-97, was passed in 2009. Put simply, the law provides that if a spouse and servicemember (SM) have the same legal residency, the spouse can relocate with the SM and not lose their residency or have to pay income taxes in the new state.

So what, then, is “residency?” In legal terms, it is the state in which one has lived and formed the intent to remain or return to indefinitely. In practice, this means you must intend for a state (and only one state) to be your permanent home in the future, and you have to take certain actions when you live in that state to prove your intent. Examples include paying taxes, voting, owning property, registering your vehicle, or being licensed to drive in that state. No single act is controlling for proving residency; it is based on facts and circumstances. You can only have one residency at a time and a residency is not lost until a new one is established. You should contact the base legal office if you have questions regarding your residency.

Tax season is now upon us, so let’s put the MSRRA to the test.

Situation #1: You and your wife lived in California and became California residents. You PCS’d to North Dakota and your wife now works in North Dakota. Your wife can choose to pay California state taxes (and not North Dakota taxes) for the income she earns here. Doing so is an important act of proving her intent to return to California. If North Dakota state or local taxes were withheld (look at her W-2, boxes 17-19), she is entitled to a full refund.

Situation #2: You established legal residency in Texas. You PCS’d to North Dakota and met your husband here. Your husband has never lived in Texas. Can your husband now claim Texas residency? No, because your husband never resided in Texas to take the action and form the intent necessary to establish residency.

There are some common misconceptions about the MSRRA. First, the MSRRA does not change state law regarding residency, except that now a state cannot automatically claim your spouse as a resident and tax his or her income. Therefore, a spouse cannot “recapture” an abandoned residency without reforming the necessary intent and taking the necessary action to demonstrate it. In addition, the MSRRA does not affect whether a spouse must get a new drivers’ license—that is also determined by state law. Finally, the MSRRA exempts only a spouse’s employment income and personal property from taxes in the new state; your spouse may still have to pay taxes for income from the sale or rent of real property.

In brief, your spouse may be entitled to a full refund of his or her North Dakota taxes withheld this year. Make sure your spouse updates his or her W-4 or state equivalent with his or her employer.

Your base legal office will be happy to answer any questions you might have about the MSRRA and taxes. Call us at (701) 747-3606 to schedule an appointment.