

MILITARY SPOUSES RESIDENCY RELIEF ACT (MSRRA)

President Obama signed the MSRRA on November 11, 2009. The MSRRA amends the Servicemembers Civil Relief Act (SCRA) to allow some spouses of Soldiers to retain or regain a state of domicile for tax purposes.

The MSRRA only applies to the spouses of Soldiers. It does not confer any benefits on the spouses of federal civilian employees or retirees. Because the MSRRA is new, many states are in the process of sorting out how they will react to it. Some states have indicated that they will scrutinize claims under the MSRRA closely because it may cause decreased tax revenues to that state. For example, Virginia has indicated it may also review the legal residency claim of the Soldier to ensure it is valid. As a result, individuals should be hesitant to change their state tax withholding unless it is fully supported

While the law provides a benefit to many spouses and Soldiers, it is important to understand what the MSRRA does and does allow. Unfortunately many articles and announcements concerning the MSRRA have been inaccurate.

For example, the MSRRA does not allow a spouse to pick a state of legal residence or domicile simply because it is the same as the state of legal residence or domicile of the Soldier spouse. Thus, a spouse who has legal residency in a state outside Texas would not be able to claim Texas as the state of legal residency or domicile merely because the spouse married a Soldier who is domiciliary of Texas.

The MSRRA would allow the following to occur though. The Soldier is a legal resident of Texas. While physically in Texas, the non-military spouse took the required steps to establish and maintain legal residency in Texas. (See our handout on Residence and Home of Record for a review of what indicia of legal residency are.) The Soldier and spouse then PCS to Virginia and the non-military spouse works in Virginia. The non-military spouse could invoke the MSRRA/SCRA and Virginia could not tax the non-spouse's income earned in Virginia.

Any spouse changing their legal residence or domicile under the MSRRA must be able to show sufficient facts and circumstances to justify the change if it is later contested by a state. The best legal advice is for spouses to act cautiously until the law is firmly established and ensure any legal residency or domicile change is fully supported by current evidence of intent.