

# **Establishing Your Domicile: Home is Much More Complicated Than Simply Where Your Heart Is**

## **Part 2: Military Spouses**

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Establishing and maintaining a domicile has traditionally been one of the greatest challenges for service-members and their civilian spouses. Too often, service-members and spouses rely on mistaken guidance offered by other service-members, state Department of Motor Vehicle employees, police officers, car salesmen or realtors. When I ask service-members and their spouses the question: "Which State do you call home?" the answer I often receive goes something like this: "I vote in Virginia, my driver's license is from Kentucky, my vehicle is registered in Maryland, I own a house in North Carolina, but for taxes, I am a Florida resident."

The decision as to which domicile to maintain has major implications, most notably: state income tax liability, vehicle registration and emissions regulations, Court jurisdiction, in-state college admissions and tuition rates for yourself or your children, estate planning and voting rights. Because of the significant legal and financial implications of maintaining a domicile, the decision is serious and once chosen, it must be carefully preserved. This article will deal specifically with civilian spouses of Service-members on Active Duty. Part 1 dealt with Service-members on Active Duty.

You acquire "Domicile" or "Legal Residence" when you are born, taking on the domicile/legal residence of the State in which you live. Until November 11, 2009, a civilian spouse of service-member was required to become a resident of the state in which they physically resided for more than six months.

On November 11, 2009, the rules changed for civilian spouses. On that date, President Obama signed S.475, the Military Spouses Residency Relief Act (MSRRA), into law. The MSRRA permits civilian spouses to retain the domicile of their service-member spouse if the civilian spouse maintained domicile in that state before relocating with their service-member spouse. This means the civilian spouse would not have to necessarily become a resident of the state in which they reside with their service-member spouse simply because the service-member spouse received military orders to move there. The civilian spouse would then report their taxable income to their state of domicile for state income tax purposes, can retain their right to vote, retain their driver's license and vehicle registration in that state of domicile. If the couple got married after the military service-member relocated outside his/her state of domicile or the civilian spouse no longer has ties to the service-member's state of domicile, the civilian spouse must become a resident of where she/he physically lives for more than six months.

As a result of the new federal law regarding civilian spouses of Uniformed Service Members, all fifty states have promulgated their own policies as to how to treat civilian

spouses, particularly with regard to state income tax. The states vary significantly in their application of the new federal law. Here are two local examples:

In **Maryland**, civilian spouses receive a broader exemption from Maryland income tax than is afforded under the MSRRA. A service-member's civilian spouse who is a resident of a state other than Maryland and who is in Maryland solely to be with the service-member serving in compliance with military orders is treated as a non-resident of Maryland regardless of how long the civilian spouse has resided in Maryland and regardless of whether the civilian spouse had the same state of residency as the service-member when the service-member entered Active Duty. See [Maryland Income Tax Administrative Release No. 1](#).

This means that the civilian spouse does not have to pay Maryland income tax on services performed within Maryland (e.g. wages, salaries or tips) and must report said income to his/her state of residence. The civilian spouse *must* timely, and annually, submit Maryland Form MW507 to the employer asserting and attesting to the civilian spouse's exempt status from withholding requirement. If the civilian spouse generated income from real or personal property in Maryland or owned or operated a business in Maryland, as well as for lottery prizes, they would have to report that income to Maryland and pay income taxes.

In **Virginia**, civilian spouses are also afforded broader protection from state income taxes than the MSRRA requires. If a civilian spouse is present in Virginia solely to be with his/her Active Duty service-member spouse who is permanently stationed in Virginia in compliance with military orders, **and** the civilian spouse maintains the same residency as the service-member, wages and salary earned by the civilian spouse as an employee or income which is derived from certain limited self-employment is exempt from Virginia state income taxes, and must be reported to the civilian spouse's state of residence. See [Military Spouses Residency Relief Act: Frequently Asked Questions](#) and [Rulings of the Tax Commissioner Document Nos. 11-16 and 11-66](#).

To clarify how this works, here are a few examples:

### **Scenario 1**

John and Jackie Jupiter are married and live in Houston, Texas. They each have driver's licenses and registered their vehicles in Texas and are registered to vote in Texas. John enters Active Duty military service and is assigned to Fort Belvoir in Virginia forcing John and Jackie to move to Virginia. If Jackie and John want, they may maintain their Texas residencies. As far as Jackie, this means she would report any income she receives to Texas and can maintain her voter registration, driver's license and vehicle registration in Texas. She may choose to become a resident of Virginia if she chooses by registering her vehicle there, registering to vote and securing a Virginia driver's license. She may not change her residency back to Texas unless she returns to Texas to live.

## Scenario 2

Helen Hucklebee is an Active Duty Major in the Marines. She is originally from California, where she was commissioned and retains her domicile (files a California tax return, driver's license, voter and vehicle registration) there, but currently is stationed at the Pentagon and lives in Virginia. She married Harry Henderson, a civilian government contractor, and moved in with him after the marriage into his house in Virginia. Major Hucklebee can retain her California domicile but Harry Henderson cannot become a California domiciliary unless he physically resides there. Harry will remain a Virginia resident so long as he lives in Virginia and then will become a resident of any state he relocates to and lives in for more than six months, even if he is living with Major Hucklebee.

## Scenario 3

Lenny Lincoln is an Active Duty Sergeant in the Army. He is married to Lisa Lincoln, his high school sweetheart who he met in Midwest high school located in Peoria, Illinois where they both lived before he entered the Army. Sergeant Lincoln has been on Active Duty for twelve years and been stationed in North Carolina, Missouri and Texas although he has retained Illinois as his domicile by filing Illinois tax returns, registering to vote, registering his vehicle and maintaining an Illinois driver's license. He recently received orders to PCS from Fort Hood in Texas to move to Fort Eustis in Virginia. Lisa has a Texas driver's license, voter and vehicle registration and reports her income to Texas. Once the Lincolns move to Virginia, Lisa must become a Virginia resident because she no longer has ties to Illinois and is not permitted to retain Texas as her state of residency because Lenny is an Illinois resident, not a Texas resident. If Lenny had become a Texas resident so he and Lisa were both Texas residents, when they move to Virginia, then Lisa is not required to become a Virginia resident and is not required to pay Virginia income tax on her wages and salary.

Thus, the MSRRA does not permit a civilian spouse to select a domicile in any State. Domicile is established, which means that the spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, registering vehicles and securing a driver's license.

Civilian spouses are liable for income taxes imposed by their state of domicile. They should request their employer to withhold state income taxes to that state. To ask your employer in Virginia to withhold taxes for a state other than Virginia, in accordance with the MSRRA, here are the necessary steps:

1. Show a copy of your Military Identification card.
2. Submit a completed Virginia State form [VA-4](#) , particularly Line 4, to claim exemption from income tax withholding due to the MSRRA, along with a copy of the service-member's current military orders that reflect duty in Virginia.

3. Submit a statement requesting state income taxes be withheld for your state of domicile along with a State Tax form for that State or, if it does not reflect how the employee is filing (married, single or head of household), a W-4 must be submitted and State Tax Form written on top of the form.

Example of statement:

I, Alice Brooks, am a military spouse and my official State of legal residence or domicile is Colorado. I request that income taxes for Colorado be withheld from my Federal pay. This is effective January 1, 2010.

Signed,

Alice Brooks

When the civilian spouse no longer qualifies under the MSRRA, the employee should notify the payroll department in order to begin to withhold state income taxes for the state the spouse resides in. This often takes place when the service-member retires, dies or the parties divorce.

The primary indicators of Domicile/Legal Residence are where the service-member votes, pays state taxes, maintains a driver's license and vehicle registration. Changing any of these may have serious legal and financial consequences: if you establish ties in Virginia through registering a vehicle, voting or getting a driver's license, you are giving the Commonwealth of Virginia the opportunity to argue that you have made conscious steps to establish Virginia as your domicile because you are taking benefits from Virginia and therefore should pay Virginia state income taxes on military pay. It could also disqualify you or your children from securing in-state college admissions or tuition rates from your true domicile. With most states facing budget shortfalls, state departments of revenue are expected to become more aggressive at comparing their voter registration, driver's license and vehicle registration rolls with state income tax records in an attempt to identify individuals who have taken benefits from Virginia without paying Virginia income taxes.

So how do you preserve your Domicile/Legal Residence? **The most effective way to avoid any problems is to be consistent with your voter registration, vehicle registration and driver's license by claiming all from your state of domicile/legal residence.** Voting is considered the most important indicator of intent to establish and maintain domicile/legal residency in most states. While voting "absentee ballot" (by mail) may be inconvenient, you should make the effort if your domicile/legal residence is not the state in which you are stationed and physically live.

Moreover, some states provide real property tax relief to cap the increased taxes on personal homes owned by residents. Maryland is one such state. If you purchase a home in a state such as Maryland, **do not** request that state's homestead tax credit: if you request the property tax discount in Maryland, you are indicating to Maryland that

your Maryland residence is your “homestead” which implies it is your domicile. You are permitted to own multiple houses, condos and the like in multiple states, but you can only have one domicile. If you have Virginia source income (such as a service-member who has a second part-time job on evenings and weekends), be sure to file a Virginia Form 763 Non-Resident tax return, **not** a Virginia 760 or 760PY Resident or Part Year Resident tax return.

Finally, civilian spouses should keep in mind that once they change their domicile such that it differs from the service-member, the only way to become a resident once again of the service-member’s state is to physically reside there.

As you can see, establishing and maintaining proper residency can become complicated and have long-lasting financial implications, particularly for Active Duty service-members and their spouses. To discuss your personal residency or tax questions, please contact the Legal Assistance Office for an Appointment: 703-805-2856.