

New law finally looks after military spouses

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On 11 November 2009, President Barack Obama signed into law the “Military Spouses Residency Relief Act” (MSRRA). The law directly impacts military families (more than 50% of all service members have a family) who on average move every three years to a new duty station and Reservists mobilized or serving on active duty. Prior to the MSRRA, the “Servicemembers Civil Relief Act (SCRA) allowed a U.S. service member to maintain his or her original state of residency despite moving to a different state or country.

However, no such benefit was available to the service member’s spouse. As a result, his or her spouse was required to obtain a new driver’s license; retitle personal property (automobile, boat, etc.); reregister to vote; and, in many cases, file a separate income tax return (if the service member does not claim the new state as his or her state of residency) every time the family was assigned to a new duty station.

The MSRRA amends the SCRA to provide every service member’s spouse with the same benefit beginning in 2009. The MSRRA provides that a nonmilitary spouse will not (1) be deemed to have lost a residence or domicile (whether or not he/she intend to return to that state), or be deemed to have acquired a new residence or domicile by virtue of residing in a state with his/her spouse while on military orders; (2) have his/her income classified as income earned in a tax jurisdiction if the spouse is in that state solely as a result of his or her spouse’s military orders; and (3) suspend land rights residency requirements for a spouse accompanying him or her service member spouse on military orders. This allows him/her to avoid all of the difficulties listed above upon moving to spouse’s new duty station. For example, the SCRA allows a Florida domiciled military resident to maintain the state of Florida as his or her state of residency despite being stationed in Georgia, New York, or any other state.

Most importantly, the law creates income and estate tax planning opportunities for military families beginning in 2009.

Income Tax:

A military family can lower their annual income tax bill by claiming a state of residency with no state income tax (Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming). Eligibility to claim a state of residency requires (1) a physical presence in the state; (2) the intent to make it, one day, their “permanent home” (by owning property, registering to vote, titling and registering automobiles, or preparing a will); and (3) the filing of a DD Form 2058, State of Legal Residence Certificate, with their local finance office. By claiming the same state of residence, a military family can also avoid the necessity of filing separate income tax returns.

Estate Planning:

Estate planning and tax benefits can be achieved when a military family establishes residency in a nonstate or inheritance tax state. While the federal estate tax exemption (currently \$3,500,000) may not be a concern for most service member families, seventeen states and the District of Columbia currently impose an estate tax, eight states impose an inheritance tax (levied on heirs and not estates), and two states (Maryland and New Jersey) impose both. Many of these estate (Ohio on estates greater than \$338,333, Rhode Island on estates greater than \$850,000) and inheritance (Indiana on inheritances greater than \$100, Kentucky on inheritances greater than \$500, etc.) taxes impact estates and heirs at levels far below the federal exemption amount. These taxes can be avoided, in the event of one spouse’s death while the military spouse is on active duty, by selecting a state with an exemption amount equal to the federal exemption amount or in close proximity (Connecticut, Delaware, North Carolina, Vermont, etc.) or one with no tax (Florida, California, Texas, etc.) as their domicile.

Military families may also be able to include restrictive and punitive (no contest clauses, loss of inheritance provisions, etc.) estate planning provisions into their documents based upon the state of residency selected. These factors should be weighed against any tax or estate benefits derived from the choice of residence.

Other Legal Matters:

Additional benefits can be achieved when drafting a prenuptial or postnuptial or handling a divorce for a military family. The spouse’s (military and nonmilitary) choice of residence may allow them to avoid “community property” laws, longer-term child support payments (some states extend child support payments past age 18) and alimony, among others, despite living in that state at the time the document is entered into or divorce is filed.

CONCLUSION:

If properly utilized, the MSRRA can provide income and estate tax benefits to service member families for tax year 2009 (despite enactment into law in Nov. 2009) and thereafter. All available options, both income and estate tax, should be considered when assisting a military family with their income tax and estate planning. Depending upon the ultimate state of residence selected by the family, another state’s estate planning attorney may need to be consulted and required to draft the final documents.