
Coates' Canons Blog: New Property Tax Rules for Military Spouses

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Changes in federal law rarely affect local property taxes. An exception occurred on Veteran's Day when President Obama signed Public Law 111-97, the Military Spouses Residency Relief Act. This law allows spouses of active-duty military members to retain residency in their home states for voting and tax purposes regardless of where the military sends them, a benefit that the military members themselves have long possessed under the Servicemembers Civil Relief Act. Sounds simple, right? As usual, many devils reside in the details.

Prior to the new law, only the military member's personal property, not that of the spouse, was exempt from North Carolina property taxes if the member had a legal residence elsewhere. This produced the odd result of a N.C. local government taxing one-half of a car that was owned jointly by a military member and spouse. Once P.L. 111-97 takes effect, the entire car will be exempt from local property taxes, assuming that the military member and spouse are legal residents of another state. Real property and business personal property owned by military members and spouses will remain subject to N.C. property taxes under the new law.

Explaining the new exemption is easy, but implementing it will be anything but. Gregg Martin of the N.C. Department of Revenue's Property Tax Division reports that he is participating in a national working group put together by the Federation of Tax Administrators to resolve several serious administrative questions.

For instance, when does the new exemption from local taxes take effect? The bill states that the tax provisions "shall apply with respect to any return of State or local *income* tax filed for any taxable year beginning with the taxable year that includes the date of the enactment of this Act" (emphasis added) but is silent as to property taxes. Does this mean that military spouses can seek a refund for property taxes paid on cars and boats for tax years that included November 11, 2009, the date the bill was signed? This interpretation would require thousands of refunds revenue across North Carolina, which is home to more service members than every state except California and Texas.

A more long-term question: how should local governments verify a taxpayer's eligibility for this exemption? Presumably the taxpayer will need to demonstrate two things: a current marriage to an active-duty member of the military and legal residency in another state.

With respect to marriage, one source of proof could be the federal military dependent I.D. cards issued to spouses every few years. But current law appears to forbid a local government from requiring a photocopy of this I.D. Another option would be requiring a copy of the military member's Leave and Earning Statement, which indicates the member's marital status. But would it be appropriate, much less legal, to require confidential information from one taxpayer to determine another taxpayer's exempt status? Would a marriage license from 20 years ago be sufficient proof of current marital status?

With respect to residency, counties won't be able to rely on the state to make this determination because the Department of Revenue does not verify the residency status of taxpayers unless a return is audited. The U.S. Department of Defense has a form for military members to record or change their legal residency, but no such process exists for military spouses. Should a North Carolina resident who marries a military member with a legal residence elsewhere automatically inherit the military member's residency status for tax purposes? Can a spouse have a different state of legal residence than the military member? The Federation of Tax Administrators thinks the answer to the last two questions should be "no," but the bill leaves these matters in doubt.

Even if the implementation questions are resolved, other more fundamental concerns about the bill will remain. Does the

bill improperly provide military spouses with income tax benefits that military members themselves don't enjoy? Consider a military member and spouse who take part-time jobs at Home Depot; under P.L. 111-97, the military member's Home Depot income is taxable by North Carolina but the spouse's income would be exempt. (The military opposed the bill for this very reason.) Did Congress exceed its constitutional limitations by amending the definition of residency included in the Fourteenth Amendment of the U.S. Constitution? If so, then the entire bill could be invalidated, along with the portions of the Servicemembers Civil Relief Act that provide similar residency benefits for military members.

The Department of Revenue plans to share its thoughts on the bill with North Carolina local governments in the next few weeks. Stay tuned . . .

Update: In March the DOR released the following guidance:

MEMORANDUM

TO: County Assessors

FROM: David B. Baker, Director

Property Tax Division

RE: Military Spouse Tax Relief

This message is a follow-up to a posting on PTAX on December 2, 2009 regarding the Military Spouses Residency Relief Act of 2009, Public Law No. 111-97 (the Act). The Military Spouses Residency Relief Act of 2009 amended the Servicemembers Civil Relief Act to provide that a servicemember's spouse shall neither lose nor acquire a residence or domicile in a state when the spouse is present in the state solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile is the same for both the servicemember and the spouse. This posting will provide information and guidance to local tax offices to assist in their administration of Public Law 111-97.

Below is a set of questions to ask the civilian spouse of an active duty military member to establish the facts necessary to determine if the spouse may take advantage of the provisions of the Act:

Are you married to an active duty military member stationed in North Carolina? If so, please provide proof. If the spouse cannot provide proof, deny the exemption.

The easiest way to verify this is to present to the tax office a copy of the dependent military I.D. card. This indicates that the dependent is a spouse of the active duty military member. In a memo dated January 19, 2010, Gail H. McGinn, Deputy Under Secretary of Defense, clarified that the copying of a military I.D. card is permissible to obtain tax benefits.

Does the Leave and Earnings Statement(LES) of the active duty military member show a home of record in another state? If the LES is not provided or does not confirm a domicile state other than North Carolina, deny the exemption.

Production of the military member's current Leave and Earnings Statement(LES) to the tax office can be used to establish this fact as it is currently being done for the military member to obtain relief from taxation of their personal property.

Has the spouse lived in the state of domicile recorded on the LES?

If the answer is no, deny the exemption.

If the answer is yes, request proof of an established and maintained domicile in the state of domicile recorded on the LES. See below.

Domicile in a particular state is not achieved by a simple election to choose a different state as a domicile, there must be an instance of physical presence in the state as well as other actions that indicate the person intends to make that state their permanent residence. A civilian citizen of North Carolina does not acquire domicile in another state merely due to a marriage to someone with domicile in that state. They must live in that state for some period of time and take actions that

would indicate the adoption of that state as their domicile and the abandonment of North Carolina as their state of domicile.

The act of filing state tax returns in a different state while living in North Carolina solely to be with the service member spouse is a strong indicator of the intent to establish and maintain domicile in the other state. It is anticipated that many individuals attempting to take advantage of the provisions in the Act will be claiming domicile in a state that does not impose income tax on its citizens. For individuals in that situation there would be no history of filing tax returns in the other state.

The filing of a North Carolina State Individual Income Tax Return and indicating a non-resident status for the civilian spouse would also be considered a strong indicator of the intent to establish and maintain a state of domicile other than North Carolina. Because of this recent change in the treatment of civilian spouses of service members, the tax return for 2009 will very likely be the first time a return is filed in a different state or the non-resident box is checked on the North Carolina return.

In the process of reviewing requests for exclusion from the assessment of taxes on personal property, or the release or refund of assessed taxes on personal property, it is the recommendation of this office that the process follow the steps outlined above. If the civilian cannot establish that they are the spouse of an active duty military member, there is no need to establish the domicile of the military member through production of the LES. If the military member is not domiciled in a state other than North Carolina as indicated by his/her current LES, there is no need to verify foreign domicile of the civilian spouse. If foreign state tax returns or North Carolina tax returns indicating non-resident status are not available, there are some additional pieces of information that a military spouse can provide to the county to establish domicile in the servicemember's state of domicile. A discussion covering some of those additional pieces of information is provided in the next paragraph.

The issuance of a driver's license in the servicemember's state of domicile and the act of keeping the license continually in force, even though the military spouse obtains a North Carolina driver's license, could be considered as additional evidence. The continuous registration of motor vehicles in the servicemember's state of domicile could also be reviewed to make a connection to the state of domicile that is not North Carolina. Evidence of receiving a jury summons and/or service on a jury in the servicemember's state of domicile and other instances of the military spouse's interaction with the civil and/or criminal courts system in the servicemember's state of domicile could also be considered. In some instances, the ownership of real property in the servicemember's state of domicile might be considered also. Ownership of real property in the domicile state could demonstrate the intention of the military spouse to maintain the other state as domicile with plans to eventually return to that state and live there. The location of the military spouse's voter registration and the confirmation of a consistent voting record in the servicemember's state of domicile by the military spouse could also be considered. The items noted above are some of the ways a military spouse may be able to satisfy the tax assessor that they are domiciled in the same state as indicated on the servicemember's LES. This is not a complete list. The military spouse may have other information that can be provided to the assessor that they feel establishes their domicile in the other state. The military spouse must provide information to the assessor that establishes their domicile in the servicemember's state of domicile. The assessor must make the determination that the information provided is sufficient enough to prove domicile in the other state.

The Act amending the SCRA does not specify an effective date for its application to taxes on personal property. Therefore, the Act is effective on the date of enactment, November 11, 2009. In North Carolina, property taxes on personal property other than registered motor vehicles, are assessed based on the ownership and value as of January 1, 2009, and will have been assessed, due and payable long before November 11, 2009. For registered motor vehicles, the assessment of property taxes is triggered by either the application for a registration or the renewal of an existing registration. It is our position that the only personal property taxes subject to release or refund due to the Act are those for registered motor vehicles for which the application for registration or renewal of registration takes place on or after November 11, 2009, and for property taxes on personal property other than registered motor vehicles that are assessed based on ownership and value as of January 1, 2010.

In summary, the outline listed below will help establish if an applicant either qualifies or does not qualify for Property Tax relief as a result of the Act in many cases. *This outline is to be used after the applicant establishes that they are the spouse of a servicemember and subject to the Act.* Some applicants will need to provide additional information beyond the items addressed below in order for the tax office to determine their status.



Does Not Qualify:

1. Servicemember's state of domicile is North Carolina.
2. Civilian spouse's state of domicile is North Carolina.
3. Civilian spouse's state of domicile is different than the state of domicile of the servicemember.
 1. Civilian spouse cannot prove a physical presence in the state of domicile of the servicemember.
 2. Civilian spouse cannot prove intent to make servicemember's state of domicile their state of domicile.

Does Qualify:

1. Civilian spouse shows they have in the past filed income tax returns in the servicemember's state of domicile which indicates intent for that to be the civilian spouse's state of domicile.
2. Civilian spouse provides information to the tax office that indicates they previously have had domicile in the servicemember's state of domicile, and continued the intent for that state to be their state of domicile.

If you have questions regarding this issue, please contact Gregg Martin in our office at 919-733-7711.

Links

- usmilitary.about.com/cs/militarylaw1/a/homeofrecord.htm
- www.law.cornell.edu/uscode/html/uscode50a/usc_sup_05_50_10_sq9_20_sq1.html
- www.taxadmin.org/
- en.wikipedia.org/wiki/Leave_and_Earnings_Statement
- www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2058.pdf
- prawfsblawg.blogs.com/prawfsblawg/2009/11/questions-about-the-military-spouse-residency-relief-act.html