

PERSONAL INCOME TAX BULLETIN 2010-01

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Military Spouses Residency Relief Act

The Military Spouses Residency Relief Act (MSRRA), which was signed into federal law on Nov. 11, 2009, permits a service member's nonmilitary spouse to retain status as an out-of-state resident and source any nonmilitary compensation to the state of residence under the following circumstances:

- The service member must be in Pennsylvania in compliance with military orders.
- The service member's spouse must be in Pennsylvania solely to be with his/her spouse.
- The service member's spouse must have the same domicile (legal residence) as the service member.

I. Domicile/Legal Residence

A person generally does not acquire a new domicile or legal residence by entering the armed forces. Until a service member intentionally changes his/her domicile, a service member's domicile is the state he/she called home when he/she entered the military. This is the state where the service member files income tax returns (if that state has an income tax) and where the service member intends to return upon leaving the military.

II. Nonmilitary Spouses and Pennsylvania Income Taxation

For tax years beginning on or after Jan. 1, 2009, compensation or other income earned in Pennsylvania for services rendered by a service member's nonmilitary spouse is not taxable by Pennsylvania, when:

- The nonmilitary spouse and service member have the same out-of-state domicile;
- The spouse is in Pennsylvania solely to be with the service member; and
- The service member is in Pennsylvania complying with military orders.

However, a nonmilitary spouse's other income from Pennsylvania sources is subject to Pennsylvania personal income tax to the extent it is earned, received or acquired from sources within the commonwealth as follows:

- By reason of ownership or disposition of an interest in real or tangible personal property in Pennsylvania;
- In connection with a trade or business in Pennsylvania, except to the extent the trade or business receives income for services performed by the MSRRA-qualifying service member's spouse; and/or
- From intangible personal property employed in a trade, profession, occupation or business carried on in Pennsylvania.

A qualifying nonmilitary spouse must have moved to Pennsylvania from another state, be in Pennsylvania solely to accompany his/her active duty service member spouse stationed in Pennsylvania in accordance with military orders and have the same state of residency as the service member. A qualifying spouse may be required to provide proof of qualification including, but not limited to, permanent change of station documentation, prior state tax filing history and returns, voter registration and driver's license from the resident state, the service member's federal Department of Defense Form 2058, State of Legal Residence Certificate and the nonmilitary spouse's military ID card, identifying the card-holder as the spouse.

Spouses of service members who meet the requirements detailed herein and who either had Pennsylvania income tax withheld from 2009 wages or made other Pennsylvania income tax payments for the 2009 tax year may receive refunds of such taxes paid by filing a Pennsylvania Personal Income Tax return, PA-40. The nonmilitary spouse should report zero wages on Line 1 of his/her Pennsylvania personal income tax return, and include the total Pennsylvania taxes withheld (Box 17 of Form W-2) on Line 14.

Only tax payments on income earned in 2009 and following tax years may be subject to refund. Prior years' tax payments and any associated carry-forwards to tax year 2009 are not subject to refund.

III. Discontinuation of Pennsylvania Income Tax Withholding

The nonmilitary spouse of a service member whose wages/salary is exempt from Pennsylvania personal income tax under MSRRA should file a Pennsylvania Form REV-419 with his/her Pennsylvania employer, claiming exemption from Pennsylvania income tax withholding. REV-419 will be available for tax year 2010 and thereafter.

IV. Taxation of Service Members' Military and Nonmilitary Pay

MSRRA does not exempt from Pennsylvania personal income tax nonmilitary income earned by a service member in 2009 and thereafter. However, a nonresident service member's active duty military income continues to be exempt from Pennsylvania personal income tax.

Pennsylvania residents report military pay earned while in Pennsylvania or when not on active duty status as taxable compensation. Active duty military pay is not taxable for Pennsylvania purposes if earned by a Pennsylvania resident serving full-time active duty (or federal active duty for training) outside Pennsylvania. Active duty military income includes income from the U. S. government or the Commonwealth of Pennsylvania for active state duty for emergency within or outside the commonwealth. Additional information on taxation of military pay is available from the Pennsylvania Personal Income Tax Guide and instructions for the Pennsylvania Personal Income Tax Return, PA-40.