



**Summary of S. 475,  
Military Spouses Residency Relief Act,  
Public Law No. 111-97**

Each tax agency will make its own interpretations, adjust its forms and provide its own guidance on S. 475. The information shared here represents the analyses of tax authorities who studied the bill immediately after its passage.

This document looks only at the individual income tax portions of the Act, not the personal property tax portion, nor does it consider the effect the Act could have on non-income tax matters such as unemployment claims.

The use of “residence or domicile” in the statute does not comport to standard legal tax definitions of those terms. This statute appears to be trying to use the term “residence” interchangeably for “domicile.” States themselves use versions on these terms that can vary from state to state. For discussion purposes, this document refers to the state with the right to tax the spouse's wage income in 2009 and forward as the state of "domicile."

For the sake of simplicity, this document refers to spouses as “she” and servicemembers as “he.”

1. Normally a worker will be taxed by the state in which income is earned. Federal laws now changes the point of taxation for the spouse and the servicemember to the state of domicile.
2. Under longstanding federal law, a Servicemember with a domicile in a state other than where he is stationed can't be taxed on **military income** earned in that state. However, the Servicemember still can be taxed by the state on **non-military income** earned in that jurisdiction. Thus, even though it seems counterintuitive, this exemption from state income tax for spouses is broader than the exemption servicemembers themselves receive.
3. A spouse who moves to a new state, establishes a new residence and a new life there, would normally become a domiciliary of that new state.<sup>1</sup> The Act allows a servicemember's spouse to keep a previous domicile (under qualifying conditions enumerated below). The spouse may, however, choose to become a domiciliary of the new state.

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<sup>1</sup> Similarly, under most state laws, a spouse who spends more than 180 to 183 days in a state would be declared to be a resident or a statutory resident and thus could be taxed. (The number varies by state, as does the terminology.) Under the Act, a servicemember or a spouse who is domiciled elsewhere for purposes of taxation will not become a resident of the state (and thus could not be taxed), unless he or she chooses to acquire domicile there.

4. Eligibility requires three factors. The spouse of a servicemember is exempt from income taxation by a state when she:
  - (1) **Currently resides in a state different than the state of her domicile;**
  - (2) **Resides in the state solely in order to live with the servicemember; and,**
  - (3) **The servicemember is present in the state in compliance with military orders.**
  
5. Eligibility may require four factors in some states. See Item 12 for discussion of this requirement:
  - (4) **The spouse and the servicemember both are able to claim the same domicile.**
  
6. If the spouse meets the above requirements, the spouse is entitled to a refund of any taxes already paid to such state through withholding and estimated payments in 2009. The spouse then will pay tax to the state of domicile for 2009, assuming that state has an income tax.
  
7. States plan to deal with 2009 withholdings by having eligible spouses file a claim for a refund directly with the state, using existing procedures.
  
8. A state's current statutes on domicile are not changed by the Act (except that it prohibits a state from automatically claiming a spouse as its domiciliary merely because she has moved there to be with a servicemember who is under orders to be in the state). Thus:
  - Spouses cannot pick and choose their states of domicile.
  - The spouse does not "inherit" the domicile of the servicemember upon marriage.
  - The spouse cannot "adopt" the domicile of the servicemember -- or any other domicile.
  - The spouse must be able to show that she had the domicile before moving into a different state, and the spouse must be able to prove that the domicile existed by going through the new state's existing list of facts and circumstances, or "proofs of intention" that will demonstrate a domicile.
  - The spouse must have **maintained** that earlier domicile.
  - At a minimum, the spouse must have lived in a state before claiming it as a domicile. A spouse who has never lived in State X cannot simply tell the employer that she is now a domiciliary in State X and become exempt from withholding.
  - State laws (and regulations now being written) will vary on what circumstances validate having established a domicile in another state, and what proof is sufficient.
  
9. State regulations will differ on whether the servicemember and spouse must have identical domiciles before the Act applies.
  
10. A servicemember may work in (be stationed in) a state other than the state of residence. Likewise, the spouse may work in a state other than the couple's state of residence. This happens frequently where there are military bases near state lines. State regulations will differ on whether the spouse who works in a state other than the state of residence is

eligible under the Act, although existing border state agreements would apply.

11. The Act applies to wages and other income from services performed in the state. The Act does not apply to other types of income that are not related to services performed, such as income from rental property. Income from a sole proprietorship may be eligible in some circumstances, but generally would not qualify.
12. Some states require an employee to complete a W-4 or its state equivalent, some allow an employee to use a federal W-4 and write in any necessary changes to allow for state withholding, and some do not use a W-4 at all. Most of those who do not use a W-4 have a special form for the employee who seeks to be exempt from withholding. Whatever form a state uses to deal with withholdings and withholding exemptions will need to be changed, or a new one created.
13. State regulations are expected to require that the W-4 or other withholding form be validated on at least an annual basis.
14. Everyday scenarios that will cause the spouse to no longer be eligible include:
  - Servicemember leaves the service.
  - Divorce.
  - Voluntary physical separation due to duty changes – the servicemember’s orders move him to a location outside the state where the spouse is allowed to join him but chooses not to.
  - Spouse commits an action that clearly establishes the state of residence as her state of domicile. These would include filing a court action, such as a claim for divorce; accepting in-state tuition; voting; using a property tax homestead exemption; and applying for certain state benefits, such as a tax credit available only to domiciliaries.
15. Everyday scenarios that **will not** cause the spouse to become ineligible:
  - Servicemember’s deployment to a war zone or other location where the spouse is not allowed to follow. The military treats this as a “travel” or “TDY” situation; the servicemember’s orders do not change.
16. The military has provided these facts about military terminology, tax records and documents:
  - Military spouses carry a military ID card that identifies the card-holder as a spouse (and not merely a dependent). The servicemember is expected to ask the spouse to return an unexpired ID card after divorce. Divorced spouses who qualify for ID cards under the Former Spouses Protection Act continue to have an ID card but it says FORMER SPOUSE on it.
  - The military services use the term “home of record.” This means the jurisdiction from which a servicemember joined. It does not mean domicile. The home of record does not carry with it any tax implications.
  - A servicemember declares a “legal residence for purposes of withholding State income taxes from military pay” when entering the service, and makes changes as

circumstances allow, by filing a Form DD 2058 with the military. Most states would term this “legal residence” to be the state of domicile. This form does provide servicemembers with guidance on idicia of establishment and maintenance of legal residence, but the Department of Defense does not verify these claims, considering it sufficient that it is an official statement is being filed under penalty of perjury.