



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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SC REVENUE RULING #21-10

- SUBJECT:** Military Servicemember Spouse – Domicile and Taxation
(Income Tax)
- EFFECTIVE DATE:** All periods open under statute, except the amendment by P.L. 115-407 applies to tax years beginning on or after January 1, 2018.
- SUPERSEDES:** SC Revenue Ruling #10-5 and all previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S.C. Code Ann. Section 12-6-30 (2014)
S.C. Code Ann. Section 12-6-1720 (2014)
S.C. Code Ann. Section 12-6-2220 (2014)
S.C. Code Ann. Section 12-6-3400 (2014)
50 U.S.C. Section 4001
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

PURPOSE OF UPDATE

The purpose of this advisory opinion is to update SC Revenue Ruling #10-5 to address changes made to the Servicemembers Civil Relief Act¹ ("Federal Act") by the Veterans Benefits and Transition Act² in 2018 that allows a spouse to elect the domicile of a servicemember; to update the documentation a spouse meeting the Federal Act requirements must provide to an employer to request exemption from withholding; and to clarify the Department's guidance with respect to the application of the Federal Act when a nonresident military servicemember is stationed in a border state, or is living with his or her spouse in a border state.

¹ P.L. 108-189 (December 19, 2003). The Servicemembers Civil Relief Act revised and replaced the Soldiers' and Sailors' Relief Act.

² P.L. 115-407 (December 31, 2018). The Veterans Benefits and Transition Act applies to any taxable year that includes the date of enactment, including 2018 individual income tax returns.

This advisory opinion addresses common questions associated with the income tax provisions of the Federal Act and uses the term “domicile” solely in reference to a person’s domicile for income tax purposes. All other Federal Act provisions, including those that deal with property taxes, are not addressed. For simplicity, this advisory opinion will refer to a military servicemember as “servicemember” and the military servicemember’s spouse as “spouse.”

FEDERAL LAW - SERVICEMEMBERS CIVIL RELIEF ACT

50 U.S.C. Section 4001 reads:

(a) Residence or domicile³

(1) A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) Spouses –

(A) In general

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with servicemember’s military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.⁴

(B) Election

For any taxable year of the marriage, the spouse of a servicemember may elect to use the same residence for purposes of taxation as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.⁵

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

³ The Federal Act uses the terms “domicile” and “resident” or “residency” interchangeably. This advisory opinion will use the term “domicile.”

⁴ This provision was added by the Military Spouses Residency Relief Act in 2009.

⁵ This provision was added by the Veterans Benefits and Transition Act in 2018.

(c) Income of a military spouse

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.⁶

BACKGROUND OF SOUTH CAROLINA TAXATION AND FEDERAL ACT DOMICILE RULES

General SC Income Tax Principles. A South Carolina resident individual is taxed on all personal service income, no matter where earned. If the South Carolina resident is taxed by another state for personal services performed in that state, the resident individual may claim a credit against South Carolina income taxes for taxes paid in the other state. Unlike a resident individual, a nonresident individual is taxed only on personal service income earned in South Carolina. “Resident individual” means an individual domiciled in this State. “Nonresident individual” means an individual other than a resident individual or a part-year resident.⁷

Servicemember’s Domicile and Taxation of Income under the Federal Act. An exception to the general principles above has existed for servicemembers under the Servicemembers Civil Relief Act for many years.⁸ A servicemember has been allowed to keep his or her tax domicile as his or her home state when serving in another state in compliance with military orders and has been taxed on military pay only in the home state. Under the Federal Act, a “nonresident” servicemember stationed in South Carolina is not subject to South Carolina income tax on military service pay. Other personal service income (e.g., wages from a civilian job) earned by the “nonresident” servicemember in South Carolina, however, would be subject to tax in South Carolina under general South Carolina income tax principles. The rules for a servicemember’s spouse are not the same.

Spouse’s Domicile and Taxation of Income under the Federal Act. Before 2009, a servicemember’s spouse, regardless of the state of domicile, was taxed on personal service income earned in South Carolina, like any other nonresident individual.

In 2009, the Military Spouses Residency Relief Act⁹ was enacted and amended the Servicemembers Civil Relief Act to allow a spouse to retain a domicile other than the state in which the spouse is living, if the spouse is living in the state solely to be with the servicemember serving in compliance with military orders and the servicemember and the spouse have the same domicile. Further, personal service income of the “nonresident” spouse will not be taxable by the state where the income is earned, if the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.¹⁰

⁶ This provision was added by the Military Spouses Residency Relief Act in 2009.

⁷ Code Sections 12-6-30, 12-6-1720, 12-6-2220(6), and 12-6-3400.

⁸ 50 U.S.C. Section 4001(b).

⁹ P.L. 111-97 (November 11, 2009).

¹⁰ 50 U.S.C. Section 4001(a)(2)(A) and (c).

In 2018, the Veterans Benefits and Transition Act¹¹ was enacted and further amended the Servicemembers Civil Relief Act to allow the spouse to elect to use the same domicile as the servicemember, regardless of the date of the marriage.¹² If the election is made, the spouse's domicile is deemed to be the same as the servicemembers. Further, personal service income of the "nonresident" spouse will not be taxable by the state where the income is earned, if the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.¹³

DETERMINATION OF DOMICILE AND TAXATION OF PERSONAL SERVICE INCOME OF A SERVICEMEMBER'S SPOUSE UNDER THE FEDERAL LAW

Below are the Department's interpretations of the Federal Act regarding a servicemember spouse's domicile for income tax purposes as it applies in South Carolina. Other states may have different interpretations.

General Rule – When Servicemember and Spouse are Living and Working in South Carolina

A spouse will not be taxed in South Carolina on personal service income from services performed in South Carolina if all of the following Federal Act requirements are met:

1. The servicemember and the spouse have the same state of domicile in a state other than South Carolina or

The servicemember is domiciled in a state other than South Carolina and the spouse elects to use the servicemember's domicile for income tax purposes; and

2. The servicemember is serving at a duty station in South Carolina in compliance with military orders; and
3. The spouse is living in South Carolina solely to be with the servicemember.

The examples below illustrate the application of these Federal Act requirements in determining the spouse's domicile and taxation of personal service income earned in South Carolina.

Note: For purposes of the examples illustrated in this advisory opinion, it is assumed that a servicemember is stationed in South Carolina (or the applicable state) in compliance with military orders and that the spouse is living in South Carolina (or the applicable state) solely to be with the servicemember, unless otherwise stated.

¹¹ P.L. 115-407 (December 31, 2018).

¹² The election is effective for tax years beginning on or after January 1, 2018. Upon marriage, the spouse may elect the servicemember's domicile for the entire tax year.

¹³ 50 U.S.C. Section 4001(a)(2)(B) and (c).

Example 1: Servicemember and Spouse have Same Domicile Outside of South Carolina.

Servicemember and spouse are both domiciled in Texas. Servicemember is stationed in South Carolina in compliance with military orders. The Federal Act allows the servicemember and spouse to retain Texas as their domicile. Spouse is working in South Carolina and living in South Carolina solely to be with the servicemember. Since the Federal Act requirements are met, the personal service income earned in South Carolina by the nonresident spouse is not subject to tax in South Carolina.

Example 2: Servicemember and Spouse have Different Domiciles and Spouse Elects to Use Servicemember's Domicile Outside of South Carolina.

Servicemember is domiciled in Texas. Spouse is domiciled in South Carolina. Servicemember is stationed in South Carolina in compliance with military orders. The Federal Act allows the spouse to elect to use the servicemember's Texas domicile. Spouse is working in South Carolina and living in South Carolina solely to be with the servicemember. Since the Federal Act requirements are met, the personal service income earned in South Carolina by the nonresident spouse is not subject to tax in South Carolina.

Application of General Rule When Servicemember and Spouse are Living in a Border State or Servicemember's Duty Station is Located in a Border State (i.e., Georgia or North Carolina).

Note: States differ on whether the state where the duty station is located, the state where spouse works, and the state where the servicemember and spouse are living must be in the same state. It is the Department's position that the Federal Act does not require the servicemember and the spouse to live in the same state as the duty station or that the servicemember and the spouse live in the same state in which the spouse works, provided the other requirements of the Federal Act are met and the couple is living in a border state (i.e., Georgia or North Carolina) or the servicemember is serving at a duty station in the border state. This interpretation is consistent with the intent of the Servicemembers Civil Relief Act, as amended by the 2009 and 2018 Acts and is illustrated in the below examples.

Example 1: Servicemember and spouse are both domiciled in a state not bordering South Carolina (i.e., Florida). Servicemember is stationed in a border state (e.g., Georgia) in compliance with military orders. The servicemember and spouse live in Georgia. Based on the facts, the spouse is living in Georgia solely to be with the servicemember serving in compliance with military orders. The Federal Act allows the servicemember and spouse to retain Florida as their domicile. Spouse is commuting to South Carolina to work. Since the Federal Act requirements are met based on the facts, the personal service income earned in South Carolina by the nonresident spouse is not subject to tax in South Carolina.

Note: The answer would be the same if the servicemember and spouse lived in South Carolina instead of Georgia, spouse worked in South Carolina, and the servicemember commuted to Georgia to work in compliance with military orders.

Example 2: Servicemember and spouse are both domiciled in a border state (e.g., North Carolina) and the servicemember is stationed in that border state in compliance with military orders. The servicemember and spouse live in North Carolina. Based on the facts, the spouse is living in North Carolina solely to be with the servicemember serving in compliance with military orders. The Federal Act allows the servicemember and spouse to retain North Carolina as their domicile. Spouse is commuting to South Carolina to work. Since the Federal Act requirements are met based on the facts, the personal service income earned in South Carolina by the nonresident spouse is not subject to tax in South Carolina.

Note: The answer would be the same if the servicemember and spouse live in North Carolina, the servicemember is stationed in South Carolina in compliance with military orders, and the spouse and the servicemember commute to South Carolina to work.

PERSONAL SERVICE INCOME OF SERVICEMEMBER'S SPOUSE EXCLUDED FROM TAX

General Rule. If the servicemember's spouse qualifies under the Federal Act, income earned from personal services performed by the spouse is excluded from state income tax.

Personal Service Income of Nonresident Spouse Excluded from SC Income. For purposes of the exclusion, income from services includes salaries, wages, tips, professional fees, and other compensation received for personal services. If the spouse actively works in a sole proprietorship, partnership, LLC taxed as a sole proprietorship or partnership, or an S corporation, service income from these entities can be excluded. The income or loss from a sole proprietorship, partnership, or LLC taxed as a sole proprietorship or partnership, or an S corporation, will be considered personal service income if it is required to be included in the computation of net earnings from self-employment for purposes of the federal self-employment tax.

Taxability of Other Income of Nonresident Spouse. South Carolina does not tax a nonresident on income that is sourced to the domicile of a taxpayer. For example, interest and dividends not connected with the taxpayer's business are not taxed in South Carolina if the spouse is domiciled outside of South Carolina. See Code Section 12-6-2220(1) and (2).

If a spouse has rental property located in South Carolina, the spouse would still be taxed on that rental income. See Code Section 12-6-2220(3). Similarly, any South Carolina business income from partnerships, LLCs, or sole proprietorships that is not service income for the spouse will need to be reported as income in South Carolina in the same manner that any nonresident individual would report this income.

ADDITIONAL GUIDANCE

Below are points to be aware of when determining if the income earned from personal services performed by the spouse or servicemember is excluded from South Carolina income tax.

- Temporary Military Assignment Outside South Carolina. If a spouse has met the conditions above for exclusion from income and the servicemember is temporarily assigned to another state or outside the United States and the spouse remains in South Carolina (or a border state), the exclusion will continue to apply as long as South Carolina (or the border state) remains the servicemember's permanent duty station. The income exclusion will no longer apply if the servicemember's permanent duty station is no longer in South Carolina (or a border state) and the spouse remains in South Carolina (or a border state), and continues to work in South Carolina.
- Spouse Marries Servicemember During Tax Year and Elects to Use Servicemember's Domicile. If the servicemember and the spouse marry at any time during the tax year, the spouse may elect the servicemember's domicile for the entire tax year. If the spouse had South Carolina income tax withheld on personal service income during the year of marriage, the spouse may file a claim for refund as provided in Code Section 12-60-470 to receive a refund of South Carolina taxes previously withheld.
- Servicemember and Spouse Domiciled in South Carolina. If the servicemember and spouse are domiciled in South Carolina, they are South Carolina residents and need to file a South Carolina income tax return, even if the spouse and the servicemember are living and working in another state.
- Servicemember's Personal Service Income. The exclusion rules under the Federal Act for the servicemember and spouse are not the same. If a servicemember has a civilian job in addition to his military job, the personal service income earned in South Carolina from the civilian job is subject to tax in South Carolina. Under the Federal law, the personal service income of the servicemember that is excluded from South Carolina income tax when a nonresident servicemember is stationed in South Carolina is income earned from military service.

DOCUMENTATION TO PROVIDE EMPLOYER TO PREVENT WAGE WITHHOLDING ON PERSONAL SERVICE INCOME OF SPOUSE

Information to Provide to Employer. A spouse meeting the Federal Act requirements described above must provide the following information to the employer:

1. Form SC W-4, "South Carolina Employee's Withholding Allowance Certificate" requesting an employer to not withhold South Carolina income tax on the personal service income.
2. The servicemember's most recent "Leave and Earnings Statement."
3. The spouse's dependent identification and privilege card identifying the employee as a military spouse.

Duration of Withholding Exemption. Form SC W-4 is an annual form. A new Form SC W-4 must be completed for each calendar year the spouse meets the Federal Act requirements for the

employer to not withhold South Carolina income tax on the personal service income. The exemption from withholding expires on December 31, unless a new Form SC W-4 is completed.

In some instances, the Federal Act may first apply for South Carolina purposes to the spouse during the tax year. This may occur when the servicemember is assigned to a permanent duty station in South Carolina during the tax year or when the spouse marries the servicemember during the tax year. In such instances, the spouse should provide Form SC W-4 on the date employment begins or as soon as possible after the date of marriage. If employment continues into the next year, a new Form SC W-4 is required to be provided to the employer by January 1 of each subsequent tax year.

Note: An untimely provided Form SC W-4 will result in the employer withholding South Carolina income taxes from the spouse until a current SC W-4 is provided.

Employer Recordkeeping. The employer must retain the completed SC W-4. The employer must verify the qualifying information on the leave and earnings statement and the dependent identification and privilege card. If an employer believes an employee's withholding exemption certificate is incorrect, the employer shall furnish a copy of the certificate to the Department within 30 days after it is received. Unless otherwise informed by the Department, the employer shall withhold on the basis of the claimed exemption.¹⁴

An employer is not required to retain copies of the military documentation that was verified, if documented in the employer's records.¹⁵ If copies of the documentation are retained, the Department recommends that the employer strikeout any personal identifying information in order to protect the privacy of the servicemember and spouse and avoid accidental disclosure of information contained on these documents.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

June 16, 2021
Columbia, South Carolina

¹⁴ Code Section 12-8-1030(A).

¹⁵ Section 701, Title 18 of the United States Code states that military ID cards may only be copied for authorized purposes. A memorandum from the Office of the Undersecretary of Defense dated January 10, 2010 indicates that copying the ID card to obtain tax benefits is authorized under DoDI (Department of Defense Instruction) 1000.13, paragraph 6.1.7.