

SC INFORMATION LETTER #09-21

SUBJECT: Federal Military Spouses Residency Relief Act
(Income Tax, Withholding Tax, Personal Property Tax)

DATE: November 24, 2009

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000 and Supp. 2008)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

On November 11, 2009, President Obama signed into law the Military Spouses Residency Relief Act (PL 111-97) (Act). The Act amends the Servicemembers Civil Relief Act to provide that a spouse shall neither lose nor acquire domicile or residence 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 spouse.

There is currently a task force of states collaborating to establish common guidelines for implementing the Act. Once these guidelines are established, the Department may provide additional information about implementing this Act in South Carolina. Any additional information will be published on the Department's website at www.sctax.org under "What's New."

Income Tax

Under the Act, a spouse of a servicemember may be exempt from South Carolina income tax on income from services performed in South Carolina if (1) the servicemember is present in South Carolina in compliance with military orders; (2) the spouse is in South Carolina solely to be with the servicemember; and (3) the spouse maintains domicile in another state.

The Act is effective for taxable year 2009 and thereafter. It does not affect income taxes imposed or paid for 2008 and earlier. Any refund of wage withholding for taxable year 2009 as a result of this Act may be claimed by filing a 2009 South Carolina Individual Income Tax Return (Form SC 1040) including a Schedule NR. This return cannot be filed prior to January 2010. On the Schedule NR the nonresident spouse's service income should be treated in the same manner as provided in the Instructions to the Schedule NR (Nonresident Schedule) for a nonresident serviceman's military compensation.

Withholding Tax

A servicemember's spouse whose wages are exempt from South Carolina income tax under the Act may claim an exemption from South Carolina withholding tax. Spouses that qualify for South Carolina wage exemption under the Act must complete a federal Form W-4 for South Carolina purposes only by writing at the top of the form "Nonresident Military Spouse for State Purposes Only." This Form W-4 should be provided to the employer and the Department recommends that the spouse also retain a copy of this Form W-4 for his or her records.

Personal Property Taxes

Motor vehicles and other tangible personal property owned by a spouse of a servicemember will be subject to the same tax treatment currently allowed for servicemembers whether the property is owned or titled in the name of the servicemember, spouse, or both names jointly.