

# PUBLIC DRAFT

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Comments Due by: **August 27, 2024**

## SC REVENUE RULING #24-x [DRAFT – 8/06/2024]

**SUBJECT:** Military Servicemember and Spouse – Domicile and Taxation (Income Tax)

**EFFECTIVE DATE:** Applies to tax years beginning on or after January 1, 2023.

**SUPERSEDES:** S.C. Revenue Ruling #21-10 for tax years beginning on or after January 1, 2023

**REFERENCES:** S.C. Code Ann. § 12-6-30  
S.C. Code Ann. § 12-6-1720  
S.C. Code Ann. § 12-6-2220  
S.C. Code Ann. § 12-6-3400  
50 U.S.C. §4001

**AUTHORITY:** S.C. Code Ann. § 12-4-320  
S.C. Code Ann. § 1-23-10(4)  
S.C. Revenue Procedure #09-3

**SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. 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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

The Veterans Auto and Education Improvement Act<sup>1</sup> (VAEIA) was enacted on January 5, 2023. Section 18 of this Federal Act amends the Servicemembers Civil Relief Act<sup>2</sup> (SCRA) to allow a military servicemember and spouse to elect to use the residence or domicile<sup>3</sup> of the servicemember or the spouse, or the permanent duty station of the servicemember, for state tax purposes. The purpose of this advisory opinion is to update SC Revenue Ruling #21-10 to address the impact on South Carolina income tax filings of the changes made by VAEIA Section 18. This advisory opinion does not address any other provisions of the VAEIA.

This Ruling provides the South Carolina Department of Revenue’s opinion on the application of South Carolina law to Section 18 of the VAEIA and 50 U.S.C. § 4001. Other states may have

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<sup>1</sup> P.L. 117-333 (January 5, 2023). The Veterans Auto and Education Improvement Act of 2022 applies to any taxable year that includes the date of enactment, including 2023 individual income tax returns.

<sup>2</sup> P.L. 108-189 (December 19, 2003). The Servicemembers Civil Relief Act revised and replaced the Soldiers’ and Sailors’ Relief Act.

<sup>3</sup> The SCRA uses the terms “domicile” and “resident” or “residency” interchangeably. This advisory opinion will use the term “domicile.”

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different interpretations. Military servicemembers and their spouses who are domiciled or stationed in other states should consult with those states to determine their interpretation of their law, the SCRA, and any filing requirements.

The SCRA provisions relating to residence or domicile for tax purposes apply for income taxes and for personal property taxes. This advisory opinion addresses the impacts on South Carolina income tax only and does not address potential impacts on other South Carolina tax types, including personal property tax.

For reference, 50 U.S.C. § 4001 is attached in its entirety.

## **General South Carolina Income Tax Principles**

For South Carolina income tax purposes, a South Carolina resident individual means an individual domiciled in this State.<sup>4</sup> Individuals are domiciled in South Carolina if South Carolina is their permanent home and is the place to which they intend to return when absent.<sup>5</sup>

A resident individual is taxed on all personal service income, no matter where it is earned.<sup>6</sup> 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.<sup>7</sup> A nonresident individual is only taxed on personal service income earned in South Carolina.

## **Servicemember Domicile and Taxation**

A servicemember is an individual who is a member of the uniformed services, as defined in 10 U.S.C. § 101(a)(5)<sup>8</sup>. The SCRA, as amended, provides that servicemembers generally remain domiciled in their home state for tax purposes when serving in another state in compliance with military orders<sup>9</sup> and are taxed on military pay only in their domicile state.<sup>10</sup> As a result, unless a servicemember makes an election in accordance with 50 U.S.C. § 4001(a)(3) that changes this result, a nonresident military servicemember stationed in South Carolina is not subject to South Carolina income tax on military service pay, while South Carolina residents stationed in another state will be subject to South Carolina income tax on all military service pay.

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<sup>4</sup> S.C. Code Ann. § 12-6-30

<sup>5</sup> See the *Determining a Taxpayer's Domicile for Income Tax Purposes* manual available at [dor.sc.gov](http://dor.sc.gov) for an overview of South Carolina's residency and domicile rules for income tax purposes.

<sup>6</sup> S.C. Code Ann. § 12-6-2220(6)

<sup>7</sup> S.C. Code Ann. § 12-6-3400

<sup>8</sup> 50 U.S.C. §3911(1)

<sup>9</sup> 50 U.S.C. §4001(a)(1)

<sup>10</sup> 50 U.S.C. §4001(b)

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Any other personal service income earned in South Carolina by a nonresident servicemember, such as W-2 wages earned at a civilian job, is subject to South Carolina income tax.

## **Servicemember's Spouse Domicile and Taxation**

The SCRA, as amended, allows a servicemember's spouse to remain domiciled in the spouse's home state for tax purposes when living in another state solely to be with the servicemember who is serving in compliance with military orders.<sup>11</sup> Personal service income earned by the servicemember's spouse is not taxed by the state where it was earned if the spouse is not domiciled in that state and is only living in the state in order to be with the servicemember serving in compliance with military orders.<sup>12</sup>

## **Domicile Elections under the VAEIA**

Beginning with the 2023 tax year, a servicemember and spouse may elect to use any of the following as the state of domicile for tax purposes:

1. The domicile state of the servicemember;
2. The domicile state of the spouse; or
3. The permanent duty station of the servicemember.<sup>13</sup>

The military servicemember and spouse are not required to live in the same state as the permanent duty station to qualify for the elections. The servicemember and spouse may each make the election and are not required to file jointly or to elect the same state for tax purposes. Servicemembers and their spouses make the election for South Carolina income tax purposes when choosing to file their SC1040 return as a South Carolina resident or nonresident.

For South Carolina income tax purposes:<sup>14</sup>

1. Military servicemembers who are domiciled in South Carolina are not taxed on military income if they elect to use the domicile state of their nonresident spouse or their permanent duty station outside of South Carolina. See Example 1.

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<sup>11</sup> 50 U.S.C. §4001(a)(2)

<sup>12</sup> 50 U.S.C. §4001(c)

<sup>13</sup> 50 U.S.C. §4001(a)(3)

<sup>14</sup> Other states may have different interpretations of the federal SCRA. Military servicemembers and their spouses should consult with other states to determine their interpretation of the SCRA and any filing requirements in that state.

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2. South Carolina income tax applies to military income for servicemembers who are not domiciled in South Carolina only if they are stationed in South Carolina or married to an individual who is domiciled in South Carolina and they elect to use South Carolina as their domicile state for tax purposes. See Example 2.
3. Military servicemembers who have non-military personal service income earned in South Carolina are taxed on that income, regardless of domicile. See Example 2.
4. Servicemember spouses domiciled in South Carolina are not taxed in South Carolina on personal service income if the spouse elects for tax purposes to use the domicile state of the servicemember or the permanent duty station outside of South Carolina. See Example 1.
5. Nonresident spouses are taxed in South Carolina on personal service income only if they elect for tax purposes to use the South Carolina domicile of the servicemember or the permanent duty station in South Carolina. See Examples 2 and 3.
6. South Carolina sourced income items unrelated to personal services and earned by military servicemembers or spouses, such as South Carolina rental income or gain on the sale of a property located in South Carolina, are included in South Carolina taxable income regardless of their domicile for tax purposes under the VAEIA.<sup>15</sup> See Example 4.

For income tax filing purposes, marital status, as defined in I.R.C. § 7703, is generally determined as of the close of the tax year. However, for a taxpayer whose spouse dies during the tax year, marital status is determined as of the date of the spouse's death. See Example 6.

Under the VAEIA, the domicile election may be made for any taxable year of the marriage, regardless of the date on which the marriage occurred. See Example 7. If the servicemember and spouse divorce, the election may be made for years during which the servicemember and spouse were married for any portion of the year. See Example 8. If the servicemember and spouse are separated during the year, but not legally divorced,<sup>16</sup> the servicemember and spouse may still make the election, even if they are “considered unmarried” under I.R.C. § 7703 for income tax filing purposes.

Military spouses who do not meet the SCRA requirements will have residency determined by state law. Retired military servicemembers, surviving spouses, and former spouses are not covered by the SCRA, so residency is determined under state law.

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<sup>15</sup> Income allocated to the state of domicile, such as interest and dividends not connected with the taxpayer's business, is not included in South Carolina taxable income for a servicemember or spouse domiciled in another state. See S.C. Code §12-6-2220 for income allocated to South Carolina.

<sup>16</sup> Legal separation, unlike divorce, does not terminate a marriage. See *Brewington v. Brewington*, 280 S.C. 502, 313 S.E.2d 53 (1984).

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## Wage Withholding

Servicemembers and spouses who are working in South Carolina, but who have or elect to use a different domicile state for income tax purposes, should provide their employer with the following:

1. Form SC W-4, “South Carolina Employee’s Withholding Allowance Certificate” requesting the employer not to withhold South Carolina income tax on personal service income;
2. The servicemember’s most recent orders showing the permanent duty station and dates;
3. The servicemember’s most recent “Leave and Earnings Statement” showing the domicile of the servicemember; and
4. The spouse’s dependent identification and privilege card identifying the employee as a military spouse.

The Form SC W-4 is an annual form and must be completed each calendar year. The exemption from withholding expires on December 31 unless a new SC W-4 is submitted to the employer.

In some cases, the state of domicile may change during the year. In these instances, the servicemember and/or spouse should provide the employer with an updated SC W-4 for their employer to correctly withhold South Carolina income taxes during the remainder of the tax year.

The employer must retain the completed SC W-4, and must verify the qualifying information on the orders, the leave and earnings statement, and the dependent identification and privilege card. Employers are not required to retain copies of the military documentation that was verified, if documented in the employer’s records.<sup>17</sup> If an employer believes an employee’s withholding exemption certificate is incorrect, the employer will forward a copy of the certificate to the Department within 30 days. Unless otherwise informed by the Department, the employer will withhold based on the claimed exemption.<sup>18</sup>

The servicemember and/or spouse should provide the employer with the completed SC W-4 at the beginning of a new year or after a change in domicile. An untimely or inaccurate SC W-4 will result in the employer withholding South Carolina income taxes. A servicemember or spouse who has South Carolina income tax withheld and shown on a W-2, but elects to use a different domicile state for income tax purposes, must file a South Carolina income tax return with nonresident schedule to request a refund of the overpayment of income taxes.

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<sup>17</sup> Section 701, Title 18 of the United States Code states that military ID cards may only be copied for authorized purposes. Under DoDI (Department of Defense Instruction) 1000.13, photocopying ID cards to facilitate tax matters is an example of authorized photocopying.

<sup>18</sup> S.C. Code Ann. § 12-8-1030(A)

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## Examples

The following examples are for a military servicemember (Servicemember) and a military servicemember's spouse (Spouse) beginning with the 2023 tax year. Unless otherwise provided, the examples assume the couple is married filing jointly and Servicemember and Spouse elect to use the same domicile for state income tax purposes. These examples show the impact of the VAEIA on South Carolina income tax filings. Servicemembers and their spouses making domicile elections in another state should consult with that state to determine any filing requirements.

1. Servicemember and Spouse are South Carolina residents stationed in another state.

Servicemember and Spouse are both domiciled in South Carolina. Servicemember's permanent duty station is in Florida. Servicemember lives in Florida in order to be in compliance with military orders, and Spouse lives in Florida in order to be with Servicemember. Spouse works full time in Florida and receives W-2 wages. Servicemember and Spouse may elect to choose either South Carolina or Florida as their domicile state for income tax purposes.

*South Carolina:* If Servicemember and Spouse elect South Carolina as their domicile state, they will file a South Carolina resident return and include all personal service income (Servicemember's military income and Spouse's W-2 wages) as South Carolina taxable income.

*Florida:* If Servicemember and Spouse elect Florida as their domicile state, the military income and Spouse's personal service income will not be taxed in South Carolina. If Servicemember or Spouse had any South Carolina withholding shown on a W-2, they should file a South Carolina income tax return with a nonresident schedule showing no South Carolina income. They should attach a statement that they are electing Florida as the domicile state under the VAEIA along with a copy of the military orders showing Florida as the permanent duty station and the dates stationed in Florida. Taxpayers who file electronically and are unable to include attachments should keep the supporting documents with their tax records until requested as part of an audit or review of the return.

2. Servicemember and Spouse are nonresidents stationed in South Carolina.

Servicemember is domiciled in Texas, and Spouse is domiciled in Georgia. Servicemember's permanent duty station is in South Carolina. Servicemember lives in South Carolina in order to be in compliance with military orders, and Spouse lives in South Carolina in order to be with Servicemember. Servicemember has a part-time civilian job in South Carolina, in addition to the military service, and receives W-2 wages. Spouse works full time in South Carolina and receives W-2 wages.

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Servicemember and Spouse may elect to use Texas, Georgia, or South Carolina as their domicile state for income tax purposes.

*South Carolina:* If Servicemember and Spouse elect South Carolina as their domicile state, they will file a South Carolina resident return and include all personal service income (Servicemember's military income, Servicemember's income from the civilian job, and Spouse's W-2 wage income) as South Carolina taxable income.

*Texas/Georgia:* If Servicemember and Spouse elect Texas or Georgia as their domicile state, the wages Servicemember earns at the part-time civilian job will still be included in South Carolina taxable income. The military income and Spouse's personal service income will not be taxed in South Carolina. Servicemember and Spouse should file a South Carolina income tax return with nonresident schedule and only include the income taxed in South Carolina.

3. Servicemember and Spouse are nonresidents stationed in a South Carolina border state.

Servicemember and Spouse are both domiciled in North Carolina. Servicemember's permanent duty station is in Georgia. Servicemember lives in South Carolina solely in order to be in compliance with military orders, and Spouse lives in South Carolina in order to be with Servicemember. Spouse works full time in South Carolina and receives W-2 wages. Servicemember and Spouse may elect to use either North Carolina or Georgia as their domicile state for income tax purposes. Since they are not domiciled in South Carolina, and are not stationed in South Carolina, they may not elect to use South Carolina as their domicile state for income tax purposes.

*South Carolina:* The personal service income earned by Spouse is not considered to be from services performed in South Carolina so is not subject to South Carolina income tax. If Spouse had South Carolina withholding shown on a W-2, they should file a South Carolina income tax return with a nonresident schedule showing no South Carolina income, and include a copy of the military orders showing the permanent duty station is in Georgia and the dates stationed there. Taxpayers who file electronically and are unable include attachments should keep copies of the supporting documents with their tax records until requested as part of an audit or review of the return.

4. Servicemember and Spouse are nonresidents with other South Carolina sourced income.

Servicemember and Spouse are both domiciled in Texas. Servicemember's permanent duty station is in Georgia. Servicemember lives in Georgia in order to be in compliance with military orders, and Spouse lives in Georgia solely in order to be with Servicemember. During the tax year, Servicemember and Spouse sold their South Carolina beach house and have \$50,000 of taxable capital gains on the sale.

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Servicemember and Spouse may elect to use either Texas or Georgia as their domicile state for tax purposes.

*South Carolina:* The capital gain from the sale of the South Carolina property is allocated to South Carolina<sup>19</sup> and included in South Carolina taxable income. Servicemember and Spouse should file a South Carolina income tax return with a nonresident schedule showing the \$50,000 capital gain as South Carolina taxable income.

5. Servicemember has a temporary change of duty station.

Servicemember and Spouse are both domiciled in South Carolina. Servicemember's permanent duty station is in South Carolina. Servicemember receives a temporary duty assignment in Texas during the tax year. Servicemember and Spouse are considered domiciled in South Carolina for income tax purposes for the entire tax year, so all military pay will be included in South Carolina taxable income. Servicemember and spouse cannot elect to use the temporary duty location as their domicile state.

6. Servicemember death occurs during the tax year.

Servicemember is domiciled in Florida, and Spouse is domiciled in South Carolina. Servicemember's permanent duty station is in South Carolina. Servicemember lives in South Carolina in order to be in compliance with military orders, and Spouse lives in South Carolina in order to be with Servicemember. Servicemember dies during the tax year, and Spouse does not remarry. For income tax purposes, Servicemember and Spouse are considered married for the tax year. Spouse may elect to use either Florida or South Carolina as the domicile state for income tax purposes.

In future tax years, Spouse will be considered a surviving spouse and will not be able to use 50 U.S.C. § 4001(c) or make the election under 50 U.S.C. § 4001(a)(3). Instead, Spouse's domicile will be determined by state law.

7. Servicemember and Spouse marry during the tax year.

Servicemember and Spouse get married in December of the tax year. For income tax purposes, under I.R.C. § 7703, Servicemember and Spouse are considered married for the tax year. Servicemember is domiciled in Texas, and Spouse is domiciled in South Carolina. Servicemember's permanent duty station is in Georgia. Servicemember lives in Georgia in order to be in compliance with military orders, and Spouse lives in Georgia in order to be with Servicemember. Servicemember and Spouse may elect to use Texas, South Carolina, or Georgia as their domicile state for the entire year for income tax purposes.

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<sup>19</sup> S.C. Code Ann. §12-6-2220(4)



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8. Servicemember and Spouse divorce during the tax year.

Servicemember is domiciled in Texas, and Spouse is domiciled in South Carolina. Servicemember's permanent duty station is in Georgia. Servicemember lives in Georgia in order to be in compliance with military orders, and Spouse lives in Georgia in order to be with Servicemember. Servicemember and Spouse divorce, and the divorce is finalized in November of the tax year. Servicemember and Spouse do not remarry during the tax year.

The filing status for income tax purposes is determined as of the end of the tax year under I.R.C. § 7703, so Servicemember and Spouse cannot file as married for the tax year. However, the election under 50 U.S.C. § 4001(a)(3) is available for any taxable year of the marriage. Therefore, since Servicemember and Spouse were married during the tax year, they can still make the election for the tax year. Servicemember and Spouse each may elect to use Texas, South Carolina, or Georgia as their domicile state for income tax purposes.

In future tax years, Spouse will be considered a former spouse and will not be able to make the election under 50 U.S.C. § 4001(a)(3). Instead, Spouse's domicile will be determined by state law.

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## **50 U.S.C §4001. Residence for tax purposes**

(a) Residence or domicile

(1) In general

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 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 the servicemember's military orders.

(3) Election

For any taxable year of the marriage, a servicemember and the spouse of such servicemember may elect to use for purposes of taxation, regardless of the date on which the marriage of the servicemember and the spouse occurred, any of the following:

(A) The residence or domicile of the servicemember.

(B) The residence or domicile of the spouse.

(C) The permanent duty station of the servicemember.

(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.

(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.

(d) Personal property

(1) Relief from personal property taxes

The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

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(2) Exception for property within member's domicile or residence

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) Exception for property used in trade or business

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) Increase of tax liability

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) Federal Indian reservations

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) Definitions

For purposes of this section:

(1) Personal property

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) Taxation

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction

The term "tax jurisdiction" means a State or a political subdivision of a State.