

117-640 This regulation concerns the taxable income calculation of military personnel, military retirees, and their families.

117-640.1. Military Pay, Non-Service Income, and Income Earned by Military Spouses

117-640.2. Legal Residence When Military Personnel is Domiciled in a Foreign Country

117-640.3. National Guard or Reserve Pension or Retirement Income

117-640.1. Military Pay, Non-Service Income, and Income Earned by Military Spouses.

1. Military pay in general: Under the provisions of Sections 12-6-510, 12-6-560, and 12-6-570, military pay is reportable for South Carolina income tax purposes.

2. Nonresident armed services personnel: Under the Soldiers' and Sailors' Civil Relief Act, members of the armed services, who are legal residents of other states stationed within South Carolina by virtue of military orders, are not subject to South Carolina income tax on their service pay. They are, however, subject to tax on any other income earned in South Carolina which would be taxable to a nonresident. Income earned in South Carolina by a spouse of a military servicemember is taxable to South Carolina.

The personal exemptions and deductions of a nonresident servicemember's spouse must be prorated in ratio to the spouses adjusted gross income within this State to the spouses entire adjusted gross income wherever earned. The spouse would not be entitled to claim exemptions for dependents unless the spouse can prove that he or she furnishes more than fifty percent of their support for the entire year.

3. Establishment of New Domicile: There is nothing in the Soldiers' and Sailors' Civil Relief Act or in the South Carolina statutes which would prevent a servicemember from changing his or her legal residence. To effect a change of legal residence, however, there must not only be an intention of making the new location the domicile of the servicemember, but also there must be the factual establishment of a domicile in the new location.

The establishment of a permanent residence (or domicile) in a new state ordinarily requires physical presence of the person in the state long enough to establish evidence of having taken up residence in the state. Some of the tests or factors to consider in determining such permanent residence (or domicile) include the following:

- (a) Place of birth.
- (b) Permanent residence of parents.
- (c) Family connections, close friends.
- (d) Address given for military purposes.
- (e) Payment of state bonus (in most cases when a state pays a bonus to a servicemember, the servicemember must be a permanent resident to be eligible).
- (f) Civic ties, church membership, club or lodge membership.
- (g) Bank account or business connections.

- (h) Payment of state income taxes.
- (i) Continuous car registration and driver's license.
- (j) Listing of "legal" or "permanent" address on Federal tax returns.
- (k) Voting by absentee ballot.
- (l) Occasional visits or spending one's leave "at home."
- (m) Ownership of a home.
- (n) Execution of approved certificates or other statements indicating permanent residence.
- (o) Expression of intention.

Our administrative policy is in accord with the military services and the courts, including Federal courts, which, when arbitrating disputes over residency, have consistently held that a legal residence (or domicile) is not abandoned until a definite residence is established elsewhere.

4. Resident armed services personnel: For the purpose of reporting military income to South Carolina, the word "resident" means an individual who is a legal resident of this State, whether stationed in this State or in some other State or country. Unless a member of the armed services submits evidence that he or she has established legal residence in another State of territory and abandoned any domicile in this State, an individual will be presumed to be a resident of South Carolina if he or she entered military service while a resident of this State. As a resident, such individual is required to report income from all sources to South Carolina.

The following may be used as a guide to determine the income tax liability of servicemembers determined to be South Carolina residents:

(a) Taxable service income: Taxable service income includes base pay, longevity pay, flight pay, foreign service pay, submarine pay, jump pay, and re-enlistment pay bonus.

(b) Exempt service income: Income not taxable to servicemembers includes enlisted personnel's subsistence and quarters allowances, officers' subsistence and quarters allowances, and family allowances under the Career Compensation Act.

(c) Allowable deductions: Deductions may be claimed by servicemembers for insignia, swords, excessive cost of caps (for naval commanders, army and air force colonels, and officers of higher rank), and cost of altering uniforms necessitated by change in rank. (The expenses for which a deduction is allowed are only those expenses actually paid for which no reimbursement is received. The cost of uniforms and cleaning of same is not allowed to members of the armed forces on full-time duty on the basis that the uniform replaces ordinary street clothes and as such is a personal expense.)

(d) Non-deductible items: In the case of individuals on full-time duty, no deduction is allowed for such items as uniforms, fatigues, laundering or cleaning, or ordinary tailoring of uniforms.

117-640.2. Legal Residence When Military Personnel is Domiciled in a Foreign Country.

The Soldiers' and Sailors' Civil Relief Act protects the rights of U.S. Armed Forces personnel, restricting the servicemember's liability for state income tax to his or her state of domicile. Domicile is defined legally as "that place where a man has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent therefrom, he has the intention of returning". A residence, on the other hand, generally is defined as a "factual place of abode" at a particular time.

A member of the armed forces who entered military service while domiciled in this state will be presumed to be a resident of South Carolina, for tax purposes, unless the servicemember submits evidence that he or she has established legal residence in another state and abandoned domicile in this state.

117-640.3. National Guard or Reserve Pension or Retirement Income.

That portion of pension or retirement income received by retired service personnel, residents of this State, that can be attributed to time served in the National Guard or Reserve components of the Armed Forces of the United States, is not taxable.

The non-taxable portion is determined by using a ratio of the time actually served in the National Guard or Reserve to the total time spent in military service, times total yearly pension or retirement.

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