



SERVICEMEMBERS' CIVIL RELIEF ACT

(Formerly - SOLDIERS' AND SAILORS' CIVIL RELIEF ACT)

Most service members and their families have heard of the Soldiers' and Sailors' Civil Relief Act but on 19 December 2003, President George Bush signed into law the "Servicemember's Civil Relief Act" (SCRA). This law is a complete revision of the Soldiers' and Sailors' Civil Relief Act (SSCRA). One of the most significant changes to the law relates to Section 201. This section applies to any civil action or proceeding in which the defendant at the time of filing an application under this section is: 1) in military service or is within 90 days after termination of or release from military service; and 2) has received notice of a civil action or proceeding. Furthermore, this law allows an active-duty service member to establish a legal state of residence for tax purposes, which does not change with each military transfer.

However, there is much more to it than just protection from double taxation. Below are answers to some of the most frequently asked questions about the act.

What was the original purpose of the Soldiers' and Sailors' Civil Relief Act?

Congress passed the act in 1940 to protect individuals who were suddenly called to active military duty as the United States approached World War II. These draftees found themselves plucked out of their communities and their civilian jobs on short notice, leaving behind civil and financial obligations.

Many soldiers and sailors had to break leases as they were sent far from their homes. Others could no longer pay their mortgages or meet their financial obligations on a military salary. In order to keep new draftees from suffering legal and financial consequences due to their military service, the Soldiers' and Sailors' Civil Relief Act put limits on the amount of debt and interest payments a new service member was obligated to pay.

The act also protected those individuals who were forced to break their leases as they entered the military.

In addition, the act protected service members who found themselves named in a legal suit, but who could not make a court appearance because they were stationed overseas or too far away from the location of the court.

As mentioned earlier, the act also allowed an active-duty service member to establish a legal state of residence for tax purposes. The act was amended in 1991 to update its application based on problems faced by members in the Persian Gulf War.

What has the new law changed?

The new law has significantly changed regarding the termination of leases, both household and auto leases.

Household leases –

The prior law only allowed the termination of pre-service "dwelling, professional, business, agricultural, or similar" leases. The new provision in the SCRA allows termination of leases by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. In other words, it is no longer necessary (although still good idea) to have a military clause included in your rental agreement. If you have PCS orders or are Deploying for a period of 90 days or more, you need to give written notice to your landlord with a copy of your orders. If your orders are not available, inform the landlord of that in the letter and provide a copy as soon as possible. Additionally, you must give at least 30-days notice but the 30-days does not start to toll until the first of the month. Therefore, if you give 30-days notice on the 15th of August, you will be obligated to pay all of September's rent. The rationale behind this is that most leases begin and end on the 1st and 30th of each month, it gives the landlord an opportunity to re-let the premises.

Automobile Leases -

The SCRA also includes automobiles leased for personal or business use by servicemembers and their dependents. The pre-service automobile lease may be cancelled if the servicemember receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember receives PCS orders to a (1) location outside the continental United States or (2) deployment orders for a period of one hundred and eighty days or more. (See Section 305, SCRA)

Final thought, ALWAYS keep a copy of any written correspondence you send to your landlord. Additionally, keep any letters they send you. NEVER rely on spoken promises, follow up every phone conversation with a letter reflecting the nature of the conversation and ask the addressee to reply if they disagree. Also, keep a log of any phone conversations that you have; include WHO you spoke with, WHAT the conversation was about, WHEN the conversation took place. This will save you a number of headaches down the road.

Civil Court Actions –

The old SSCRA gave judges the option of granting a stay-of-proceedings in Civil Actions in which a servicemember was a party. The SCRA removes this discretion. At any stage before final judgment in a civil action (the SCRA does not apply to criminal proceedings) or proceeding in which a servicemember (as described above) is a party, the court shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the court receives the following: 1) a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be

available to appear; and 2) a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

Does the act protect the service member's spouse or children?

No. The act applies only to active duty members but not to their dependents, except in a few extremely limited circumstances beyond the scope of this article. However, be aware that the act DOES protect against eviction and civil actions against the spouse where the servicemember is a necessary party.

Because the act does not cover military family members, an employed military wife, for example, cannot claim her husband's legal state of residence and expect to avoid income tax in the state where she temporarily lives.

An employed military spouse or child must pay state income tax to the state in which he or she lives, regardless of the sponsor's state of legal residence. The worker will be taxed as a resident or a non-resident, depending on his or her state of legal residence.

In addition, some states require that all military family members who relocate to the state get an in-state driver's license within 30 days of arriving. Arkansas has this requirement. Other states, like Virginia, only require an employed military family member to get an in-state driver's license while an unemployed family member is allowed to drive with a valid driver's license issued in the sponsor's legal state or record. Military spouses and other family members should check the motor vehicle laws each time they move to a new state to see if they need to get new driver's licenses.

Military members, on the other hand, do not have to get a new driver's license every time they are transferred. Because of the Soldiers' and Sailors' Civil Relief Act, they can drive on a valid driver's license issued by their legal state of residence while living in another state.

Military Spouses Residency Relief Act

(Public Law 111-97) 11 Nov 09

To amend the Servicemembers Civil Relief Act to guarantee the equity of spouses of military personnel with regard to matters of residency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Military Spouses Residency Relief Act”.

SEC. 2. GUARANTEE OF RESIDENCY FOR SPOUSES OF MILITARY PERSONNEL FOR VOTING PURPOSES.

(a) **IN GENERAL.**—Section 705 of the Servicemembers Civil Relief Act (50 U.S.C. App. 595) is amended—

(1) by striking “For” and inserting the following:

“(a) **IN GENERAL.**—For”;

(2) by adding at the end the following new subsection:

“(b) **SPOUSES.**—For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State because the person is accompanying the person’s spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence—

“(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

“(2) be deemed to have acquired a residence or domicile in any other State; or

“(3) be deemed to have become a resident in or a resident of any other State.”; and

(3) in the section heading, by inserting “**AND SPOUSES OF MILITARY PERSONNEL**” before the period at the end.

(b) **CLERICAL AMENDMENT.**—The table of contents in section 1(b) of such Act (50 U.S.C. App. 501) is amended by striking the item relating to section 705 and inserting the following new item:

“Sec. 705. Guarantee of residency for military personnel and spouses of military personnel.”.

(c) **APPLICATION.**—Subsection (b) of section 705 of such Act (50 U.S.C. App. 595), as added by subsection (a) of this section, shall apply with respect to absences from States described in such subsection (b) on or after the date of the enactment of this Act, regardless of the date of the military or naval order concerned.

SEC. 3. DETERMINATION FOR TAX PURPOSES OF RESIDENCE OF SPOUSES OF MILITARY PERSONNEL.

(a) **IN GENERAL.**—Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. 571) is amended—

(1) in subsection (a)—

(A) by striking “A servicemember” and inserting the following:

“(1) **IN GENERAL.**—A servicemember”; and

(B) by adding at the end the following:

“(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 if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.”;

(2) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively;

(3) by inserting after subsection (b) the following new subsection:

“(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.”; and

(4) in subsection (d), as redesignated by paragraph (2)—

(A) in paragraph (1), by inserting “or the spouse of a servicemember” after “The personal property of a servicemember”; and

(B) in paragraph (2), by inserting “or the spouse’s” after “servicemember’s”.

(b) **APPLICATION.**—Subsections (a)(2) and (c) of section 511 of such Act (50 U.S.C. App. 571), as added by subsection (a) of this section, and the amendments made to such section 511 by subsection (a)(4) of this section, shall apply with respect to any return of State or local income tax filed for any taxable year beginning with the taxable year that includes the date of the enactment of this Act.

SEC. 4. SUSPENSION OF LAND RIGHTS RESIDENCY REQUIREMENT FOR SPOUSES OF MILITARY PERSONNEL.

(a) **IN GENERAL.**—Section 508 of the Servicemembers Civil Relief Act (50 U.S.C. App. 568) is amended in subsection (b) by inserting “or the spouse of such servicemember” after “a servicemember in military service”.

(b) **APPLICATION.**—The amendment made by subsection (a) shall apply with respect to servicemembers in military service (as defined

in section 101 of such Act (50 U.S.C. App. 511)) on or after the date of the enactment of this Act.

Approved November 11, 2009.