

**Is Your State a “State of No Return”?**  
**Determining Domicile and other Common State Income Tax Issues**

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At the Tax Center, we field State Income Tax questions from all 50 states as well as Puerto Rico. Three common questions asked are “how do I determine my state of residence / domicile?”, “Does my state tax military pay?”, and “Does my spouse automatically have the same domicile as me?” Short answers to those questions are below. For a more detailed explanation, please visit us at the Tax Center.

What is a domicile, and what is your domicile? Upon entering the service, and often at several other points in a Soldier’s career, the Soldier will fill out a DD Form 2058, State of Legal Residence Certificate. Soldiers also indicate which state should withhold income taxes when they process through Finance. Some Soldiers believe that they can never change their domicile from the state where they entered the Service. Others believe that they can change their domicile to any state, at any time. Both of these ideas are actually wrong. Determining domicile is a combination of physical presence in a state and the intent to permanently reside there.

If a Servicemember’s domicile is ever questioned by a governmental entity, a variety of indicators may be used to determine whether the Soldier should be claiming a particular state as his or her domicile. These factors include- where they were born, where they are registered to vote, their oral or written intent to claim a state as domicile, physical presence in the state (both past and present), the state of residence of the Soldier’s immediate family, where they pay income and personal property taxes, if and where they own land, houses, or other real property... the list goes on. For more information, please visit the Tax Center.

Under the Servicemembers’ Civil Relief Act (SCRA), Soldiers do not lose their state of legal residence solely because they physically leave the state pursuant to military orders. They also do not gain residence in a new state solely because they are physically present in the new state on orders. They are protected from double taxation because only their state of domicile can tax them on their military income. If a soldier wants to change his or her state of domicile to the state they are currently serving in, they should consider the list of factors above and decide whether they want to take the steps necessary to change their domicile.

Before changing their state of domicile, Soldiers are cautioned to consider the impacts of falsely claiming a state as their state of domicile. States with no income tax are attractive to many Service members, and we have many large military bases in some of those states, including Alaska and Texas. However, if a Soldier claims one of those states without having been physically present in the state and having the intent to permanently reside in that state, they could face fines, penalties, and civil or criminal charges from either their true domiciliary state or the state they falsely claim. Make sure you meet the physical presence and intent tests before making tax changes.

Also, Soldiers should consider other impacts that changing their residence will have- things like registering vehicles, registering to vote, the ability to gain in-state tuition rates at colleges, and the amount they will pay in income taxes to their old state of domicile versus what they would pay to the new state of domicile. States tax income differently, particularly for members of the military.

Whether states tax income, and to what extent they tax income, varies greatly. The percentage of income taxed can vary greatly within a state as well, based on types of income and other factors. Hawaii has the highest top state tax rate- 11% for a married couple making over \$400,000. Obviously, that high bracket will not affect many military personnel, and their tax rates in Hawaii could be lower than in certain other states.

Seven states do not tax income at all, two states tax only interest and dividends above a certain amount, 14 fully exclude military pay, seven partially exclude military pay, and 20 fully tax military pay- subject to certain exceptions, like time spent in combat zones. States with no income tax do not require a return to be filed, and those that only tax interest and dividends only require a return to be filed if the interest is above a certain amount. The states that fully or partially exclude military pay may or may not require a return to be filed, so it is best for Soldiers to consult the Tax Center, particularly if they had income tax withheld from the state on their W-2. For a list of the states, read the [note posted on Facebook](#) . Once a Soldier knows their state of domicile and whether it taxes military pay, the next question is often “what about my spouse?”

Under the Military Spouse Residency Relief Act of 2009 (MSRRA), the spouses of Servicemembers may claim the state of domicile of the Servicemember if they are also a resident of that state at the time the Servicemember leaves the state pursuant to military orders. In other words, if they are both Texas residents at the time the Soldier receives orders and does a Permanent Change of Station (PCS) move to Hawaii, both can continue to claim Texas. However, if the Soldier is single when he leaves Texas, then meets a civilian in Hawaii that is a Hawaii resident and marries her, she cannot claim Texas under the MSRRA. In order to claim residency or non-residency under the MSRRA, many states have particular forms or documentation that must be submitted. For further information on the MSRRA, including how it could apply to your particular filing situation, please visit the Tax Center.

So far this year the Hawaii Army Tax Centers have processed over \$2 million worth of refunds and saved our Military Community over \$500,000 in filing fees. We will be open on Schofield Barracks and Fort Shafter Monday – Friday through April 29<sup>th</sup>. Please call us at 655-1040 to make an appointment at Fort Shafter, walk-in any time between 7am – 4pm at Schofield Barracks, or visit us on [Facebook](#).