

Identifying Your Domicile

Prepared by the Legal Assistance Division
Joint Force Headquarters-National Capital Region
U.S. Army Military District of Washington
Office of the Staff Judge Advocate
Bldg. 201 Fort Myer, Virginia 22211-1101
(703) 696-0761

A. Importance of Domicile

1. Your domicile is the state of your permanent home, or the state you consider your home whenever you are elsewhere. Your domicile is an important place. It is, for example, the place that usually has the power to tax your income or dissolve your marriage or distribute your property upon your death. The Servicemembers Civil Relief Act (SCRA) protects your military pay from being taxed by any state other than the military member's state of domicile. The SCRA further provides that no change in your state of legal residence/domicile will occur solely as a result of you being ordered to a new duty station. From a legal point of view, your domicile is often more important than the place where you are physically present or the place where you are living or the place in which you are stationed. Depending on the purpose and context when it is used, "residence" may mean the same as domicile, but it may mean something different. The two definitions are further discussed below.
2. Many people in the military are confused about their state of legal residence, probably because they move around so much that they don't have any close, continuous links to any particular state; but everyone has a domicile. Most of us identify our domicile because it is where we call home, but for those of us who move a lot or who are in the military, it is sometimes difficult to determine our domicile. At birth we have the domicile of our parents, by operation of law – without any choice in the matter, and until we are free to leave home we acquire any new domicile our parents may acquire. When we leave home however, to go to college, for example, we acquire a state of domicile by choice. You may change your domicile by being physically present in the new state with the simultaneous intent of making it your permanent home and abandonment of your old state of legal residence/domicile.

B. Difference Between Domicile, Legal Residence, Home of Record, and Residence

1. "State of Legal Residence" (SLR) and "Domicile" mean the same thing, namely, your true, fixed, and permanent abode. It is your permanent home, i.e., the place where, while you are absent from it, you intend to return. For example, a soldier with a domicile in Oregon leaves the state on military orders, but intends to go back to Oregon after leaving the military. Oregon is his permanent home, even though he is temporarily absent from it due to military orders. The soldier might never be stationed in Oregon during a thirty-year military career, and yet Oregon would remain the soldier's domicile for the entire thirty-year period. Your domicile is one of the key factors in determining, among other things, your liability for state income taxes, eligibility for "in-state" tuition rates, eligibility for voting in state and federal elections, and where your will is probated.
2. "Home of Record" (HOR) is almost always the state where you first joined the military. HOR is an accounting term used by the military to determine a number of military benefits, such as travel allowances, transportation expenses, travel time to report to duty, etc. A HOR must be changed if it was erroneously or fraudulently recorded initially. Enlisted members may change

their HOR at the time they sign a new enlistment contract. Officers may not change their HOR except to correct an error, or after a break in service. A soldier's HOR is usually the same as the soldier's domicile, but that's a coincidence since most people just happen to join the military in the state that is also their domicile. Except in the military, HOR is usually a meaningless term. However, since the HOR and the domicile are frequently the same, some colleges have started asking for information about the HOR as evidence of a person's domicile.

3. "Residence" means the place where you are actually living. By itself, residence usually has little or no legal significance.
4. "Statutory Residence" is very similar to "residence" in that it refers to the state where you are actually living. This term describes a certain category of persons who are liable for state income taxes. For example, in some states, someone who is physically present in that state for a specified period of time is considered to be a statutory resident and therefore liable for state income taxes in that state. This is one time that "residence" does have some legal significance. It is important to note that a statutory resident of State A may still retain State B as the domicile and may be required to file a tax return in State B also. The SCRA protects military members from becoming a statutory resident of a state other than their state of domicile so the second state may not tax the military member's military pay. Non-military spouses and family members often become statutory residents of the state where the military member is stationed when they live with the military member there. That state may tax any income the non-military spouse and family members earn in that location

C. Changing Your Domicile

1. **To Acquire a Domicile of Choice in a New Place, two things must happen:**
 - (a) **You must be in the State (physically present); AND**
 - (b) **While you are there, and before you leave, you must intend to make it your permanent home.**

Those two requirements are all that's necessary. You don't have to live in the state for any length of time, own a home in the state, have an address in the state, open a bank account, vote, get a driver's license, file a legal notice in the paper, or anything else to be domiciled in the state. Physical presence, along with the appropriate mental intent, is all that's required – you simply need to be physically present in the state at the time you decide to make it your permanent home. You could, for example, drive through the state and be so struck by its beauty that you immediately adopt it as your permanent home; however, if you do not have feelings about it before you drive out, your domicile has not changed.

Domicile is primarily a state of mind that a certain place is your permanent home. It is a mental attachment that you carry around with you. Once you acquire a domicile it remains your domicile, even though you leave it, unless your state of mind changes while you are in another place. Unfortunately, proving mental intent can be difficult. Such intent must be clearly established. To prove that you really did intend to make the new state your domicile, it might be a good idea to do some or all of the things listed in paragraph #4.

2. **If You Change Your Domicile, You Should Take These Actions:**

- (a) You must be consistent. If you are a legal resident of State A, then you should not keep your driver's license from State B or vote in State C. Inconsistency is probably the single biggest mistake that people make in this area.

- (b) You should adjust your state income tax withholding by filing **DD Form 2058** with your local military finance office.

The rules for changing your HOR are not the same that apply when changing your domicile. Unlike domicile, you can only change your HOR at a certain time, when you reenlist, for example. Because some military personnel in administrative jobs have a tendency to think that HOR and domicile mean the same thing, service members are sometimes told that they cannot change their domicile unless they reenlist. This incorrect advice has, in some cases, resulted in the military withholding income from the pay of a service member for state income tax purposes and paying the amounts withheld, perhaps for a period of several years, to a state that is not entitled to receive that money.

To make sure that your active duty military pay is being correctly withheld and paid to a state entitled to receive it, you must file a DD Form 2058 (State of Legal Residence Certificate). Once filed, this certificate will go through channels to finance where it will be used to determine whether pay should be withheld from your income and, if so, how much should be withheld and to which state it should be paid. If you declare a change in your domicile on this certificate, the military will notify the state which was your former domicile about your action. You should therefore be prepared to prove that your domicile has indeed changed as discussed in paragraph #3.

- (c) There is no need to publish a notice or file any documents with the state Attorney General's Office or anything like that.
- (d) If both the old and new states have an income tax, and if you moved on any day other than January 1, then you will have to file part-year returns in both states. For the first state, you report the income you had before acquiring the new domicile state. For the new domicile state, you report the income earned after becoming a domiciliary of the new state.

3. Proving You Changed Your Domicile

If you change your domicile state, you may have to prove it, which is a question of proving your state of mind. We rely on external evidence or indications of your state of mind. Your statement that a certain place is your permanent home is evidence of your state of mind. The best evidence of your state of mind is the contacts that other people can see you have with a specific state. For the kinds of actions to help prove your state of domicile see the list in paragraph #4.

You may not prove successfully that your domicile has changed unless you show contacts beyond just the benefit of the legal consequences that a change of domicile would give you. The issue of domicile is not a "shell game" to avoid taxes – it is your real and honest intention to make a state your permanent home. You should have all your contacts with the one state you call your permanent home. If you have contacts with multiple states, it may be difficult or impossible to prove your domicile.

You might, for example, have decided to stop paying state income taxes because you changed your domicile to a state with no income tax. Your old domicile, the state losing tax revenue, may question that change. If you cannot prove your domicile changed, you could end up owing taxes to two or more states, and require that a court decide the matter. Another example would be if your spouse sued for divorce in your former domicile, and you don't like the divorce laws there. If you can prove your domicile changed, you might be able to get the case dismissed.

4. Physical Actions That May Indicate Your Intent:

- (a) Physical presence, coupled with simultaneous intent of making the new state your permanent home (Prerequisite to establishing domicile)
- (b) Voter registration [Important Factor]
- (c) Vehicle registration as a resident vice non-resident military [Important Factor]
- (d) Payment of taxes (income and personal property) – one cannot establish domicile by paying taxes alone, physical presence is also necessary [Important Factor]
- (e) Declarations of residence on legal documents, such as wills, deeds, mortgages, leases, contracts, insurance policies, and hospital records [Important Factor]
- (f) Declarations of domicile in affidavits or litigation [Important Factor]
- (g) Ownership of real property [Important Factor – However, ownership of property in another state will not disqualify]
- (h) Concealed weapons permit
- (i) Resident hunting license
- (j) Motor vehicle operator's permit
- (k) Location of bank and investment accounts
- (l) Explanations for temporary changes in residence
- (m) Submission of DD Form 2058 (Change of domicile form)
- (n) Payment of nonresident tuition to institutions of higher education
- (o) Residence of immediate family
- (p) Membership in church, civil, professional, service, or fraternal organizations
- (q) Ownership of burial plots
- (r) Place of burial of immediate family members
- (s) Location of donees of charitable contributions
- (t) Location of schools attended by children
- (u) Home of record at the time of entering service
- (v) Place of marriage or place of birth
- (w) Business interests or sources of income
- (x) Outside employment
- (y) Address provided on federal income tax return
- (z) Spouse's domicile*

*There is one situation where you may be able to change your domicile without meeting the physical presence test. If you marry a resident of a different state, you might be allowed to claim your spouse's domicile as yours, or vice versa, without ever having been physically present in that state. The marital relationship is so significant that, by itself, it may give the spouse a close enough connection to the new state to justify claiming the new state as the domicile. There is substantial historical precedent for this argument. In the 1900's, when a woman married a man from a different state, the woman became a legal resident of the man's domicile by operation of law. Those laws no longer exist, but that helps demonstrate the legal significance of the marital relationship and the type of legal consequences that can result from marriage.

Generally, unless you have taken at least some of these steps, it is doubtful that you can prove that your domicile has changed. Failure to resolve any doubts as to your domicile may adversely impact privileges which depend on domicile, including, among others, eligibility for resident tuition rates at state universities, eligibility to vote or be a candidate for public office, and eligibility for various welfare benefits.

Domicile and State Income Taxes
Prepared by the Legal Assistance Division
Joint Force Headquarters-National Capital Region
U.S. Army Military District of Washington
Office of the Staff Judge Advocate
Bldg. 201 Fort Myer, Virginia 22211-1101
(703) 696-0761

A. No Income Tax

- Alaska
- Florida
- Nevada
- New Hampshire => no earned income tax
- South Dakota
- Tennessee => no earned income tax
- Texas
- Washington
- Wyoming
- Arizona => No tax on active duty pay
- Illinois => No tax on active duty military income
- Michigan => Compensation paid for military service is exempt from income tax and is deductible from adjusted gross income to the extent it's included in federal adjusted gross income
- Montana => Military income received under Title 10 is fully exempt (Guard/Reserve pay under Title 10 is also exempt)
- New Mexico => Active duty pay is exempt

B. No Tax if it's Military Pay Earned Outside the State

- California
- Idaho => active duty income is only taxable for Idaho residents stationed in Idaho
- Louisiana => if you or your spouse served for 120 days outside of Louisiana, your military pay is exempt from income tax
- Minnesota => pay is exempt for active-duty services performed outside of Minnesota
- New Jersey => military personnel who are residents of NJ and who meet all three of the following conditions for the entire year, are considered nonresidents for income tax purposes: (1) did not maintain a permanent home in New Jersey; (2) did maintain a permanent home outside of New Jersey; and (3) did not spend more than thirty days in New Jersey during the taxable year
- New York => Military personnel who are residents of NY are treated as nonresidents if 3 conditions are met: (1) did not maintain a permanent place of abode in NY; (2) did maintain a permanent place of abode outside of NY during the entire tax year; and (3) spent 30 days or less in NY during the tax year
- Ohio => exempts military pay of resident service members stationed outside Ohio
- Oregon => exempts all active duty pay earned outside Oregon and up to \$6,000 of active duty pay earned in Oregon
- Pennsylvania => all active duty pay earned outside Pennsylvania is exempt
- Vermont => pay is exempt for full time active duty when pay is earned outside Vermont
- West Virginia => if resident spends 30 days or less in state during the tax year, his military income is not subject to tax

C. Other Tax Exemptions for Military

- Alabama => Combat pay is excluded for active duty personnel
- Arkansas => Combat pay is excluded; \$9,000 of military compensation is exempt; Veterans Affairs disability income is excluded
- Georgia => Guard/Reserve combat pay is not taxed
- Hawaii => First \$2,998 of Guard and Reserve pay is excluded
- Indiana => Up to \$2,000 of military income is excluded
- Kansas => enlisted, warrant officers, and commissioned warrant officers serving in a combat zone during any part of the month can exclude military pay for that month
- Kentucky => Income earned by soldiers killed in the line of duty for the year of death and the year before the year of death are exempt; includes federal and state death benefits
- Maryland => \$15,000 is exempt if attributable to service outside the US
- Mississippi => \$15,000 for Guard/Reserve pay, and combat and hazardous-duty pay for active service below the grade of commissioned officer are excluded
- Missouri => Combat pay not otherwise excluded from federal adjusted gross income may be subtracted when determining Missouri taxable income
- North Dakota => If Form ND-2 is used, an exemption of up to \$1,000 of compensation for active-duty service or Guard/Reserve service is allowed; an exclusion of \$300 of compensation for active duty service is allowed for each month of service outside the US
- Oklahoma => First \$1,500 of active duty pay and POW/MIA benefits are exempt
- Virginia => Up to \$15,000 of military basic pay may be exempted but this amount is reduced when military pay exceeds \$15,000 and is fully phased out when pay reaches \$30,000; Military personnel must serve for 90 days or more and can be stationed inside or outside Virginia; the lesser of 39 calendar days or \$3,000 for Guard members whose rank is O-3 or lower may be subtracted