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**Administrative Release No. 1**

**Subject: Military Personnel and Civilian Spouses - Both Residents and Nonresidents of Maryland.**

**I. General**

This release relates to the application of Maryland income tax law to members of the United States armed forces stationed at military establishments located both within and outside of Maryland. This release also addresses the impact of the Military Spouses Residency Relief Act (Public Law No. 111-97) [hereinafter the "Act"]<sup>1</sup> on the application of Maryland income tax law to these servicemembers and their spouses.

**II. Law**

**A. General**

Maryland income tax law applies to both residents and nonresidents of the State. In administering Maryland income tax law, the Revenue Administration Division gives effect to the federal Servicemembers Civil Relief Act,<sup>2</sup> as amended by the Act.

**B. Military servicemember**

1. A military "servicemember" has the meaning stated in § 101(1) of the Servicemembers Civil Relief Act.

2. Military servicemembers who are permanent residents of Maryland do not lose their domicile if duty or assignments require their physical presence outside this State during the taxable year. Such individuals have a continuing obligation to file Maryland income tax returns which include all income no matter where earned or from whatever source, including military pay.

3. Under the federal law, a servicemember who is domiciled in a state other than Maryland and who is transferred to Maryland for military duty is not subject to Maryland taxation on military pay. However, the law provides that the individual shall be taxed as a nonresident on that portion of federal adjusted gross income derived from tangible property, real or personal, permanently

located in this State, income from a business, trade, profession or occupation carried on in this State, and income from Maryland lottery prizes.

**C. Military servicemember's civilian spouse**

1. Under the Act, a military servicemember's civilian spouse who is domiciled in a state other than Maryland and who is in this State solely to be with the servicemember serving in compliance with military orders is a nonresident of the State regardless of how long the civilian spouse has resided in the State, and:

a. **Is not subject** to Maryland taxation on **income for services** performed within this State (e.g. wages, salaries or tips) — the civilian spouse *must* timely, and annually, submit Maryland Form MW507 and MW507M<sup>3</sup> to the employer asserting and attesting to the civilian spouse's exempt status from withholding requirement; and

b. **Is subject** to Maryland taxation on that portion of federal adjusted gross income derived from tangible property, real or personal, permanently located in this State, **non-service income** from a business, trade, or profession or occupation carried on in this State (e.g. partnership income), and income from Maryland lottery prizes.

2. If a nonresident civilian spouse who relocated to Maryland solely to be with the military servicemember serving in compliance with military orders as set forth in Paragraph 1, voluntarily remains in the State after the servicemember has relocated elsewhere, the civilian spouse will become subject to Maryland income tax law either as a resident or as a nonresident of the State (see below) with respect to income from salary, wages or compensation received for services performed in this State.

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<sup>3</sup> Form MW507M is new and is available online at the Comptroller's Web site. Form MW507M is used for tax year 2011 and forward. For taxpayers who are subject to MSRRA and have already filed Form MW507 for 2011, they should contact their employers to obtain and complete Form MW507M, which will be effective retroactive to the date that Form MW507 was filed.

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<sup>1</sup> Signed into law on November 11, 2009.

<sup>2</sup> Formerly the Soldiers' and Sailors' Civil Relief Act of 1940.

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a. A servicemember's civilian spouse is generally deemed to be staying in the State voluntarily if the servicemember has relocated to another state, the District of Columbia, or a non-combat zone country.<sup>4</sup>

b. A civilian spouse who is domiciled in a state other than Maryland and who has resided within Maryland for less than 183 days of the taxable year, is a nonresident of Maryland and is only taxable on that portion of federal adjusted gross income derived from tangible property, real or personal, permanently located in this State, income from a business, trade, profession or occupation carried on in this State and income from Maryland lottery prizes.

c. A civilian spouse who is domiciled in a state other than Maryland and who has resided in this State for 183 days or more of the taxable year, is a statutory resident and is taxable as a resident of Maryland on all income derived from sources both within and outside this State.

3. A civilian spouse subject to Maryland income tax law may be entitled to a credit on the home-state return for income subject to tax by both states. See Administrative Release No. 3, and Maryland Form 502CR and instructions.

### **III. Some Specific Filing Instructions for Military Servicemembers and Their Spouses**

**A.** Military servicemembers who are domiciled (legal residents) in Maryland.

Members of the military who are domiciled (legal residents) in the State of Maryland, regardless of where they are stationed, are required to file a resident tax return (Form 502) and report all taxable income received from whatever sources, including military pay.

A military servicemember who is domiciled in the State and whose spouse is domiciled in another state must file separate Maryland returns if separate federal returns were filed. Spouses filing joint federal returns may file separate Maryland returns, or a joint Maryland resident return, in which case a *pro forma* joint Maryland nonresident return (Forms 505 and 505NR) must also be completed

and submitted as an attachment to the joint resident return. See Form 502 Instruction 7.

**B.** Military servicemembers who are domiciled (legal residents) in a state other than Maryland.

Individuals who are members of the military stationed in Maryland serving in compliance with military orders and who are domiciled (legal residents) in another state should follow the guidelines below:

1. Single, or married having a civilian spouse without income.

a. If a military servicemember's only income is derived from military pay, intangible personal property or income from sources outside Maryland, then no income tax return is required to be filed.

b. If the military servicemember, in addition to military pay, has income derived from Maryland sources other than intangible personal property, a nonresident tax return (Forms 505 and 505NR) must be filed. The individual must report total federal adjusted gross income, subtracting military pay on Form 505, and subtracting income from intangible personal property and other income derived from sources outside Maryland on Form 505NR. The individual may claim all personal exemptions and may either itemize deductions to the extent they are properly allocable to income taxable to Maryland or use the standard deduction. Personal exemptions and the standard deductions must be prorated based upon the ratio of Maryland adjusted gross income to federal adjusted gross income.

2. Married having a nonresident civilian spouse with income.

a. A military servicemember with a nonresident civilian spouse who has income from Maryland sources may not be required to file with Maryland if the military servicemember's income consists of solely military pay and the civilian spouse's income from Maryland sources consists of solely service income.

b. A military servicemember with a nonresident civilian spouse who has income from Maryland sources, must file a joint, nonresident return (Forms 505 and 505NR), if a joint federal return was filed. Total federal adjusted gross income should be reported on a joint, nonresident return, subtracting military pay and the spouse's

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<sup>4</sup> Maryland generally looks to the Internal Revenue Service for guidance on designated combat zone or qualified hazardous duty areas.

service income, if any, from Maryland sources on Form 505, and subtracting income from intangible personal property and other income from sources outside Maryland on Form 505NR. Itemized deductions may be claimed to the extent they are properly allocable to income taxable by Maryland, or the standard deduction may be used. Personal exemptions and the standard deductions must be prorated.

c. A military servicemember with a nonresident civilian spouse who has income from Maryland sources, must file separate Maryland returns if separate federal returns were filed. If separate Maryland returns are filed, the civilian spouse must file a nonresident return (Forms 505 and 505NR), using the married filing separate status. Spouses must report their separate income, deductions, and exemptions. Spouses would subtract their service income from Maryland sources on Form 505, and income from intangible personal property and other income derived from sources outside Maryland on Form 505NR. Spouses may itemize only if they have itemized on their separate federal returns.

3. Married having a resident civilian spouse with income.

a. Spouses filing separate federal returns must also file separate Maryland returns. Spouses filing joint federal returns may file separate Maryland returns.

b. If separate returns are filed, the resident civilian spouse must file a Maryland resident return (Form 502), using the married filing separate status. Resident civilian spouses must report their separate income (including service income), deductions, and exemptions. They may itemize only if they have itemized on the federal return.

The resident spouse may, unless the Comptroller requires or allows another method, claim:

(1) The standard deduction;

(2)(a) Only the civilian spouse's federal itemized deductions from among those deductions claimed on the federal return, as limited under Maryland law, that are attributable exclusively to the individual, and

(b) From among those federal itemized deductions not otherwise claimed by the civilian

spouse, a prorated amount of the itemized deductions in accordance with Subparagraph (3); or

(3) A prorated amount of the itemized deductions claimed on the federal income tax return by using a fraction, the:

(a) Numerator of which is the civilian spouse's Maryland adjusted gross income; and

(b) Denominator of which is the spouses' joint federal adjusted gross income.

c. For purposes of allocating itemized deductions under Paragraph b, "attributable exclusively" means that:

(1) The individual is solely responsible for the payment of an expense claimed as an itemized deduction, including compliance with a valid court order or separation agreement; or

(2) The individual is jointly responsible for the payment of an expense claimed as an itemized deduction, but can demonstrate payment of the full amount of the itemized deduction with funds that are not attributable, in whole or in part, to the other jointly responsible individual.

d. If a joint Maryland resident return is filed (for this filing, Form 502 may not be submitted electronically), a *pro forma* joint Maryland nonresident return (Forms 505 and 505NR) must also be completed and submitted as an attachment to the joint resident return. The joint nonresident filing uses the total joint non-military income to determine the nonresident servicemember's tax rate.<sup>5</sup>

Specifically, Form 505 is completed using the figures from the joint federal return for lines 1 through 31.<sup>6</sup> On Form 505NR, the amount reported on line 5 should include the amount of the joint federal adjusted gross income that is attributable to the Maryland resident spouse. The total Maryland tax figure from line 32c of Form 505 should be added to the figures on lines 28 and 33 of Form 502, and that total should be entered on

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<sup>5</sup> Chapter 3 of the Acts of 2007 (Special Session) provided for new graduated Maryland income tax rates, and provided that for nonresident military personnel with Maryland source income, these rates are determined by the nonresident's total non-military income from all sources.

<sup>6</sup> These filing instructions are based on 2008 Maryland returns and instruction booklets.

line 34 of Form 502. The remainder of the Maryland Form 505, lines 33 through 55b should be left blank.

Form 502 should be completed using the figures from the joint federal return. The amount of the joint federal adjusted gross income attributable to the nonresident servicemember should be subtracted on line 13 of the Form 502. The Maryland tax on nonresident servicemember's income is calculated on Forms 505 and 505NR. Form 502 standard or itemized deductions and exemptions must also be adjusted, and the nonresident servicemember's special nonresident tax and the resident civilian spouse's local tax be calculated separately. For these computations, use 2008 Form 502 Military Worksheets A and B.

#### **IV. Estimated Tax**

Military servicemembers and civilian spouses must file estimated tax returns if their estimated Maryland taxable income, not subject to withholding, results in a tax liability exceeding \$500.

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