

LAW REVIEW¹ 11079

SCRA Only Protects Your Military Income from State Income Tax

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[About Sam Wright](#)

4.5—Protection from State/Local Tax Authorities

7.2—Service member or military spouse voting and domicile

Q: I am a life member of ROA. In 1988, I was commissioned an Ensign in the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA), a commissioned corps in the United States Department of Commerce. My first NOAA assignment was on a NOAA vessel home ported in Florida, and while there I established my domicile in that state. I registered to vote there and voted in person on Election Day while serving in the state. Over the last 20-plus years, I have maintained my domicile in Florida. I vote there by absentee ballot, and I use as my “permanent home address” the apartment where I lived while assigned to that NOAA vessel more than 20 years ago.

I have been on active NOAA service continuously for my entire career, and I am currently serving at the NOAA headquarters in Maryland. I physically reside in an apartment near the

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

NOAA headquarters, since I cannot commute from Florida. But I do not consider Maryland to be my domicile. I have never voted or registered to vote anywhere but Florida.

Florida has no state income tax and that has been a blessing to me over my NOAA career. I have been told that a federal law called the Soldiers' and Sailors' Civil Relief Act (SSCRA) protects me from having to pay state income tax to whatever state where I happen to be stationed, so long as I maintain my Florida domicile. But now somebody has told me that the SSCRA does not apply to NOAA Corps officers. Does it apply?

A: Yes.

In 2003, Congress enacted the Servicemembers Civil Relief Act (SCRA), as a long- overdue rewrite of the SSCRA, which dates back to 1917. Under the SCRA, coverage of NOAA Corps officers and Public Health Service (PHS) commissioned corps officers was ambiguous. Under the SCRA, PHS and NOAA officers are unambiguously covered.³

The SCRA is codified in title 50 Appendix of the United States Code, sections 501-597b (50 U.S.C. App. 501-597b). You can find the SCRA definitions at 50 U.S.C. App.

511. "The term 'servicemember' means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code." 50 U.S.C. App. 511(1). This most definitely includes the NOAA Corps and the PHS Corps.

Q: This is confusing. Is the NOAA Corps an armed force, or is it a uniformed service?

A: The NOAA Corps (like the PHS Corps) is a uniformed service but not an armed force. All armed forces are uniformed services, but not all uniformed services are armed forces.

As defined in the United States Code, the armed forces are the Army, Navy, Marine Corps, Air Force, and Coast Guard. 10 U.S.C. 101(a)(4). The uniformed services are the five armed forces plus the NOAA Corps and the PHS Corps. 10 U.S.C. 101(a)(5).

Whenever a Senator or Representative introduces a bill to provide some new or expanded benefit to members of the "armed forces," we (ROA) and The Military Coalition (of which ROA is a very active member) ask the sponsor to change "armed forces" to "uniformed services" so that NOAA Corps and PHS Corps officers will benefit. Sometimes they agree to make this change, and sometimes they don't.

Q: As I approach the end of my NOAA career, I have been attending graduate school part time. In connection with the graduate school program, I have been selected for a "fellowship" under which I will receive about \$10,000 for work in my new field, over the next few months. I will be doing this work on a part-time basis on weekends and in the evening, not to interfere with my NOAA duties, and with permission from NOAA authorities. Maryland's tax

³The NOAA Corps and PHS do not have enlisted personnel.

department claims that it can make me pay Maryland state income tax on this fellowship income, even if I do not pay Maryland state income tax on my NOAA salary. Is that correct?

A: Yes.

“Compensation of a servicemember *for military service*⁴ shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.” 50 U.S.C. App. 571(b) (emphasis supplied).

If you have income other than your NOAA salary, Maryland is not precluded from taxing that income.

“A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.” 50 U.S.C. App. 571(e).

This means that Maryland is limited to taxing the \$10,000 in fellowship income at the rate that would apply if \$10,000 were your only income during the year. Because the state income tax is progressive, the tax on \$10,000 will be only a few dollars.

Q: I expect to retire from the NOAA Corps sometime in the latter part of 2012. When I retire, I will likely remain in the same apartment in Maryland and take a civilian job, likely for the Federal Government or a federal contractor. In this scenario, will I be required to pay Maryland state income tax on my NOAA retired pay and my civilian salary after I retire from NOAA?

A: Yes.

“The term ‘period of military service’ means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.” 50 U.S.C. App. 511(3).

Once you leave active service, by retirement or otherwise, the special SCRA rules no longer apply to you. Presently, the Maryland apartment where you usually sleep is not your domicile. On the day after you leave active duty, that apartment is your domicile. You will need to pay Maryland state income tax on your NOAA retirement income and your civilian salary.

You will also need to register to vote in Maryland. Once you are off active duty, you are no longer a Florida domiciliary, and you are no longer eligible to vote in Florida by absentee ballot.

⁴The NOAA Corps is not exactly “military” but should be considered as such for SCRA purposes.

Update – March 2022⁵

The location of the SCRA within the United States Code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.⁶ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant section cited throughout the article can be found at:

50 U.S.C. App. § 511 discussing the definitions can be found at 50 U.S.C. § 3911.

50 U.S.C. App. § 571 discussing residence for tax purposes can be found at 50 U.S.C. § 4001.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved.*⁷

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This article is one of 2,300-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

⁵Update by Second Lieutenant Lauren Walker, USMC.

⁶*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Mar. 10, 2022).

⁷Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

If you are now serving or have ever served in any one of our nation's eight⁸ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE

⁸Congress recently established the United States Space Force as the 8th uniformed service.