

LAW REVIEW¹ 15076

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SCRA Precludes Oregon from making you Pay State Income Tax in Oregon while you are Serving there in the PHS

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[About Sam Wright](#)

4.5—SCRA right to protection against state and local tax authorities

7.2—Service member or military spouse voting and domicile

Q: I am an officer in the United States Public Health Service (PHS), a commissioned corps in the United States Department of Health and Human Services. I recently joined the Reserve Officers Association (ROA) after I became aware that PHS officers are eligible for ROA membership.

As you explained in Law Review 15041, PHS officers serve with several federal agencies, including the Bureau of Prisons, the Coast Guard, and the Food & Drug Administration. I have served my PHS career so far in Alaska. In a few days, I will be transferred to a new PHS duty station in Oregon. I expect to remain in the PHS for at least 14 more years, to qualify for

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. I am the author of more than 1800 of the articles.

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.

retirement.³ Doing an Internet search, I found your Law Review 1018, titled “SCRA Applies to PHS Officers.” My situation is similar to the situation you discussed in that article, but not exactly.

I was born in Alaska and have spent my whole life in the state. I was living in the state when I joined the PHS Corps in 2009, and I have spent my first six years of PHS active service in Alaska. The PHS will soon transfer me to a new duty station in Oregon.

Alaska is one of a handful of states that have no state income tax.⁴ My question is: When I transfer from Alaska to Oregon for the next three to six years (or possibly longer), will I be required to pay Oregon state income tax on my PHS income while I am physically residing in the State of Oregon because my PHS duty station is located there?

I checked out the website of the Oregon Department of Taxation (ODT). The website says that members of the *armed forces* who are serving in the State of Oregon but who are not domiciled there are exempt from having to pay Oregon state income tax while on active duty and serving in Oregon. The PHS commissioned corps is not an armed force, but it is a uniformed service.

In your Law Review 1018, you wrote that PHS officers are treated exactly like active duty members of the Army or Navy for purposes of the Servicemembers Civil Relief Act (SCRA). Am I exempt from having to pay the Oregon state income tax on my PHS salary while serving in Oregon for the next three to six years?

A: Yes. The ODT website should say that members of the *uniformed services* (not just the armed forces) are exempt from having to pay Oregon state income tax while serving in Oregon, if they are not Oregon domiciliaries and are in the state only because of their uniformed service duties. It would be unlawful, under the SCRA, for Oregon to charge you state income tax for the period that you are living in Oregon only because your PHS duties require your presence in the state. Under the SCRA, PHS officers are treated exactly like members of other uniformed services for SCRA purposes.

Title 10 of the United States Code, section 101 (the definitions section) defines several terms, including “armed forces” and “uniformed services.” The armed forces are the United States Army, Navy, Marine Corps, Air Force, and Coast Guard.⁵ The uniformed services are the armed

³ The factual set-up for this article is based on an amalgamation the situation of two individuals (one PHS and one Army), plus some invented facts to make legal points.

⁴ There are currently nine state that have no income tax: Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, and Wyoming. However, New Hampshire taxes interest and dividends. John Waggoner, *9 States That Don't Have an Income Tax*, AARP, <https://www.aarp.org/money/taxes/info-2020/states-without-an-income-tax.html> (last updated Mar. 9, 2022).

⁵ 10 U.S.C. § 101(a)(4).

forces plus the commissioned corps of the PHS and the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA).⁶

The SCRA is codified in title 50 Appendix of the United States Code, sections 501 through 596 (50 U.S.C. App. 501-596).⁷ The SCRA's definition section makes clear that PHS and NOAA officers are covered while in active service. "The term 'military service' means— ... (B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service."⁸

"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 servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders."⁹

"Compensation of a servicemember for military service 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."¹⁰

While you are serving in Oregon for the next few years, you should continue voting in Alaska, by absentee ballot. You must not register to vote in Oregon, because doing so would clearly make you an Oregon domiciliary. You cannot have it both ways. You cannot be an Alaskan for tax purposes and an Oregonian for voting purposes. Like any human being, you have one and only one domicile at a time, for all legal purposes.

"Evidence that a person registered or voted is admissible and ordinarily persuasive when the question of domicile is at issue." *Comptroller of the Treasury v. Lenderking*, 303 A.2d 402, 405 (Md. 1973). This holding of the Maryland Court of Appeals (Maryland's high court) has been cited with approval and upheld in eight later Maryland high court decisions. *See Reeder v. Board of Supervisors of Elections of Queen Anne's County*, 305 A.2d 132 (Md. 1973); *Knapp v. Comptroller of the Treasury*, 309 A.2d 635 (Md. 1973); *Bartell v. Bartell*, 357 A.2d 343 (Md. 1976); *Toll v. Moreno*, 397 A.2d 1009 (Md. 1979); *Wamsley v. Wamsley*, 635 A.2d 1322 (Md. 1994); *Roberts v. Lakin*, 665 A.2d 1024 (Md. 1995); *Blount v. Boston*, 718 A.2d 1111 (Md. 1998); and *Oglesby v. Williams*, 812 A.2d 1061 (Md. 2002). The Oklahoma Supreme Court has also cited *Lenderking* with approval and has followed it. *See Suglove v. Oklahoma Tax Commission*, 605 P.2d 1315 (Okla. 1979). It is very likely that the Oregon Supreme Court would also follow

⁶*Id.* § 101(a)(5).

⁷Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers' and Sailors' Civil Relief Act (SSCRA) which was originally enacted in 1917, shortly after the United States entered World War I.

⁸50 U.S.C. App. § 511(2)(B).

⁹*Id.* § 571(a).

¹⁰*Id.* § 571(b).

this line of logic. Do not register to vote in Oregon if you want to be exempt from the Oregon state income tax.

Q: My wife and I own an automobile, which we purchased in Alaska. The vehicle is titled in Alaska and has Alaska license tags. When we move to my new duty station in Oregon in a few days, we will be driving the vehicle to Oregon and will be using it there. If Oregon has a personal property tax on vehicles, will Oregon be permitted to impose that personal property tax on this vehicle?

A: No. The SCRA provides: “The personal property¹¹ of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.”¹² So long as you are not domiciled in Oregon but are only there because your PHS duties require your presence there, Oregon is precluded from taxing your vehicle, your furniture, and other personal (moveable) property. *See Dameron v. Brodhead*, 345 U.S. 322 (1953).¹³

Q: My wife works outside the home and earns substantial income. In some years, she earns more than I earn. Will Oregon be able to tax her income and her personal property?

Like me, my wife was born in Alaska and has lived there her entire life. We got married in 2008, ten months before I joined the PHS in 2009. We have lived together in an apartment in Alaska for the entire time that we have been married, including the entire time that I have been serving in the PHS. When I transfer to my new duty station in Oregon, she and our young children will accompany me and will live in Oregon to be near my new duty station.

A: Under the SCRA as amended in 2009 by the Military Spouse Residency Relief Act, your wife can be exempt from having to pay Oregon state income tax and personal property tax to Oregon during the years that you are assigned to PHS duties in Oregon. Here are the two pertinent SCRA provisions:

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*

¹¹Personal property refers to property that can be moved: vehicles, furniture, etc. Personal property is distinguished from real property (buildings, land) which cannot readily be moved.

¹²50 U.S.C. App. § 571(d)(1).

¹³This is a 1953 decision of the United States Supreme Court. The citation means that you can find the case in Volume 345 of the *United States Reports*, and the case decision starts on page 322. The Supreme Court held that the SSCRA (predecessor of the SCRA) precluded the City of Denver from taxing the furniture and household goods of an Air Force officer who physically resided in the city but domiciled in Louisiana. The Supreme Court held that it did not matter that Louisiana did not tax the officer's personal property. The Supreme Court also rejected the argument that Congress lacked the constitutional authority to exempt active duty service members from state and local taxes. Please see law review 0917 (April 2009) for a detailed discussion of *Dameron*.

*orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.*¹⁴

Income for services performed by a 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.*¹⁵

Because your wife currently shares your Alaska domicile with you, and because she is moving to Oregon solely to be with you and to continue the marriage, the SCRA exempts her from having to pay Oregon state income tax on all the income that she earns while physically residing in Oregon (to accompany you) but domiciled in Alaska. It is interesting to note that the SCRA only exempts you from having to pay Oregon state income tax on your PHS income.¹⁶ But the SCRA exempts *all* your wife's income while physically residing in Oregon but domiciled in Alaska.

Q: My wife and I have already purchased a house in Oregon, near my new PHS duty station. Is Oregon precluded from charging us property tax on the house and land? Does the fact that we will be living in a purchased house, rather than a rented house or apartment, make us Oregonians and make us liable for Oregon's state income tax and personal property tax?

A: Real property tax is imposed on the property itself, and real property (land, buildings) does not move. If you own real property in Oregon, you must pay the property tax on the real property, without regard to your state of domicile and without regard to your status as a member of a uniformed service or as the spouse of a member of a uniformed service. The fact that you and your wife have chosen to purchase a house in Oregon, rather than living in a rented house or apartment, does not detract from the conclusion that you are not domiciled in Oregon and that you will be physically residing in Oregon for the next several years only because your PHS duties require your presence there.

Q: Alaska entered the union as a state in 1959, several years before I was born. Alaska has never had a state income tax. There has been plenty of state income from the production of oil. But the price of oil has dropped below \$50 per barrel, and the production of oil has fallen off as some fields are being exhausted. The state government is having fiscal problems, and there is talk that it may be necessary to establish a state income tax in Alaska for the first time. If Alaska establishes a state income tax next year or in some subsequent year while I am still serving in the PHS, will it be possible for me to reconsider the idea of being an Alaska domiciliary?

A: Yes. You can change your domicile while you are on active duty or in active service. To make a change, you need a physical presence in the state to which you wish to change and the intent

¹⁴50 U.S.C. App. § 571(a)(2) (emphasis supplied).

¹⁵*Id.* § 571(c) (emphasis supplied).

¹⁶If you have a moonlighting job or dividend or interest income, Oregon is not precluded from taxing that income.

to make the place your home, and you need both elements simultaneously. To change to Oregon while you are serving in Oregon, you only need to register to vote in Oregon and to announce that you have decided to make Oregon your home and to renounce your Alaska domicile.

You must have a physical presence in the state to which you wish to change, along with the requisite intent, at the time you make the change. This is not a matter of “pick a state, any state.” You cannot become a Texan while serving in Oregon.¹⁷

Q: It is very likely that for the next three to six years my wife and I will be physically living in Oregon, in our new home near my new PHS duty station, but we will maintain our domiciles in Alaska, even if Alaska finds it necessary to establish a state income tax next year. While we are physically living in Oregon but domiciled in Alaska, are we eligible to vote by absentee ballot in Alaska?

A: Yes. You and your wife will both be eligible to vote by absentee ballot in Alaska, under a federal law called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).¹⁸ You qualify as an “absent uniformed services voter” (AUSV) under UOCAVA because you are “a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote.”¹⁹ Your wife qualifies as an AUSV under UOCAVA because she is “a spouse or dependent of a [service] member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.”²⁰

Q: How do we go about applying for absentee ballots in Alaska?

A: It is important that you use the Federal Post Card Application (FPCA) to apply for an absentee ballot. You complete the form and send it to the Lieutenant Governor of Alaska, who is the state’s chief state election official.²¹

It is still possible to obtain and fill out the old-fashioned, paper FPCA form. In the second decade of the 21st Century, a much better way is to go to www.overseasvotefoundation.org, the website of the Overseas Vote Foundation (OVF).²⁴ The website contains an easy to use “wizard”

¹⁷Texas is another that does not have state income tax.

¹⁸UOCAVA is a federal statute that was enacted in 1986. It is codified in title 52 f the United States Code at section 20301 through 20311 (52. U.S.C. §§ 2031-20311).

¹⁹52 U.S.C.A. § 20310(1)(A) (like the SCRA, UOCAVA explicitly applies to all seve3n uniformed services, including PHS and NOAA, and not just to the five-armed forces).

²⁰*Id.* § 20310(1)(C).

²¹The FCPA is misnamed. For more than a decade, this federal form has folded over into a sealed envelope. Since a new FPCA form was adopted in 2004, it has not been necessary for you to put personal information (date of birth, Social Security number, etc.) on an open postcard. In Alaska and Maine, unlike the other 48 states, absentee voting is administered centrally at the state level, rather than by counties or municipalities.

that you can use to complete the form in a way that is complete, correct, and legible. The OFV website will also facilitate your submission of the completed form by electronic means. You will receive your unmarked absentee ballot, either electronically or by mail. You mark your ballot and place it in the unmarked “inner envelope” and seal that envelope. You then place the sealed inner envelope and place that inner envelope in the outer envelope. You complete the affidavit on the back of the outer envelope and mail the marked ballot back to the Lieutenant Governor.²²

Update – March 2022²³

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, 2015.²⁴ 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 definitions can be found at 50 U.S.C. § 3911.

50 U.S.C. App. § 571 discussing residence for tax purpose 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*.²⁵

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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

²²The purpose of the double envelope system is to preserve the secrecy of your ballot. The election officials review the completed affidavits and make the necessary determination about identity and eligibility before they open the outer envelope. Then, the still-sealed inner envelopes are removed from the outer envelopes and the outer envelopes are removed from the room. When the election officials review and count the marked ballots, they have no way of knowing the identity of any one vote and the secrecy of the ballot is preserved.

²³Update by Second Lieutenant Lauren Walker, USMC.

²⁴*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).

²⁵Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

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.

If you are now serving or have ever served in any one of our nation's eight²⁶ 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
Washington, DC 20002

²⁶Congress recently established the United States Space Force as the 8th uniformed service.