

LAW REVIEW¹ 15118

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Maintain your Domicile on the Indian Reservation To Avoid State Income Tax while on Active Duty

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4.5—SCRA protection against state/local tax authorities

7.2—Service member or military spouse voting and domicile

Q: I am a Sergeant in the United States Army, on active duty. I read with great interest your “Law Review” articles about the Servicemembers Civil Relief Act (SCRA) and other laws that are especially pertinent to those of us who serve in the military.

In Law Reviews 15117, 15113, and 15095, you discussed the scenario of the service member who lived in a state like Texas or Florida—a state that has no state income tax. You suggested that such a service member would be well advised to maintain his or her domicile at the place where he or she lived immediately before entering active duty, in order to avoid having to

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.

pay state income tax while on active duty. Does that advice also apply to service members (like me) who grew up on Indian reservations?

I am an American Indian. I was born and raised on a reservation in a Western state, and I still lived there when I graduated from high school and joined the Army seven years ago. My parents and other Indian residents of the reservation are exempt from having to pay state income tax to the state where the reservation is located. Does that exemption also apply to me?

A: Yes. The pertinent subsection of the SCRA is as follows: “An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.”³ Congratulations to my friend Colonel Paul Conrad, who accomplished the codification of this exemption.⁴

Q: How long does this exemption last?

A: Your exemption from having to pay state income tax to the state where the reservation is located lasts until you establish a new domicile elsewhere or until you leave active duty, whichever comes first. When you leave active duty, by retirement or otherwise, you will lose this exemption, unless of course you return to live on the reservation.

Q: What do I need to do to maintain this exemption?

A: I suggest that you vote by absentee ballot in each major election in the county where your reservation home is located. You must refrain from registering to vote or voting in some other place. Your domicile is the place where *you lived* before you entered active duty. If you remain on active duty for a full career of 20 years or more, it is likely that at some point your parents will move away or pass away. That will not affect your domicile. It is not necessary that you have relatives living at the address of your domicile or that you be able to receive mail at that address.

³50 U.S.C. 4001(f). This citation refers to subsection (f) of section 4001 of title 50 of the United States Code. As I explained in Law Review 15115, the SCRA until recently was codified in the “Appendix” to title 50. The editors of the United States Code recently eliminated this confusing “Appendix.” The SCRA is now codified in title 50 at sections 3901 and following.

⁴Paul retired from the Army Reserve Judge Advocate General’s Corps about a decade ago. He successfully argued for this exemption in cases arising under the Soldiers’ and Sailors’ Civil Relief Act (SSCRA). When Congress enacted the SCRA in 2003, as a long-overdue rewrite of the SSCRA (which dates from 1917), what was implicit under the old law became explicit under the new law.