

LAW REVIEW¹ 20055

June 2020

The SCRA Protects you from Having To Pay Personal Property Tax on Vehicle that you Own, But Not a Vehicle you Lease

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

[About Sam Wright](#)

4.0—SCRA generally

4.5—SCRA protection from state-local tax authorities

4.6—SCRA eviction and foreclosure protection

Q: I am a Lieutenant (O-3) in the United States Navy, on active duty and serving in Virginia at Naval Air Station (NAS) Oceana. I was born and raised in Maryland and graduated from high school in 2009. I went away to college in another state, but while in college I did not change my domicile (legal residence) to the state where I was attending college. While in college, I voted by absentee ballot at my parents' home in Maryland, the same place where I lived until I left in 2009 to go off to college.

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.

While in college, I participated in the Naval Reserve Officers Training Corps (NROTC), and when I graduated in 2013, I was commissioned an Ensign. I have been on active duty continuously since then. Early in my active duty service, I attended Undergraduate Pilot Training (UPT) at NAS Pensacola, in Florida. During our first week of training, an instructor told me and my classmates that we would be well-advised to become Floridians, because Florida is one of only nine states that do not impose a state income tax.³

Following the instructor's advice, I registered to vote in Escambia County, Florida, using as my address the apartment where I was living while attending UPT. Since 2013, I have voted by absentee ballot in Escambia County, using that same apartment address as my "permanent home address" on my absentee ballot applications. I have never registered to vote or voted in any other place, since I changed my domicile to Florida in October 2013.

After I registered to vote in Florida in October 2013, I notified the Navy personnel office that I had changed my domicile from Maryland to Florida. The Navy stopped withholding Maryland state income tax from my pay. Changing my domicile to Florida has saved me thousands of dollars in Maryland state income tax over the last 6.5 years.

I have heard that the Servicemembers Civil Relief Act (SCRA) protects me not only from Virginia's state income tax but also from the personal property tax that Virginia and the City of Virginia Beach impose on personal property (especially vehicles). Is that correct?

I am still driving the 2009 Buick that my parents gave me when I graduated high school in 2009. Virginia Beach tried to make me pay personal property tax on that vehicle, but I showed them my active duty ID card and convinced them that I am domiciled in Florida, not Virginia, and that Virginia and the City of Virginia Beach are precluded by the SCRA from imposing the personal property tax on that vehicle.

The 2009 Buick has been a great car, but it is nearing the end of its useful life. Now that I can afford it, I want to get a new Mercedes. But instead of buying it I am contemplating leasing it. I have not yet signed the lease. Before I do, I wanted to ask you if the SCRA will protect me from having to pay personal property tax on the vehicle to Virginia and Virginia Beach. What do you think?

A: First, based on the facts as you have explained them, you made a bona fide change of your domicile from Maryland to Florida in the fall of 2013. A service member on active duty *can change* his or her domicile. Doing so requires that the service member *simultaneously* have a physical presence in the state to which he or she wishes to change *for a significant time* and the

³The other eight states are Alaska, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming. See John Waggoner, *9 States That Don't Have an Income Tax*, AARP (Mar. 9, 2022), <https://www.aarp.org/money/taxes/info-2020/states-without-an-income-tax.html>.

intent to make that new state one's home. In October 2013, you had both the physical presence for a significant time⁴ and the intent to make Florida your new home. You did this right.

The pertinent SCRA section is section 4001 of title 50 of the United States Code (U.S.C.). That section reads as follows:

(a) Residence or domicile.

(1) In general. *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.*

(2)

(A) In general. 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 orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.

(B) Election. For any taxable year of the marriage, the spouse of a servicemember may elect to use the same residence for purposes of taxation as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.

(b) Military service compensation. 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.

(c) Income of a military spouse. Income for services performed by the 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.

(d) Personal property.

⁴I am aware of service members who have tried to establish Florida domiciles while at a Florida military base for a two-week Temporary Additional Duty (TAD) assignment or a weekend in the Bachelor Officers Quarters. I think that such short periods of physical presence in Florida are insufficient to bring about a bona fide change of domicile.

(1) Relief from personal property taxes. *The personal property 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.*

(2) Exception for property within member's domicile or residence. This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) Exception for property used in trade or business. This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of state of domicile. *Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.*

(e) **Increase of tax liability.** 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.

(f) Federal Indian reservations. 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.

(g) Definitions. For purposes of this section:

(1) Personal property. *The term "personal property" means intangible and tangible property (including motor vehicles).*

(2) Taxation. The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction. *The term "tax jurisdiction" means a State or a political subdivision of a State.⁵*

Section 4001(a)(1) means that the fact that you sleep in an apartment you rent or even a home you buy in Virginia Beach does not make you a Virginian or a domiciliary of Virginia Beach. Because the Navy requires you to perform your duties primarily at NAS Oceana, you need to sleep in a place that is within a reasonable commuting distance of your duty station. You have a physical residence in Virginia Beach only because the Navy requires your presence there. You are not a Virginian, and Virginia is precluded from taxing your military income.⁶

⁵50 U.S.C. § 4001 (emphasis supplied).

⁶*Id.* § 4001(b).

Section 4001(d)(1)⁷ provides that *your personal property*⁸ is deemed not to have a situs in Virginia Beach for personal property tax purposes. The 2009 Buick is *your personal property*—you own it. The SCRA precludes Virginia and the City of Virginia Beach from taxing that vehicle.

Let us say that you proceed to lease the new Mercedes, as you are considering. In that case, you do not own the automobile—the leasing company owns it. Virginia and the City of Virginia Beach impose the personal property tax on the leasing company. You have an obligation to reimburse the leasing company for the personal property tax, *under the fine print of the lease*. Section 4001(d)(1) does not exempt the leasing company from the obligation to pay the personal property tax, nor does it exempt you from the obligation to reimburse the leasing company for the personal property tax the company pays. That reimbursement is factored into the monthly lease payments that you make.

On its website, the City of Alexandria (Virginia) says the following about personal property tax on vehicles owned or leased by active duty service members:

The Servicemembers Civil Relief Act exempts active duty military personnel from personal property taxation in any state other than their legal state of residence. Therefore, vehicles titled in the active duty military person's name will be exempt as long as the active duty military member is in Virginia pursuant to military orders and furnishes a Leave & Earnings Statement (LES) for the period of situs (physical presence in this locality/state).

Under any circumstances, if your vehicle is leased, you do not qualify for personal property tax exemption. However, beginning with tax year 2016, each vehicle leased by an active duty military member, his or her spouse, or both, may qualify to receive 100% tax relief for the first \$20,000 of the vehicle's assessed value.⁹

I would not hesitate to challenge the City of Alexandria's legal conclusion if I thought that it was wrong, but in this case, I must acknowledge that Alexandria has it right. For service members in your situation, my advice is that you should purchase an automobile instead of leasing it.

Q: While negotiating with the salesman for the leasing company, I tried to strike out the clause requiring me to reimburse the leasing company for the personal property tax and substitute some other language to the effect that I don't have to pay personal property tax because I am on active duty in the Navy and domiciled in Florida, not Virginia. The salesman brought in his manager, and the manager said that if I want to lease the Mercedes, I must sign the lease exactly as printed. He said that the salesman and the manager do not have any

⁷*Id.* § 4001(d)(1).

⁸Personal property is property that can be moved. Real property (buildings and land) is property that cannot be moved. If you own a house in Virginia Beach, the city will charge you real property tax on the house and land, and the SCRA does not exempt you from having to pay that tax.

⁹See *Personal Property (vehicle) Tax*, CITY OF ALEXANDRIA VIRGINIA, <https://www.alexandriava.gov/CarTax> (last updated Feb. 24, 2022 at 11:25 AM).

authority to change the language that the “corporate lawyers” have come up with. Does that surprise you?

A: No, that does not surprise me. An automobile lease is the ultimate “adhesion contract.” I would be surprised if a leasing company agreed to modify the standard terms in the printed lease.

Q: My good friend Lieutenant John Paul Jones is one of my colleagues at NAS Oceana. Like me, he has a physical residence in Virginia Beach but a domicile in a state (Texas) that has no state income tax. He recently *purchased* a new Mercedes from a dealership here in the Tidewater area. Because he could not come up with the \$65,000 purchase price up front, he took out a substantial loan from Navy Federal Credit Union (NFCU), and he makes monthly payments to NFCU. He told me that if he falls seriously behind in the payments NFCU will repossess the vehicle.

In that situation, is Lieutenant Jones the owner of the vehicle? Or is NFCU the owner? Can Virginia and the City of Virginia Beach make Lieutenant Jones pay personal property tax on the vehicle?

A: In that situation, Lieutenant Jones is the owner, and NFCU has what we call a “lien” or a “security interest.” Because Lieutenant Jones owns the vehicle, section 4001 protects him from having to pay personal property tax on the vehicle.

Because Lieutenant Jones is on active duty in the armed forces, NFCU can only repossess the vehicle *judicially*. The credit union cannot lawfully send somebody into his driveway at 0200 to make off with the vehicle.¹⁰

Q: My active duty obligation expires at the end of Fiscal Year 2021 (9/30/2021). I have not yet made up my mind, but I am thinking of leaving active duty and affiliating with the Navy Reserve at that time. If I leave active duty, I will almost certainly remain in the house that my wife and I own in Virginia Beach. I will find a civilian job in the Tidewater area.

If I leave active duty on 9/30/2021, will I still be protected by the SCRA with respect to the state income taxation of my income or the personal property taxation of my vehicle?

A: No. If you leave active duty, you lose the protections of the SCRA. That law applies to members of the armed forces *on active duty*.¹¹ The SCRA does not apply to Reservists and National Guard members *except when they are on active duty*.

¹⁰See 50 U.S.C. § 3958. See also *Gordon v. Pete's Auto Service of Denbigh, Inc.*, 670 F. Supp. 2d 453 (E.D. Va. 2009), reversed sub. nom. *Gordon v. Pete's Auto of Denbigh*, 637 F.3d (4th Cir. 2011); *Gordon v. Pete's Auto Service of Denbigh, Inc.*, 837 F. Supp. 2d 581 (E.D. Va. 2011); *Gordon v. Pete's Auto Service of Denbigh, Inc.*, 838 F. Supp. 2d 436 (E.D. Va. 2012) (on remand). I discuss these cases in detail in Law Review 19038 (March 2019).

¹¹50 U.S.C. § 3911(a)(2)(A)(i).

Let us say that you leave active duty on 9/30/2021 and remain in the same Virginia Beach house. When you go to sleep at 2200 on 9/30/2021, you are still a Floridian. When you wake up at 0600 on 10/1/2021, you are a Virginian. On and after 10/1/2021, you must pay Virginia state income tax on your income, including your Navy Reserve drill pay and any civilian salary or wages that you receive.¹²

Please join or support ROA

This article is one of 2000-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 in 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 many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs. Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights 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 seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. 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 Officers Association 1 Constitution Ave. NE Washington, DC 20002

¹²Please see law Review 12098 (Oct. 2012).