

Calendar No. 108

111TH CONGRESS }
1st Session }

SENATE

{ REPORT
111-46

MILITARY SPOUSES RESIDENCY RELIEF ACT

JULY 15, 2009.—Ordered to be printed

Mr. AKAKA, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

together with

SUPPLEMENTAL VIEWS

[To accompany S. 475]

The Committee on Veterans' Affairs (hereinafter, "Committee"), to which was referred the bill (S. 475) to amend the Servicemembers Civil Relief Act (hereinafter, "SCRA") to guarantee the equity of spouses of military personnel with regard to matters of residency, and for other purposes, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

INTRODUCTION

On February 25, 2009, Committee Ranking Member Richard Burr introduced S. 475, the proposed "Military Spouses Residency Relief Act." Senator Dianne Feinstein is an original cosponsor. Senators John Barrasso, Evan Bayh, Mark Begich, Christopher S. Bond, Sherrod Brown, Sam Brownback, Jim Bunning, Roland W. Burris, Robert C. Byrd, Maria Cantwell, Benjamin L. Cardin, Saxby Chambliss, Tom Coburn, Thad Cochran, John Cornyn, Jim DeMint, Richard Durbin, John Ensign, Judd Gregg, Orrin G. Hatch, Kay Bailey Hutchison, James M. Inhofe, Johnny Isakson, Mike Johanns, Tim Johnson, Mary L. Landrieu, Joseph I. Lieberman, Blanche L. Lincoln, Mel Martinez, Lisa Murkowski, James E. Risch, Jeff Sessions, Richard C. Shelby, Olympia J. Snowe, Arlen Specter, Jon Tester, John Thune, Mark Udall, David Vitter, Roger F. Wicker, and Ron Wyden were later added as cosponsors. The bill was referred to the Committee.

On April 29, 2009, the Committee held a hearing on legislation pending before the Committee. Testimony on S. 475, among other bills, was offered by: Robert Jackson, Assistant Director, National Legislative Service, Veterans of Foreign Wars of the United States; Raymond C. Kelley, National Legislative Director, AMVETS; R. Chuck Mason, Legislative Attorney, Congressional Research Service; Ian de Planque, Assistant Director for Claims Service, Veterans Affairs and Rehabilitation Commission, The American Legion; and Rebecca Poynter, Director, Military Spouse Business Organization.

COMMITTEE MEETING

On May 21, 2009, the Committee met in open session to consider legislation pending before the Committee. Among the measures so considered was S. 475. The Committee voted without dissent to report favorably S. 475 to the Senate.

SUMMARY OF S. 475 AS REPORTED

S. 475 (hereinafter, “the Committee bill”) would extend several SCRA protections to certain spouses of servicemembers:

Section 2 would, in certain circumstances, allow the spouse of a servicemember, for purposes of voting in Federal, state, or local elections, to retain residency in a state from which the spouse is absent.

Section 3 would, in certain circumstances, allow the spouse of a servicemember, for purposes of income taxes and personal property taxes, to retain residency in a tax jurisdiction from which the spouse is absent.

Section 4 would suspend certain residency requirements for the spouse of a servicemember seeking to exercise certain land rights, such as mining claims or homesteading, on public lands.

BACKGROUND AND DISCUSSION

The Committee bill contains several provisions designed to afford certain SCRA protections to the spouses of military personnel.

Congress has long recognized that the men and women of our military should be afforded civil legal protections, in order to allow them “to devote their entire energy to the defense needs of the Nation.” 50 U.S.C. App. 502. Currently, these protections are provided by the Servicemembers Civil Relief Act or SCRA.

Among a wide range of protections, the SCRA allows a servicemember to maintain his or her residency for certain purposes, such as voting, income taxes, and personal property taxes, in a state from which the servicemember is absent in compliance with military orders. These protections essentially allow a servicemember to retain a “home” state while he or she is ordered to new locations by the military and to avoid many of the difficulties, burdens, and distractions associated with a permanent change of duty station.

The amendments to the SCRA that would be made by the Committee bill would provide military spouses with SCRA residency protections similar to those afforded to servicemembers.

Sec. 2. Guarantee of residency for spouses of military personnel for voting purposes.

Section 2 of the Committee bill would, in certain circumstances, allow the spouse of a servicemember, for purposes of voting in Federal, state, or local elections, to retain residency in a state from which the spouse is absent.

Background. Under section 705 of the SCRA (50 U.S.C. App. 595), for purposes of voting in Federal, state, or local elections, if a servicemember leaves a state in compliance with military or naval orders, the servicemember will not, solely based on that absence, be deemed to have lost residence or domicile in that state, be deemed to have acquired residence or domicile in any other state, or be deemed to have become a resident of any other state. These protections allow the servicemember, as he or she is moved around the country by the military, to continue voting in the state he or she considers home and to avoid the confusion and difficulties of frequently changing his or her voter registration.

However, if the servicemember's spouse moves with the servicemember, that spouse is not afforded the same SCRA protections. The negative impact this may have on military spouses was described at the Committee's April 29, 2009, hearing by Rebecca Poynter:

Military Spouses are disenfranchised from voting; often times not arriving to a new state in time to vote in primaries and do not have ample opportunity to get to know the Federal, state or local candidates or adequate time to learn their policies and legislative agendas. It is confusing when one state allows a military spouse to vote via absentee ballot, yet the state where the spouse is physically located does not * * *.

Similarly, in an April 28, 2009, letter to the Chairman and Ranking Member of the Committee, the Air Force Association stressed that "the burdens placed on military spouses to simply exercise their Constitutional right to vote are a constant source of consternation and frustration for our military families."

Committee Bill. Section 2 of the Committee bill would amend section 705 of the SCRA (50 U.S.C. App. 595) to add a new subsection providing that, for purposes of voting in Federal, state, or local elections, if a spouse of a servicemember leaves a state in order to accompany the servicemember who is absent from that same state in compliance with military or naval orders, the spouse will not, solely based on that absence, be deemed to have lost residence or domicile in that state, be deemed to have acquired residence or domicile in any other state, or be deemed to have become a resident of any other state. These changes would apply with respect to absences from states on or after the date of enactment, regardless of the date of the relevant military or naval orders.

These changes will allow certain military spouses, like servicemembers, to vote in the states they consider home and will reduce the confusion and difficulties now encountered by military spouses attempting to exercise their right to vote.

Sec. 3. Determination for tax purposes of residence of spouses of military personnel.

Section 3 of the Committee bill would, in certain circumstances, allow the spouse of a servicemember, for purposes of income taxes and personal property taxes, to retain residency in a tax jurisdiction from which the spouse is absent.

Background. Under section 511(a) of the SCRA (50 U.S.C. App. 571), a servicemember does not lose or acquire residence or domicile, for purposes of income taxes and personal property taxes, based on the fact that the servicemember is absent from or present in any tax jurisdiction of the United States solely in compliance with military orders. Under section 511(b) of the SCRA, the servicemember's military compensation will not be considered income in a tax jurisdiction where the servicemember is serving in accordance with military orders and is not a resident. Also, under section 511(c), the personal property of a servicemember will not be deemed to be present in a tax jurisdiction in which the servicemember is serving in accordance with military orders, unless that jurisdiction is the servicemember's domicile or residence.

With these protections, if a servicemember is ordered to a duty location in a new state, the servicemember is free to bring to the new state his or her personal property, such as an automobile, without risk that the property will be taxed in that state. Also, the servicemember will not be required to pay income taxes on his or her military income in a state other than the one he or she has declared as his or her home state.

However, in some states, if the servicemember's personal property is jointly titled with his or her spouse, the SCRA protection regarding personal property taxes will not apply. In fact, in 1992, the National Military Family Association testified before the House Committee on Veterans' Affairs that, "in some States, [the family] car must be registered in the servicemember's name only in order for the family to be protected against personal property tax" and that, "[i]n addition to creating difficulties if the servicemember dies or in cases of divorce, the current situation has left many military spouses feeling they are perceived as excess baggage."

More recently, the Department of Defense submitted testimony for the Committee's April 29, 2009, hearing addressing the same issue. In part, the Department of Defense provided this explanation of the current problem:

(i) Section 511 of the SCRA states that the personal property of a servicemember shall not be deemed to be located 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.

(ii) Many states conclude that property (most often this is an automobile) jointly held by a servicemember and spouse is not protected from taxation by Section 511 of the SCRA.

(iii) Thus to ensure the tax benefit, the servicemember must register the property in his or her name only. This is contrary to the recommendations that we provide Servicemembers for estate planning purposes.

In addition, at the Committee's April 29, 2009, hearing, Rebecca Poynter provided a description of how this impacts military families:

For personal property; current, and often conflicting, state laws create financial and administrative burdens for the military spouse resulting in the suppression of assets. While an active duty servicemember may title, register, and maintain, a car in their home state, their spouse may not. With each move, if a spouse chooses to keep his/her joint tenancy of personal property, they must change the registration and/or titling to the new state; requiring the spouse pay several hundred dollars each time they relocate. To alleviate these types of fees, many spouses are forced to put all property in the name of the servicemember.

Military families are also impacted by the current state of the law regarding state income taxes. There are significant differences between the states, ranging from states that have no income tax to those that impose up to an 11% marginal income tax. Because the income of a military spouse is not protected under the SCRA, a spouse's income may be taxed in any jurisdiction where the spouse moves to accompany the servicemember. As a result, if a working military spouse moves around the country with the servicemember, their family income may vary significantly based on where the servicemember is sent by the military.

In addition to the potential financial burdens this may cause for military families, the military spouse may be required to file tax returns in multiple jurisdictions. The complexities of this situation were described by a military spouse in the attachment to testimony for the Committee's April 29, 2009, hearing:

Taxes are a confusing mess. My husband has residency in one state and I have residency in another state. Just this year our tax attorney had to redo our taxes because she was confused about both of our states of residence * * *. Next year is going to be even more confusing when I have a business registered in one state. My husband is a resident in another state and I will have been a resident of both Virginia and California * * *.

Committee Bill. Section 3 of the Committee bill would amend section 511 of the SCRA (50 U.S.C. App. 571) to provide that, for purposes of income taxes and personal property taxes, the spouse of a servicemember will not be deemed to have lost or acquired domicile or residence by reason of being absent from or present in a tax jurisdiction solely to be with a servicemember who is in compliance with military orders and has the same original residence or domicile as the spouse. In addition, it would add a new subsection to section 511 providing that income for services performed by the spouse of a servicemember will not be deemed to be income in a tax jurisdiction where the spouse is located solely to be with the servicemember who is serving there in compliance with military orders.

Also, the Committee bill would amend section 511 to provide that the personal property of the spouse of a servicemember will not be deemed to be present in a tax jurisdiction in which the servicemember is serving in accordance with military orders, unless that jurisdiction is the servicemember's or the spouse's domicile or residence. These changes would apply with respect to any state or local

income tax return filed for any taxable year beginning with the taxable year that includes the date of enactment.

These changes will allow spouses to title personal property in their own names or jointly with their servicemember-spouses, without the potential tax ramifications that are possible under current law. In addition, these changes will reduce some of the confusion, difficulties, and burdens now faced by military families when they are moved to a new state.

Sec. 4. Suspension of land rights residency requirements for spouses of military personnel.

Section 4 of the Committee bill would suspend certain residency requirements for the spouse of a servicemember seeking to exercise certain land rights, such as mining claims or homesteading, on public lands.

Background. Under section 508 of the SCRA (50 U.S.C. App. 568), a servicemember is entitled to have certain residency requirements suspended for purposes of exercising land rights, such as mining claims or homesteading, on public lands. This protection applies with respect to requirements related to the establishment of residency within a limited time. Those requirements will be suspended for a servicemember seeking entry onto public lands until 180 days after termination of or release from military service. Similar rights are not provided to the spouses of servicemembers.

Committee Bill. Section 4 of the Committee bill would amend section 508 of the SCRA to suspend certain residency requirements for the spouse of a servicemember seeking entry onto public lands. This protection would apply with respect to requirements related to the establishment of residency within a limited time. Those requirements would be suspended for the spouse of a servicemember seeking entry onto public lands until 180 days after the servicemember's termination of or release from military service. These changes would apply with respect to servicemembers in the military on or after the date of enactment.

These changes would afford the spouse of a servicemember some of the same SCRA land-rights protections that are now afforded to servicemembers.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (hereinafter, "CBO"), estimates that enactment of the Committee bill would, relative to current law, not have a significant effect on the Federal budget. It would impose an intergovernmental mandate that would fall below the annual threshold established by the Unfunded Mandates Reform Act.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 26, 2009.

Hon. DANIEL K. AKAKA, *Chairman,*
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S.475, the Military Spouses Residency Relief Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

S. 475, Military Spouses Residency Relief Act

Summary: S. 475 would extend to military spouses several residency-related benefits afforded to servicemembers under the Servicemember Civil Relief Act (SCRA). CBO estimates that implementing the bill would not have a significant effect on the Federal budget.

S. 475 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by limiting the ability of state and local governments to collect income and property taxes. CBO estimates the total cost of complying with the mandate would fall well below the annual threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation). The bill contains no private-sector mandates as defined in UMRA.

Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for enforcing the constitutional rights of individuals. CBO has determined that section 2 of this bill falls within that exclusion; we have not reviewed it for intergovernmental or private-sector mandates.

Basis of estimate: S. 475 would extend to military spouses certain benefits afforded servicemembers under the SCRA. Sections 2 and 3 would allow military spouses to maintain a home-of-record for purposes of voting and taxation when they are absent from their home state to join active-duty spouses at military duty stations.

Similarly, section 4 would suspend for military spouses the residency requirements for land rights under laws—such as mining and mineral leasing laws—relating to federally owned lands. Under S. 475, absence from the land due to a servicemember's military orders would not require the military spouse to forfeit those land rights, regardless of their state of domicile, for a period ending six months after the servicemember's discharge from active-duty service.

Intergovernmental and private-sector impact: S.475 contains an intergovernmental mandate as defined in UMRA. It would prohibit state and local governments from collecting taxes on an individual's income or personal property, if that individual moved to the jurisdiction to accompany his or her spouse at a military-duty station. It would transfer authority to tax those individuals to the states in which they were legal residents before moving to the duty station. The effect on individual state and local revenue collections would

vary depending on the number and income of these individuals and where they reside or maintain legal residence. However, CBO estimates the net effect across states to be small and well below the annual threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation).

The bill contains no private-sector mandates as defined in UMRA.

Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for enforcing the constitutional rights of individuals. CBO has determined that section 2 of this bill falls within that exclusion because it would protect individual's voting rights; we have not reviewed it for intergovernmental or private-sector mandates.

Estimate prepared by: Federal Costs: Dwayne M. Wright; Impact on State, Local, and Tribal Governments: Burke Doherty; Impact on the Private Sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact that would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any regulation of individuals or businesses or result in any impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by Members of the Committee on Veterans' Affairs at its May 21, 2009, meeting. On that date, the Committee considered and ordered reported S. 475, as amended, a bill to guarantee the equity of spouses of military personnel with regard to matters of residency, and for other purposes. The Committee bill was agreed to by a vote of 14 to 0.

Yeas	Senator	Nays
X (by proxy)	Mr. Rockefeller	
X	Mrs. Murray	
X (by proxy)	Mr. Sanders	
X	Mr. Brown	
X	Mr. Webb	
X	Mr. Tester	
X	Mr. Begich	
X	Mr. Burris	
X (by proxy)	Mr. Specter	
X	Mr. Burr	
X	Mr. Isakson	
X (by proxy)	Mr. Wicker	
X	Mr. Johanns	
	Mr. Graham	
X	Mr. Akaka, Chairman	
14	TALLY	0

SUPPLEMENTAL VIEWS OF SENATOR AKAKA

I have been concerned for some time that the Senate Veterans' Affairs Committee is not the appropriate committee to have jurisdiction over the Servicemembers' Civil Relief Act (SCRA). This bill is a perfect example of the reason for my concern since it, like all of the SCRA, has no relationship to an individual's rights as a veteran but relates solely to the rights and protections afforded those who are serving on active duty.

That overarching issue aside, I have significant concerns about this legislation.

First, as reported, the legislation addressing the state of residency for tax purposes would create a disparity in the treatment between a servicemember and his or her spouse which would place the spouse in a better position than the servicemember. As proposed, any income earned by a spouse while accompanying a servicemember would not be subject to taxation in the jurisdiction of military service. However, if a servicemember were to earn additional income, through a business endeavor or a part-time job, the servicemember's additional income would be subject to taxation in that jurisdiction.

Second, I make special note of the informal comments of the Department of Defense on this measure which were received from the Office of the Under Secretary of Defense (Personnel and Readiness). These views, which I am including at the end of my views, raise issues of limited Federal interest, impact on employability, and heightened scrutiny of servicemembers' declared domiciles by the states.

Finally, I note that, according to testimony received by the Committee at its hearing on April 29, there are legitimate questions about the constitutionality of the legislation. Although the Supreme Court ruled in 1953 in *Dameron v. Brodhead*, 345 U.S. 322, that SCRA is constitutional under Congress' authority "to declare War" and "to raise and support Armies," it is not clear that exempting individuals who are not members of the Armed Forces from taxation in the jurisdiction in which their spouses are stationed contributes to those authorities. I have appended to my views an analysis of the measure from a constitutional perspective that was prepared in response to a request I made of the Congressional Research Service of the Library of Congress.

* * * * *

OFFICE OF THE UNDER SECRETARY OF DEFENSE
(PERSONNEL AND READINESS)
JULY 2009

INFORMAL COMMENTS

Subject: S. 475, "Military Spouses Residency Relief Act" (The Act)
Language/Provision: The Act amends several provisions of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. App. §§ 501, et seq.) to:

- a. guarantee residency for spouses of military personnel for voting purposes;
- b. guarantee residency for spouses of military personnel for tax purposes and to exempt income earned in the non-domiciliary State from taxation; and
- c. extend suspension of homestead residency requirements to spouses.

DOD POSITIONS/COMMENTS:

a. For the reasons noted in paragraph b, the Department of Defense (DOD):

- (1) does not object to Section 2 of the proposed bill: "Guarantee of Residency for Spouses for Voting";
- (2) strongly objects to Section 3 of the proposed bill: "Determination for Tax Purposes of Residence of Spouses of Military Personnel" and recommends an alternate consideration; and
- (3) does not object to Section 4 of the proposed bill.

b. Comments by Section:

(1) *Guarantee of Residency for Spouses for Voting (Section 2).*

(a) The guarantee of residency for voting in new section 705(b) of the SCRA (50 U.S.C. App. § 595) would not provide any protections when the servicemember and spouse are co-located in the State from which they would be absent but are not both domiciliaries of that State. Furthermore, new section 705(b) of the SCRA would not provide any protections if both the servicemember and the spouse were domiciliaries of the same State and left that same State, but not together (e.g., the servicemember is assigned unaccompanied to Korea, and the spouse goes to a different State to live with a relative).

(b) Even though the above two scenarios are not uncommon, there may be some practical benefits to those spouses who are covered under the proposed amendment and seek to vote in the domiciliary State. Accordingly, we do not object to this section of the proposed amendment.

(2) *Guarantee of Residency for Spouses for Taxation (Section 3).* The proposed amendment to section 511 of the SCRA (50 U.S.C. App. § 571) shields the income of a spouse (under the stated conditions) from taxation in the non-domiciliary State where the spouse is currently located with the servicemember. Although, the proposed amendment would provide a financial windfall for military families whose State of domicile would not tax the income earned in the non-domiciliary State, it could have significant and detrimental long-term effects that would offset the arbitrary tax windfall that some would receive.

(a) This proposed amendment upsets the entire theory of taxation as it has traditionally applied to the spouse. In general, a State imposes tax on the worldwide income of individuals who are resident or domiciled in that State. States impose tax on nonresidents of the State to the extent the nonresident receives income earned or derived from that State. The burden on a spouse who is employed in a tax jurisdiction where the member is assigned is the same as that of every other citizen of that State—no greater or less. Furthermore, the spouse receives the benefits of services and employment protections provided by the State.

(b) There is limited Federal interest involved in ensuring the spouse's income is not taxed in the non-domiciliary State where it is earned. There would be, however, great Federal interest in ensuring that the spouse's income is not taxed in both the domiciliary State and the non-domiciliary State where earned, but we are not aware that this is happening or that this bill is in any way intended to address that possibility. Rather, the purpose of this bill appears to be to encourage military members and their spouses to seek assignments to one of the seven States that do not have a personal income tax and to become a domiciliary of that State. For those not so fortunate, the spouses could find themselves paying more State taxes when moving from a domiciliary State with higher income taxes to a non-domiciliary State with lower income taxes.

(c) The inherent unfairness and arbitrary nature of this scheme compounds the States' legitimate concerns if prohibited from taxing compensation earned within their borders by those who live there and use its resources and services. Some might question why DOD would care about this proposal's effect on any particular State. The Department is and should always be concerned when the proper and fair balancing of interests under the SCRA becomes too far skewed in favor of the servicemember. Such imbalance could lead to a backlash of ill will from the State.

(i) For example, approximately 24 States currently do not pay spouses unemployment benefits when they are forced to relocate under military orders with their military member spouse. For some time, DOD has urged those 24 States to reconsider their position and extend unemployment benefits to such spouses. The proposed legislation would provide a compelling disincentive for the remaining 24 States to adopt a more favorable practice.

(ii) In addition, this proposal could undercut employment opportunities for spouses who seek employment with State governments. States could choose to hire someone who will be part of the tax base instead of the spouse. Although there are anti-discrimination provisions in the SCRA, such discrimination would be difficult to prove.

(iii) Also, the loss of revenue for the States could cause them to challenge assertions of domicile for the spouse and then for the servicemember as well. Proving domicile can be complicated and time consuming. It may well prove impossible if the servicemember and spouse have not established the appropriate contacts to prove their intent with respect to domicile. The unintended consequences of increased scrutiny of the spouse's assertion of domicile, and the likely scrutiny of the servicemember's own domicile as well, could well lead to the collection of back taxes that would offset any benefits this provision might provide.

(d) This proposal would actually provide greater tax protection for the spouse than for the servicemember (assuming the tax rate in the non-domiciliary State is less than the rate in the domiciliary State). It would shield all income by the spouse (at least in the non-domiciliary State) under the noted conditions. Conversely, only military compensation for the servicemember is shielded. Thus, the servicemember who moonlighted on the weekend would pay State taxes on that income to the non-domiciliary State, but the spouse would pay none for any work performed in the non-domiciliary State, and, depending on the law of the domiciliary State, may not pay any taxes at all.

(e) If in spite of our objections, Congress believes that this provision should become law, we recommend that a provision be added that would eliminate the requirement for an employer in the non-domiciliary State to withhold State income taxes from the spouse on behalf of the domiciliary State for services performed in the non-domiciliary State. This would result in an additional administrative burden on the employer solely because the employer hired a spouse of a military member. We are concerned that such an administrative burden could provide another disincentive for the non-domiciliary State to hire the spouse.

(f) The proposed amendment to current section 511(c)(1) of the SCRA would relieve the spouse from personal property tax in the non-domiciliary State to the same extent that the Servicemember would be relieved. We support this initiative but recommend that it be accomplished by amending current section 511(f)(1) of the SCRA to redefine personal property to include property owned jointly by a servicemember and his or her dependent or dependents.

(i) We are concerned that the requirement in proposed section 511(a)(2) of the SCRA that the spouse be present in the non-domiciliary State ("to be with the servicemember") could qualify the proposed language in current section 511(c)(1) and (2) so that the benefits of the section would not apply when the servicemember is present in a non-domiciliary State without the spouse—as is frequently the case with mobilized reservists—and the property is held jointly.

(ii) Our proposed amendment to current section 511(f)(1) (as opposed to the proposed amendment to

current section 511(c) (1) and (2)) would avoid all the difficulties we have voiced above and also extend protections to property held not simply with the spouse but with dependents as well.

(3) *Suspension of Land Rights Residency Requirement for Spouses of Military Personnel (Section 4)*. The proposed amendment to section 508 (b) of the SCRA (50 U.S.C. App. § 568) extends the suspension of residency requirement for the establishment of a property right to spouses. Section 508 deals with land rights of Servicemembers who may have an interest in mining claims or homesteading public lands. We have no objections to the proposed amendment to section 508(b).

* * * * *

LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, May 26, 2009.

Ms. BABETTE POLZER,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

CONSTITUTIONAL ANALYSIS OF S. 475, 111TH CONG., 1ST SESS., THE
"MILITARY SPOUSES RESIDENCY RELIEF ACT"

This memorandum is in response to your request to evaluate the constitutionality of S. 475, the "Military Spouses Residency Relief Act." The bill, if enacted, would extend certain protections under the Servicemembers Civil Relief Act (SCRA)¹ to the spouses of servicemembers. S. 475 would amend three sections of the SCRA: (1) 50 U.S.C. § 568, Land rights of servicemembers; (2) 50 U.S.C. § 571, Residence for tax purposes; and (3) 50 U.S.C. § 595, Guarantee of residency for military personnel. Arguably, the proposed amendments could reduce burdens on military families related to residency and taxation issues that often arise as a result of frequent duty station transfers. However, to the extent that the bill, as drafted, confers certain benefits on a servicemember's spouse that are independent from those of the servicemember, its constitutionality may raise a question of first impression.

The SCRA was enacted on December 19, 2003, as a modernization and restatement of protections and rights previously available to servicemembers.² The purpose of the Act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation."³ The SCRA generally protects servicemembers by temporarily suspending certain judicial and adminis-

¹ 50 U.S.C. app. §§ 501 et seq.

² Congress has long recognized the need for protective legislation for servicemembers whose service to the Nation compromises their ability to meet obligations and protect their legal interests. During the Civil War an absolute moratorium on civil actions brought against soldiers and sailors was enacted (Act of June 11, 1864, ch. 118, 13 Stat. 123). During World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act of 1918 (40 Stat. 440 (1918)); followed by the Soldiers' and Sailors' Act of 1940 (Act of October 17, 1940, ch. 888, 54 Stat. 1178) during World War II.

³ 50 U.S.C. app. § 502.

trative proceedings and transactions that may adversely affect their legal rights during military service.

Proposed changes to the SCRA

50 U.S.C. § 568 provides various land right protections for servicemembers, including rights in public lands, desert lands, mining claims, and mineral permits and leases. Under these protections, servicemembers may maintain rights to access and use public lands and to enter desert lands obtained before entering military service. The servicemember may also retain mining claims and mineral permits and leases in the event of nonperformance of the requirements of the lease while on active duty. Generally, an individual must be at least 21 years old in order to exercise such land rights; however the Act creates an exception to the age requirement and allows all servicemembers, regardless of age, to exercise rights related to lands owned or controlled by the United States. Additionally, residency requirements for purposes of exercising the land rights, are suspended for six months after release from military service. As enacted, the Act does not provide the same protections and rights to a servicemember's spouse or dependents. Under S. 475, the spouse of a servicemember would be entitled to the same suspension of residency requirements for a period of 6 months after the servicemember is released from military service.

50 U.S.C. § 571 prevents multiple state taxation on the property and income of military personnel serving within various tax jurisdictions⁴ by reason of military service. The Act provides that “[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.” The duty station tax jurisdiction may not include military compensation earned by a nonresident servicemember to compute its state income tax liability. The duty station jurisdiction may tax non-military income earned by the servicemember and/or the spouse. Additionally, personal property of a servicemember is not be subject to taxation by a jurisdiction other than his or her domicile or residence while serving at a duty station outside of his or her home state. S. 475 would expand the language concerning residency for tax purposes to include the spouse of a servicemember. Under the proposed language, the spouse would neither lose nor acquire a state of domicile or residence for taxation purposes when he or she accompanies the servicemember to a duty station outside the home state in compliance with military orders. Income earned by, and personal property of, the spouse, while in a jurisdiction pursuant to the military orders, would not be subject to taxation by that jurisdiction. Rather, the income and property of the spouse would be subject to taxation only by his or her home state.

⁴“Tax jurisdiction” is defined to include “a State or a political subdivision of a State,” which would include the District of Columbia and any commonwealth, territory or possession of the United States (Sec. 101(6)). “Taxation” includes licenses, fees, or excises imposed on an automobile that is also subject to licensing, fees or excise in the servicemember’s state of residence. “Personal property” includes intangible and tangible property including motor vehicles.

50 U.S.C. § 595 provides that military personnel are not deemed to have changed their state residence or domicile for the purpose of voting for any Federal, state, or local office, solely because of their absence from the respective state in compliance with military or naval orders. S. 475 would expand the provision to apply to the spouse of a servicemember, therefore guaranteeing that his or her state residence or domicile for the purpose of voting for any Federal, state, or local office, would not change solely because of an absence from the respective state while accompanying a spouse to a duty station in compliance with military orders.

Constitutional Analysis

The question at issue is whether the proposed amendment could precipitate a conflict between congressional power to regulate the military pursuant to its constitutional War Powers and the reserved right of the states to tax. The powers of the Federal Government, while limited to those enumerated in the Constitution,⁵ have been interpreted broadly, so as to create a large potential overlap with state authority.⁶ Significant powers exercised by Congress are the War Powers,⁷ which include the power to raise and support an army. The scope of the congressional and executive authority to prescribe the rules for the governance of the military is broad and subject to great deference by the judiciary.⁸

Although such issues have rarely come before the U.S. Supreme Court, it has considered the structure and balance of the SCRA in circumscribing state law in order to promote the interests of the military as an entity, and servicemembers in their individual capacity. In *Dameron v. Brodhead*,⁹ the Court addressed the question of the power of the Federal Government to limit a state's right to tax property within its jurisdiction. The case involved a challenge to the provision in the Act prohibiting state taxation on the property and income of military personnel serving within a tax jurisdiction in compliance with military orders.¹⁰ Dameron, a commissioned officer in the U.S. Air Force, sued Brodhead, in his capacity

⁵ Article I, § 1, of the Constitution provides that "All legislative Powers herein granted shall be vested in a Congress of the United States * * *." Unlike a typical grant of power to states, Article I, § 1, does not grant to Congress "all legislative power," but rather grants to Congress only those specific powers enumerated in § 8 and elsewhere in the Constitution.

⁶ For instance, Article I, § 8, cl. 18 provides that "[t]he Congress will have power * * *. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof." Early in the history of the Constitution, the Supreme Court found that this clause enlarges rather than narrows the powers of Congress. As stated by Chief Justice Marshall in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819): "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

⁷ U.S. Const., Art. I, § 8, cl. 11–14 provide that: The Congress shall have power * * *. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;] To provide and maintain a Navy;] To make Rules for the Government and Regulation of the land and naval Forces.

⁸ *Rostker v. Goldberg*, 453 U.S. 57, 64–68 (1981); *Brown v. Glines*, 444 U.S. 348, 353–58 (1980); *Schlesinger v. Councilman*, 420 U.S. 738, 746–48 (1975); *Greer v. Spock*, 424 U.S. 828, 837–38 (1976). See Johnny Killian, Kenneth Thomas, & George Costello, UNITED STATES CONSTITUTION: ANALYSIS AND INTERPRETATION 332 (2002 ed.).

⁹ *Dameron v. Brodhead*, 345 U.S. 322 (1953) (The case questioned a provision in the Soldier's and Sailor's Civil Relief Act, but for ease of discussion this memorandum will refer to the SCRA and its predecessor as the "Act").

¹⁰ The challenged section being § 514 of the SSCRA (50 U.S.C. App. § 574), restated and codified as § 571 of the SCRA (50 U.S.C. § 571).

as a city and county official of Denver, Colorado, for the recovery of \$23.51 in taxes on his personal property assessed while Dameron was stationed in Colorado. Dameron argued that his domicile was Louisiana and that pursuant to the SCRA he was exempt from assessment by a tax jurisdiction other than his domicile. Brodhead asserted that the language of the Act did not prevent Colorado from taxing the servicemember's personal property because the law's purpose was to prevent multiple taxation of military personnel, and since Louisiana had not taxed Dameron's personal property, Colorado could. If the SCRA did prevent the tax in question, Dameron contended that it was unconstitutional. With respect to the constitutional question, the Court stated that:

[t]he constitutionality of Federal legislation exempting servicemen from the substantial burdens of seriate taxation by the states in which they may be required to be present by virtue of their service, cannot be doubted. Generally similar relief has often been accorded other types of Federal operations or functions. And we have upheld the validity of such enactments, even when they reach beyond the activities of Federal agencies and corporations to private parties who have seen fit to contract to carry on functions of the Federal Government.¹¹

The Court held that servicemembers' "duties are directly related to an activity which the Constitution delegated to the National Government * * * 'to declare war' and 'to raise and support Armies.'"¹² The Court further held that "congressional exercise of a 'necessary and proper' supplementary power such as this statute must be upheld."¹³ In effect, SCRA preempts state laws which would tax the service-related income or personal property of servicemembers at their duty station when it is not their domicile. The Court concluded the constitutional discussion by stating, "[w]hat has been said in no way affects the reserved powers of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments. This we think is within the Federal power."¹⁴

In contrast, the dissent in *Dameron* emphasized states' right to tax over Congress' War Powers authority, stating "[t]he power to tax is basic to the sovereignty of the states."¹⁵ Acknowledging that limits exist on congressional restrictions on states' right to tax, the dissent looked to those instances where a Federal instrumentality, or the means by which an instrumentality performs its functions, are immune from state tax as being most similar to the prohibition under the Act.¹⁶ It noted a previous holding in *Graves v. New York*¹⁷ that wages of Federal employees, which include servicemembers, could be taxed on a nondiscriminatory basis by the

¹¹ *Brodhead* at 324–325 (Citing *Carson v. Roane-Anderson Co.*, 342 U.S. 232 (holding that contractors with the Atomic Energy Commission were exempt from state sales and use tax by section 9(b) of the Atomic Energy Act of 1946)).

¹² *Id.* at 325 (internal citations omitted).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 327 (Citing *Railroad Co. v. Peniston*, 18 Wall. 5).

¹⁶ *Id.*

¹⁷ *New York v. Graves*, 306 U.S. 466 (1939).

states.¹⁸ The dissent further argued that a servicemember “receives protection and benefits from the society which the states create and maintain * * *. If he gets tax immunity, it means that other citizens must pay his share.”¹⁹ It concluded with the assertion that “[w]hen Congress undertakes to protect [servicemembers] from state taxation or regulation, it is not acting to protect either a Federal instrumentality or any function which a Federal agency performs. Congress, therefore, acts without constitutional authority.”²⁰

A solid majority (seven of the nine Justices) concurred in the majority opinion in *Dameron*, with much of the discussion focused on the servicemember’s relationship to the Federal Government. The Court reasoned that servicemember’s “duties” are directly related to an activity (to raise and support an army) delegated to Congress, and, as such, within Congress’ authority to regulate. The full extent of Congress’ authority to extend limitations on the reach of state law with regard to individuals, based exclusively on a spousal relationship with a servicemember, is less clear. Previously Congress expanded certain protections of the Act to include spouses and/or dependents of servicemembers (e.g., maximum interest rate on debts²¹), but generally these protections require the existence of a joint obligation before the Act may be invoked. The Act does allow for a spouse and/or dependent of a servicemember to petition a court for certain protections under the SCRA, but the court may only extend the protections if it finds that the ability to comply with the terms of a covered contract are materially impaired by the military service of the person upon whom he or she is dependent.²² If enacted, S.475 would provide individual protections to the spouse of a servicemember with respect to residency for land rights, taxes and voting purposes. The common requirement of the expanded protections is that the spouse must accompany the servicemember on military orders away from his or her domicile. However, it appears that the proposed amendments create an inconsistency in taxation of servicemembers and their spouses. Currently, any income earned by a spouse and any non-military income earned by the servicemember may be taxed by the duty station tax jurisdiction. Under the proposed amendments, the spouse would not be subject to tax at the duty station, but non-military income earned by the servicemember would still be subject to taxation by the duty station tax jurisdiction. Arguably, the spouse of a servicemember would enjoy greater protections, i.e., immunity from duty station income tax, under the SCRA than would the servicemember.

Federal regulation of state residency requirements may in itself be unusual, but there does not appear to be a significant question as to whether Congress’ War Powers are sufficient to support such a regulation. The interest of the Armed Forces in family cohesion and troop morale may be sufficient justification for a legal requirement allowing servicemembers and their dependants to maintain

¹⁸ *Brodhead* at 328 (Douglas, J., dissenting).

¹⁹ *Id.* at 328–329.

²⁰ *Id.* at 329.

²¹ 50 U.S.C. app. § 527.

²² 50 U.S.C. app. § 518.

the same domicile regardless of where they are stationed. It could be argued that this requirement would serve the broader interests of the Federal Government in raising and maintaining its troops and therefore be within Congress' constitutional authority. In *Boone v. Lightner*, the U.S. Supreme Court, while addressing the level of discretion afforded courts under the SCRA, stated that "[t]he [Act] is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the Nation."²³ The stated purpose of the Act is "to provide for, strengthen, and expedite the national defense" by minimizing burdens on servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation."²⁴ It may be plausibly argued that simplifying residence requirements to include spouses, presumably individuals who organize their affairs to accompany servicemembers to their duty station, allows servicemembers to "devote their entire energy to the defense needs of the Nation."²⁵ The degree to which permitting military families to limit income tax payable on non-military income earned in the duty station jurisdiction achieves comparable goals, without imposing undue limitations on the duty-station state, is not settled.

R. CHUCK MASON,
Legislative Attorney.

²³ *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

²⁴ 50 U.S.C. app. § 502.

²⁵ In a similar manner, Congress has acted to prohibit states and/or local jurisdictions from assessing a personal property tax on a motor vehicle owned by a Member of Congress (or by his or her spouse) while maintaining a place of abode for purposes of attending sessions of Congress (H.R. 3067, § 3067, incorporated into Act of December 19, 1985, Public Law 99-190, § 101(c), 99 Stat. 1224 by Act of December 22, 1987, Public Law 100-202, § 106, 101 Stat. 1329).

SUPPLEMENTAL VIEWS OF SENATOR BURR

On February 25, 2009, I introduced S. 475, the Military Spouses Residency Relief Act, along with Senator Feinstein, in order to provide military spouses with residency protections similar to those afforded to military personnel under the Servicemembers Civil Relief Act (hereinafter, "SCRA"). Since then, 41 Senators have been added as cosponsors and the bill has been endorsed by a long list of organizations, including the Air Force Association, the Military Officers Association of America, Veterans of Foreign Wars of the United States, and AMVETS. I am pleased that the Senate Committee on Veterans' Affairs (hereinafter, "Committee") also demonstrated its support for this bill by voting to favorably report it to the full Senate. Although the Committee report explains the Committee's rationale for that decision, I am including these supplemental views to explain the reasons why I personally believe this bill is the right thing to do.

The law this bill amends, the SCRA, is the most recent in a series of laws passed during the past two centuries to afford civil protections to the men and women who serve in our Nation's Armed Forces. In part, the SCRA allows a servicemember to maintain residency in a single state, for purposes of voting and paying taxes, as he or she is moved around the country by the military. See 50 U.S.C. App. 571, 595. These and other protections in the SCRA are one way a grateful nation accounts for the fact that military personnel "drop their own affairs to take up the burdens of the Nation." *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

But, today, the burdens of the Nation are not borne by servicemembers alone; they are shared by the military spouses who move around the country and the world in support of our Nation's all-volunteer force. These spouses leave behind their homes, friends, and jobs in order to put servicemembers and the military ahead of their own needs. Indeed, studies by the RAND Corporation have found that military wives move farther and more often than their civilian counterparts; are more likely to be unemployed than the average civilian spouse; and, even if they do find work, tend to earn less than civilian wives. See "Working Around the Military: Challenges to Military Spouse Employment and Education," at 18, 48 (2004); "Working Around the Military" Revisited, at 1, 3 (2007).

In addition to making great personal sacrifices to support the military, it is now widely recognized that military spouses play an important role in the success of our Armed Forces. In fact, Military Spouse Day was first proclaimed by President Ronald Reagan 25 years ago to acknowledge "the profound importance of spouse commitment to the readiness and well-being of servicemembers * * * and to the security of our Nation." Proclamation 5184 (April 17, 1984). More recently, the RAND Corporation stressed in its 2004 study that "[s]uccessful recruiting and retention of the active duty

force relies in large part on the extent to which servicemembers and their spouses experience both job satisfaction and contentment with life in the military.” “Working Around the Military: Challenges to Military Spouse Employment and Education,” at xvii.

These sentiments clearly are shared by senior Army leaders who recently signed the Army Family Covenant, in which they “recognize the commitment and increasing sacrifices that our families are making every day” and “recognize the strength of our Soldiers comes from the strength of their Families.” As Secretary of the Army Pete Geren said in signing the covenant, “[t]he readiness of our all-volunteer force depends on the health of the Families.” <http://www.military.com/features/0,15240,153120,00.html> (last visited June 9, 2009). In short, servicemembers and their families are a package deal—if you lose the family, you will lose the servicemember.

Unfortunately, the SCRA has not yet been updated to recognize the role of military spouses or to ease their burdens as they move to new duty stations with their servicemember-spouses. For example, under the SCRA, if a servicemember moves to a new state in compliance with military orders, the servicemember may continue to vote in the state he or she considers home; the servicemember’s military pay may be taxed only in that home state; and any personal property the servicemember brings to the new state will not be subjected to taxation in that state. See 50 U.S.C. App. 571, 595. However, if a servicemember’s spouse leaves the same state and travels to a new state with that servicemember, the spouse is not afforded similar protections. The spouse may have to register to vote and file tax returns in every state in which they live. Also, in some states, the family assets must be held solely in the servicemember’s name in order to protect them from being taxed by those states.

In addition to the hassles this may cause for military families, as they move to a new state every few years, this sends the wrong message to military spouses. As the National Military Family Association testified back in 1992, “the current situation has left many military spouses feeling they are perceived as excess baggage.” H. Hrg. 102–35, at 3, House Committee on Veterans’ Affairs, April 29, 1992. Similarly, the Committee recently heard from a military spouse who provided this assessment: “As a military spouse I feel like I am forced into unnecessary hardships that could be easily rectified.” Attachment to testimony of Mrs. Rebecca Poynter, at 4, Hearing on Pending Benefits Legislation, Senate Committee on Veterans’ Affairs, April 29, 2009.

In my view, this situation should not be allowed to continue. It is time for Congress to update the law to reflect the true role of military spouses and to alleviate these unnecessary hardships. I believe this bill would take a significant step in that direction, by allowing military spouses to vote and pay taxes in their home states. This should reduce some of the hassles and confusion of moving every time the servicemember is ordered to a new duty station and will allow military spouses the flexibility to hold property in their own names. Perhaps more importantly, it will send a clear message to military spouses that we, as a Nation, appreciate their sacrifices

and are grateful for the contributions they make every day to the success of our Armed Forces.

* * * * *

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Committee bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

TITLE 50. WAR AND NATIONAL DEFENSE

TITLE 50 APPENDIX—WAR AND NATIONAL DEFENSE

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Servicemembers Civil Relief Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purpose.

TITLE I—GENERAL PROVISIONS

* * * * *

TITLE VII—FURTHER RELIEF

Sec. 701. Anticipatory relief.

Sec. 702. Power of attorney.

Sec. 703. Professional liability protection.

Sec. 704. Health insurance reinstatement.

[Sec. 705. Guarantee of residency for military personnel.]

Sec. 705. Guarantee of residency for military personnel and spouses of military personnel.

Sec. 706. Business or trade obligations.

SEC. 2. PURPOSE.

* * * * *

TITLE V—TAXES AND PUBLIC LANDS

* * * * *

SEC. 508. LAND RIGHTS OF SERVICEMEMBERS.

(a) * * *

(b) **RESIDENCY REQUIREMENT.**—Any requirement related to the establishment of a residence within a limited time shall be sus-

pended as to entry by a servicemember in military service or the spouse of such servicemember until 180 days after termination of or release from military service.

(c) * * *

* * * * *

SEC. 511. RESIDENCE FOR TAX PURPOSES.

(a) **RESIDENCE OR DOMICILE.**—[A servicemember] (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) *SPOUSES.*—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) **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.

[(c)] (d) **PERSONAL PROPERTY.**—

(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.

[(d)] (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.

[(e)] (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.

[(f)] (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.

* * * * *

TITLE VII—FURTHER RELIEF

SEC. 701. * * *

* * * * *

SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL AND SPOUSES OF MILITARY PERSONNEL.

[(For)] (a) IN GENERAL.—*For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—*

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.

(b) SPOUSES.—*For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State because the person is accompanying the person’s spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence—*

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.