CHANGING YOUR STATE OF RESIDENCY CONSIDERATIONS

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Members of the armed forces must pay state and local income taxes in their state of legal domicile (sometimes called legal residence) unless that state has made exemptions for active duty or retired pay. Only the state of legal domicile may tax the military income and personal property of an active duty military member.

Residence. The place where the individual is physically present. A military member's residence may differ from his domicile. Mere "residence" in a state pursuant to military orders does not make that state his domicile or legal residence for tax purposes.

Domicile or Legal Residence. The place one considers as his true and permanent home and where one intends to return after a temporary absence.

Home of Record. This is the point from which a member enlisted, was appointed, or called to active duty. The "home of record" is only one factor in determining where one is domiciled. It is established upon entry into the service and cannot be changed absent unusual circumstances.

Accounting & Finance withholds state taxes from military pay based on the entries you make on DD Form 2058, State of Legal Residence Certificate.

A person may voluntarily change domicile. However, this requires more than just changing the address on a person's documentation at Accounting & Finance. A legal change of domicile requires **both**:

a. Actual residence (bodily presence in the new location); and

b. Intent to change one's domicile, which may be shown by some of these factors:

(1) Changing voting registration (which is the key factor for domicile).

(2) Changing driver's license and auto registration.

(3) Buying real property.

(4) Changing finance DD Form 2058.

(5) Execution of a will, listing the new domicile.

(6) One's home of record.

(7) Other activities of a business or social nature in the new location.

Basically, if you wish to change domicile, you should: be physically present in the state you will be changing to (more than a temporary stop over); abandon ties with the old state; and establish ties with the state you will be changing to (a-g above describes the ties, which you need some, but not all). Service personnel may be tempted to change their domicile in order to avoid the

income tax liability of a particular state. However, the state they were last paying taxes to may challenge their attempt to change domicile. In the last few years, states have been much more active in challenging attempts to change domicile. Unless the change was bonafide, the change may well be invalidated and back taxes and penalties imposed.

Before attempting a change, you should also remember that domicile may affect the following important rights and duties:

a. Liability for state inheritance taxes.

b. Where your will may be probated.

c. The right to vote in a particular state.

d. Bonuses for wartime service.

e. The right to hold public office.

f. The right to homestead, veteran's claims, or tax exemptions.

g. Whether you or your children may attend a state college without paying higher fees required to non-domicile residents.

Of note, the Servicemembers' Civil Relief Act of 2003 is the federal act that allows active duty military members to avoid being deemed a domiciliary of a state by mere assignment to that state. **That act does NOT apply to dependents!** If this article does not answer all your questions about your legal residence, seek legal advice. Contact your legal office at 4-2211 for walk-in times to see a lawyer.