



Notice 2010-30

Transitional Guidance for Taxpayers Claiming Relief Under the Military Spouses Residency Relief Act for Taxable Year 2009

Notice 2010-30; 2010-1 C.B. 650; 2010 IRB LEXIS 225; 2010-18 I.R.B. 650

April 15, 2010

[*1]

TEXT:

I. PURPOSE

This notice grants certain civilian spouses of active duty members of the uniformed services (servicemembers), as defined under *10 U.S.C. § 101 (a) (5)*, an extension of time through October 15, 2010 for paying the amount of tax shown or required to be shown on a federal income tax return for the taxable year that includes November 11, 2009 (this will generally be the calendar year 2009 and is referred to hereinafter as "2009"). This extension is granted with respect to civilian spouses of servicemembers (civilian spouses) who: (1) were away from their residence or domicile (tax residence) in a State or the District of Columbia during 2009 solely to be with a servicemember spouse serving in compliance with military orders at a military duty station in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands (hereinafter, a "U.S. territory"); and (2) maintained their tax residence in a State or the District of Columbia for 2009 under MSRRA. As discussed in Part III (A) (2) of this notice, the extension to pay tax provided in this notice does not apply to civilian spouses claiming tax residence in a State or the District of Columbia who are [*2] (1) federal employees in American Samoa, Guam, or the U.S. Virgin Islands (USVI), or (2) individuals working in Guam or the Northern Mariana Islands (NMI) to whom *section 935* applies.

Certain taxpayers who worked in a State or the District of Columbia during 2009 and who claim tax residence in a U.S. territory under MSRRA for 2009 may apply for a refund of federal income taxes that the taxpayer's employer withheld and remitted to the Internal Revenue Service (IRS) or estimated tax payments that the taxpayer paid to the IRS during 2009. This notice provides guidance and procedures for submitting claims for refund of federal income taxes to civilian spouses who: (1) were away from their tax residence in the U.S. territories during 2009 solely to be with a servicemember spouse serving in compliance with military orders at a military duty station in a State or the District of Columbia; and (2) maintained their tax residence in the U.S. territories for 2009 under MSRRA. As discussed in Part III (B) (2), the procedures set forth in this notice do not apply to certain civilian spouses claiming tax residence in Guam, the NMI, or the USVI.

II. BACKGROUND

MSRRA was signed into law on November 11, [*3] 2009 and applies retroactively to 2009 as well as to subsequent taxable years. MSRRA amends the Servicemembers Civil Relief Act, *50 U.S.C. App. § 501 et seq.*, to provide a civilian spouse with rights similar to those afforded to the servicemember when the civilian spouse accompanies the servicemember serving at a duty station on military orders within one of the 50 States, the District of Columbia, or a U.S. territory.

Although it does not explicitly amend any provision of the Internal Revenue Code (Code), MSRRA nonetheless may have the effect of modifying the application of certain provisions of the Code with respect to federal income tax withholding, source of income, and residency for a civilian spouse who claims relief under the tax provisions of MSRRA and who was employed in a State, the District of Columbia, or a U.S. territory. MSRRA provides in relevant part

that a civilian spouse shall neither lose nor acquire tax residence by reason of being absent or present in any tax jurisdiction of the United States (defined in *50 U.S.C. App. §§ 511 and 571* to include the 50 States, the District of Columbia, and a commonwealth, territory, or possession of the United States) solely to be [*4] with the servicemember serving in compliance with military orders if the tax residence is the same for the servicemember and civilian spouse. See MSRRA, § 3. Accordingly, pursuant to MSRRA, a civilian spouse may maintain tax residence other than where the civilian spouse is physically present while accompanying the servicemember to a military duty station.

MSRRA also provides that income for services performed by the civilian spouse in a tax jurisdiction of the United States shall not be deemed to be income for services performed or from sources within that tax jurisdiction if the civilian spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the civilian spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders. See MSRRA, § 3. Consequently, the civilian spouse claiming the benefits of MSRRA may not be required to pay income taxes to a jurisdiction in which the civilian spouse performs services if that jurisdiction is different from the civilian spouse's chosen tax residence under MSRRA. Instead, the civilian spouse may be required to pay applicable State and local income taxes or U.S. territory [*5] taxes in the jurisdiction in which the civilian spouse claims tax residence. In addition, the civilian spouse will be required to pay federal income taxes on income from services if the civilian spouse's chosen tax residence is in a State or the District of Columbia. For example, if a civilian spouse is working in Guam but properly claims tax residence in Virginia under MSRRA, the civilian spouse's income from services would not be considered to be from sources in Guam. Thus, this income would not constitute taxable income for Guam tax purposes. However, the civilian spouse would owe taxes to the IRS and may owe taxes to Virginia.

III. TRANSITIONAL RELIEF FOR 2009

A. Taxpayers Claiming Tax Residence in a State or the District of Columbia

1. In General

MSRRA was enacted on November 11, 2009, and applies retroactively to 2009. As a result, the IRS recognizes that taxpayers working in a U.S. territory who claim tax residence in a State or the District of Columbia may experience undue hardship in timely paying federal income tax liabilities due the IRS for 2009. This situation may occur, in particular, if a taxpayer claims tax residence in a State or the District of Columbia and files a 2009 [*6] federal income tax return with the IRS, but the taxpayer's employer withheld income tax for 2009 that was remitted to a U.S. territory tax administration, and/or the taxpayer made estimated tax payments to a U.S. territory tax administration. (As discussed in Part III (A) (2), this situation generally should not arise for (1) federal employees in American Samoa, Guam, or the USVI, or (2) individuals working in Guam or the NMI to whom *section 935 of the Code* applies.) Accordingly, withheld amounts and estimated tax payments that should have been paid to the IRS were actually paid to the territory. The IRS recognizes that a taxpayer in this situation, in order to recover amounts erroneously paid to a U.S. territory, may need to file a claim for refund or credit of amounts withheld by the taxpayer's employer or estimated tax payments that the taxpayer remitted to the U.S. territory tax administration during 2009.

Furthermore, a civilian spouse should be aware that to the extent that a Form W-2, *Wage and Tax Statement* (or its equivalent), issued to the taxpayer by an employer indicates income tax withholding paid to a tax administration of a U.S. territory for 2009, such amount should not [*7] be claimed as a payment on a federal income tax return (e.g., Form 1040, Line 61) if such withholding amount has not been paid or treated as paid to the IRS. In such a case, the amount owed as shown on a tax return filed with the IRS will be higher than if such withholding amounts had been paid to the IRS.

a. Applicable Provisions of the Code

Section 6651 (a) of the Code imposes a penalty on any failure to pay (on or before the due date for payment, including extensions) any amount shown as tax on any return. In general, individuals must pay income tax by April 15. *Section 6161 of the Code* authorizes the Secretary of the Treasury or his delegate to grant taxpayers reasonable extensions of time (generally not to exceed 6 months) to pay the amount of tax shown or required to be shown on any return. However, *section 6601 of the Code* imposes interest on any amount of tax not paid by the due date, determined without regard to any extension of time for payment or any installment agreement entered into under *section 6159 of the Code*, from such due date to the date the tax is paid.

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Section 6654 (a) of the Code provides for an addition to tax in the case of an underpayment of estimated tax by [*8] an individual. An underpayment of estimated tax is the excess of the required quarterly estimated tax payment over the amount actually paid on or before the due date for the payment. *Section 6654 (e) (3) (A) of the Code* provides that the addition to tax shall not be imposed to the extent that the Secretary or his delegate determines that the imposition of such addition to tax would be against equity and good conscience due to unusual circumstances.

b. Procedures for Relief

Pursuant to *section 6161 of the Code*, the IRS is providing to certain taxpayers an extension of time through October 15, 2010 for paying the amount of tax shown or required to be shown on a federal income tax return for 2009. This extension is being provided to taxpayers who: (i) worked in a U.S. territory; (ii) claim tax residence in a State or the District of Columbia under MSRRA; and (iii) are not (1) federal employees in American Samoa, Guam, or the USVI, or (2) individuals working in Guam or the NMI to whom *section 935* applies. Additionally, pursuant to *section 6654 (e) (3) (A) of the Code*, the IRS has determined that with respect to such taxpayers, applying the addition to tax under *section 6654 (a)* is against [*9] equity and good conscience due to unusual circumstances. However, interest on the amount of tax must be paid for the period from the time the tax is due, without regard to such extension (generally, April 15), until the date the tax is paid.

Taxpayers should be aware that the extension of time to pay provided in this notice is **not** an extension of time to file a return. To obtain an automatic extension of time to file, a taxpayer should file IRS Form 4868.

To qualify for the extension of time to pay under this notice, taxpayers must follow these procedures:

- o Taxpayers must mark "MSRRA" in red ink on the top of their returns and include with their returns a copy of the Form(s) W-2, or its equivalent, that they received from their employers in the U.S. territory where they worked during 2009.
- o Taxpayers must also attach the following declaration:

"I am claiming as my residence or domicile under the Military Spouses Residency Relief Act ("MSRRA"). Under penalties of perjury, I declare that I am qualified for relief under MSRRA because I am present in solely to accompany my spouse who is a servicemember serving in compliance with military orders, and my claimed residence or domicile is the [*10] same as my spouse's residence or domicile."
- o The declaration must be signed and dated by the taxpayer. Neither a stamped signature nor a faxed signature is permitted.
- o Taxpayers must mail their returns to the IRS Service Center to which the return would be mailed if the taxpayer lived in the jurisdiction claimed as the taxpayer's tax residence under MSRRA. The address for the appropriate IRS Service Center may be found in the instructions to IRS Form 1040. For example, if a civilian spouse works in Puerto Rico but claims tax residence in Virginia under MSRRA, the civilian spouse should mail the federal income tax return to the IRS Service Center in Kansas City, Missouri. Taxpayers may use private delivery services designated by the IRS to mail their returns, as provided in the instructions to IRS Form 1040.

2. Exceptions

a. Taxpayers Employed by the U.S. Federal Government in American Samoa, Guam, or the USVI

The relief provided in Part III (A) (1) (b) does not apply to a federal employee claiming tax residence under MSRRA in a State or the District of Columbia but who was working in American Samoa, Guam, or the USVI in 2009. In this case, the taxpayer's federal agency employer withheld [*11] income taxes and remitted amounts withheld to the IRS during 2009. As a result, the taxpayer does not need the relief provided in Part III (A) (1) (b). Instead, the taxpayer should file an income tax return with the IRS and may claim as a payment on that federal income tax return (*e.g.*, Form 1040, Line 61) the amount reported as income tax withholding paid to the IRS on the Form W-2, or its equivalent, issued to the taxpayer by the federal agency employer.

b. Certain Other Taxpayers Present in Guam or the NMI

The relief provided in Part III (A) (1) (b) also does not apply to a civilian spouse working in Guam or the NMI to whom *section 935* applies. In that case, the civilian spouse does not need to file a claim for refund with Guam or the NMI because the civilian spouse may treat amounts paid to Guam or the NMI as paid to the IRS. *Section 935* applies to a civilian spouse claiming tax residence in a State or the District of Columbia under MSRRA if the civilian spouse is a U.S. citizen or resident alien and has income from sources in Guam or the NMI (other than income from services performed in Guam or the NMI). A resident alien is a person with a green card or who meets the substantial [*12] presence test, which generally means that the person is present in the United States for a specified number of days. If *section 935* applies, the taxpayer may treat amounts withheld and paid to the relevant U.S. territory as paid to the IRS. *See Treas. Reg. § 1.935-1 (c) (1) (ii) (A)*. The taxpayer should file an income tax return with the IRS and pay any tax due by the relevant due date.

B. Taxpayers Claiming Tax Residence in a U.S. territory

Circumstances similar to those described in Part III (A) (1) may arise for a civilian spouse who is present in a State or the District of Columbia but who claims tax residence under MSRRA in one of the U.S. territories. In that case, the civilian spouse may be required to file a 2009 income tax return with the relevant U.S. territory tax administration, but the civilian spouse's employer withheld income tax for 2009 that was remitted to the IRS, and/or the civilian spouse made estimated tax payments to the IRS. Thus, taxes that should have been paid to the U.S. territory tax administration were actually paid to the IRS.

As described in more detail in Parts III (B) (1) and (2), the federal income tax treatment of taxpayers in this situation may depend [*13] in part on whether the taxpayer is treated under *section 937* as a bona fide resident of the U.S. territory in which the taxpayer claims tax residence under MSRRA. Under *Treas. Reg. § 1.937-1 (b) (2)*, a servicemember who qualified as a bona fide resident of a U.S. territory in a prior taxable year is deemed to satisfy the requirements for bona fide residence in such U.S. territory for a subsequent taxable year if the servicemember is otherwise unable to satisfy such requirements during such subsequent year by reason of being absent from the U.S. territory or present in a State or the District of Columbia solely in compliance with military orders. The IRS and the Department of Treasury intend to issue regulations under *section 937* to provide a civilian spouse with treatment similar to that provided to the servicemember spouse for purposes of *section 937*. In particular, the regulations will provide that a civilian spouse who claims tax residence under MSRRA in a U.S. territory but is present in a State or the District of Columbia qualifies as a bona fide resident of such U.S. territory under *section 937 of the Code* if the civilian spouse satisfies the following requirements: (1) the civilian [*14] spouse qualified as a bona fide resident of the U.S. territory in a prior taxable year, and (2) the civilian spouse is unable to satisfy the requirements for bona fide residence in the U.S. territory in a subsequent taxable year by reason of being present in a State or the District of Columbia solely to be with the servicemember spouse who is serving in compliance with military orders. For general rules regarding bona fide residence in a U.S. territory, please refer to IRS Publication 570.

1. American Samoa and Puerto Rico

Section 931 of the Code provides that, in the case of a bona fide resident of American Samoa, income derived from sources within American Samoa is not included in gross income for U.S. federal income tax purposes (except amounts paid for services performed as an employee of the United States or any agency thereof). A civilian spouse who claims tax residence in American Samoa under MSRRA and is a bona fide resident of American Samoa, but who had income taxes withheld and paid to the IRS during 2009 with respect to services performed by the taxpayer in a State or the District of Columbia, may therefore be entitled to claim a refund of these withheld amounts because the [*15] income from such services may be deemed to be from sources in American Samoa.

Similar rules apply in the case of Puerto Rico. Specifically, *section 933* generally provides that gross income for U.S. federal income tax purposes does not include income of a bona fide resident of Puerto Rico from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof). A civilian spouse who claims tax residence in Puerto Rico under MSRRA and is a bona fide resident of Puerto Rico, but who had income taxes withheld and paid to the IRS during 2009 with respect to services performed by the taxpayer in a State or the District of Columbia, may therefore be entitled to claim a refund of income taxes withheld and paid to the IRS.

a. Procedures for Taxpayers Claiming Tax Residence in American Samoa or Puerto Rico Who Are Not Federal Employees

Taxpayers who worked in a State or the District of Columbia during 2009 but were not employees of the U.S. federal government, who claim tax residence in American Samoa or Puerto Rico for 2009 under MSRRA, and who claim a refund of federal income taxes should follow these procedures.

- o Complete the appropriate [*16] Form 1040 and mark "MSRRA" in red ink on the top of the return;
- o Attach the statement signed under penalties of perjury described in Part III (A) (1) (b), verifying the taxpayer's eligibility for relief under MSRRA; and
- o Mail the Form 1040 and attached statement to the IRS Service Center indicated in the instructions to the Form 1040, based on the location in which the taxpayer lives at the end of the year. (For example, if the taxpayer lives and works in Virginia but claims tax residence in Guam under MSRRA, the taxpayer should mail the required forms and statements to the IRS Service Center in Kansas City, Missouri.) Taxpayers may use private delivery services designated by the IRS to mail their returns, as provided in the instructions to IRS Form 1040.

Taxpayers claiming tax residence in American Samoa or Puerto Rico under MSRRA may be required to pay taxes to American Samoa or Puerto Rico, as the case may be, on their income from services. Taxpayers should contact the appropriate U.S. territory tax administration for further information regarding their tax obligations in that U.S. territory, including whether any relief may be available for late filings and payments. See Part IV below [*17] for contact information for the U.S. territory tax administrations.

b. Procedures for Taxpayers Claiming Tax Residence in American Samoa or Puerto Rico Who Are Federal Employees

Taxpayers claiming tax residence in American Samoa or Puerto Rico under MSRRA who are federal employees should file a return with the relevant U.S. territory tax administration and file a federal income tax return with the IRS. These taxpayers should report income from federal employment as income from sources in American Samoa or Puerto Rico on their federal income tax returns.

Taxpayers should contact the appropriate U.S. territory tax administration for further information regarding their tax obligations in that U.S. territory, including whether any relief may be available for late filings and payments. See Part IV below for contact information for the U.S. territory tax administrations.

2. Guam, the NMI, and the USVI

Under *section 932 (c) of the Code*, an individual who is a bona fide resident of the USVI for the entire taxable year (or a person who files a joint return with such an individual) must file an income tax return for the taxable year with the USVI. For purposes of the territorial income tax of the [*18] USVI (that is, "mirrored" sections of the Code), a bona fide resident of USVI may take income tax paid to the United States into account as payments to the USVI under mirrored *sections 31* (tax withheld on wages), *6315* (payments of estimated income tax), and *6402 (b)* (credits against estimated tax). See *Treas. Reg. § 1.932-1 (g) (2) (ii) (A)*. As a result, a civilian spouse who claims tax residence in the USVI under MSRRA and is a bona fide resident of the USVI should file an income tax return with the USVI and may treat amounts paid to the IRS in 2009 as paid to the USVI on the taxpayer's return.

Section 935 (b) of the Code provides in relevant part that, with respect to a taxpayer who is (i) a bona fide resident of Guam or the NMI, (ii) a citizen of Guam or the NMI (but not otherwise a U.S. citizen and not a resident of the United States), or (iii) an individual who files a joint return for a taxable year with an individual described in (i) or (ii) if the individual described in (i) or (ii) has the greater adjusted gross income, the taxpayer shall file an income tax return with Guam or the NMI, as the case may be. Under *section 935 (c) (3)*, an individual is relieved of liability for [*19] income tax to the jurisdiction other than the jurisdiction with which the individual is required to file under *section 935 (b)*. In applying the territorial income tax of Guam or the NMI (under "mirrored" sections of the Code), a bona fide resident or citizen of Guam or the NMI may take income tax paid to the United States into account under mirrored *sections 31* (tax withheld on wages), *6315* (payments of estimated income tax), and *6402 (b)* (credits against estimated tax), as payments to the relevant U.S. territory. *See Treas. Reg. § 1.935-1 (c) (1) (ii) (A)*. Consequently, a civilian spouse who claims tax residence in Guam or the NMI under MSRRA and is a bona fide resident or citizen of Guam or the NMI should file an income tax return with the relevant U.S. territory and may treat amounts paid to the IRS in 2009 as paid to the U.S. territory.

C. Other Guidance

In the case of taxpayers described in Part III (A) (1) and III (B) (1) of this notice, the IRS and tax administrations of the U.S. territories may determine by agreement or otherwise to coordinate relief for taxpayers claiming the benefits of MSRRA. The IRS and U.S. territories will issue additional guidance if coordinated procedures [*20] become available. Taxpayers claiming the benefits of MSRRA should continue to use the procedures set forth in this notice until the IRS issues further guidance.

Taxpayers who have already filed 2009 federal income tax returns and were not aware of the procedures provided in this notice and taxpayers who have any questions regarding the relief or procedures in this notice may call 1 (800) 829-1040 or (215) 516-2000 (not a toll-free call) for assistance.

State, local, and U.S. territory tax administrations may establish their own procedures for the implementation of the taxation provisions of MSRRA. However, such procedures are beyond the scope of this notice.

IV. CONTACT INFORMATION FOR U.S. TERRITORY TAX ADMINISTRATIONS

Taxpayers may direct questions regarding U.S. territory taxes and claims for refund to the following:

American Samoa

Tax Division

Government of American Samoa

Pago Pago, American Samoa 96799

Phone number: 684-633-4181

Fax Number: 684-633-1513

The Northern Mariana Islands

Department of Finance

Division of Revenue and Taxation

Commonwealth of the Northern Mariana Islands

P.O. Box 5234 CHR

Saipan, MP 96950

Phone number: 670-664-1000

Fax Number: 670-664-1015

Guam

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Department of Revenue and [*21] Taxation

Government of Guam

P.O. Box 23607

GMF, GU 96921

Phone number: 671-635-1840 or 671-635-1841

Fax Number: 671-633-2643

Puerto Rico

Departamento de Hacienda

Negociado de Asistencia Contributiva

P.O. Box 9024140

San Juan, Puerto Rico 00902-4140

Phone number: 787-721-2020, extension 3611,

or 1-800-981-9236 (toll-free within Puerto Rico but outside San Juan)

U.S. Virgin Islands

Virgin Islands Bureau of Internal Revenue

9601 Estate Thomas

Charlotte Amalie

St. Thomas, VI 00802

Phone number: 340-715-1040

Fax Number: 340-714-9341 and 340-714-9345

V. EFFECTIVE DATE

The relief provided in Part III (A) (1) (b) and the procedures in Part III (B) (1) of this notice are effective for taxable years that include November 11, 2009.

The regulations under *section 937* providing a civilian spouse with treatment similar to that provided to the servicemember spouse for purposes of *section 937* will be effective for taxable years that include November 11, 2009 and subsequent years.

VI. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (*44 U.S.C. § 3507*) [*22] under control number 1545-2169.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in Part III (A) (1) and III (B) (1). This information will be used to verify a taxpayer's eligibility for relief under the taxation provisions of MSRRA. The collection of information is required to obtain a benefit. The likely respondents are individuals.

The [*23] estimated total annual reporting burden is 6,200 hours. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching exist-

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ing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of paperwork. The estimated number of respondents is 6,200. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Avenue, NW, IR-6526, Washington, DC 20224.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by *26 U.S.C. § 6103*.

VII. DRAFTING INFORMATION

The principal author of this notice is Rosy L. Lor of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Rosy L. Lor at (202) 435-5262 (not a toll-free call).

