



## **Income Tax Information for Spouses of United States Military Servicemembers**

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On November 11, 2009, President Obama signed into law the Military Spouses Residency Relief Act (S. 475 as Public Law No. 111-97). This Act is effective for taxable year 2009 and thereafter. It does not affect taxes imposed or paid for 2008 and earlier.

The Act amends the Servicemember Civil Relief Act to provide that the spouse of a servicemember shall neither lose nor acquire residence or domicile in a state when the spouse is present in another state. Effective for taxable year 2009, spouses of military service members may be exempt from West Virginia income tax on wages received from services performed in West Virginia if (a) the servicemember is present in West Virginia in compliance with military orders; (b) the spouse is in West Virginia solely to be with the servicemember; **and** (c) the spouse maintains domicile in another state. This means that affected individuals may be eligible for refunds of income tax withheld by their employers in 2009.

Refunds may be claimed on a properly filed Form IT-140 indicating "Non Resident Military Spouse" above the title on the first page. The starting point for the West Virginia income tax return (IT-140) is the federal adjusted gross income. Therefore, military spouses should indicate the amount of their wages included in their federal adjusted gross income as a decreasing modification on line 43 of the West Virginia schedule M. This will remove the wages from their income and result in a refund of the withholding on these wages. A copy of their State of Legal Residence Certificate form DD2058 must be enclosed with their return when it is filed.

However, non resident military servicemembers and their spouses may be liable for West Virginia income tax on other types of West Virginia source income such as business income, interest income, unemployment compensation, etc. These types of income are reported on the West Virginia schedule A which is included in the Personal Income Tax Booklet.

A spouse whose wages are exempt from West Virginia income tax under this Act may claim an exemption from West Virginia withholding tax beginning in tax year 2010. The Withholding Exemption Certificate, WV IT-104, can be found on the West Virginia Tax Department website at <http://www.wvtax.gov>. Spouses wishing to claim this exemption from income tax may file a revised Form IT-104 with the spouse's employer. Spouses must also attach a copy of their "spouse military identification card" to Form IT-104 when providing Form IT-104 to their employer. Spouses claiming exemption from West Virginia income tax should consider the impact on their income tax (and estimated income tax) liability in their state of domicile.

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