

The Military Spouse Traveler and the Tax Home Concept

The tax home / residence rules are daunting especially for new travelers. It gets even more complicated when the traveler is married to a spouse that is a serving in the military. Before I go through these rules, let me first thank the spouses of our soldiers for their service. A military spouse has a unique role in supporting our military. They often function as single parent during deployments or special assignments and live with unending concern for the safety of their loved one. Many are always “on call” to take immediate and sole responsibility of their home if their enlisted spouse is summoned to a crisis. They serve quietly without pretense and our nation is more secure because of them.

Back to topic and a primer. First, a tax residence and a permanent residence (often called domicile) are completely different things even though their location may be the same area. A permanent residence is determined by legal ties, while a tax residence is determined first by the main place of work, and if there is no main area of income, then by where the individual maintains their principal residence / dwelling that they have substantial expenses for.

Normally, when an individual moves, they will change their driver's licenses, car registration, voter registration and many other ties that are necessary. In the military, when one enlists, they keep their permanent residence ties regardless of where they serve. They may be assigned for years to a base in a state they did not live in prior to enlisting, but they are still treated as a non-resident so long as the reason for living in the state where they are assigned is because of military orders. If you have ever lived near a military base, you will see a lot of out of state license plates because those serving and their family keep the domicile they had when they began their military career. If a member of the military is assigned to a state that they wish to adopt as their permanent residence in, they have the option to change their residence that and then keep that domicile for the duration of their career.

A person married to a member of the military is extended this same privilege if the reason that they are present in the state of assignment is to be with their spouse who is under military orders. This is not necessarily the case when the couple are married AFTER the enlisted spouse has begun service. The non-military spouse in this case would have to live with the enlisted spouse for a period of time and adopt the domicile of the serviceman/woman. This is not as simple as it sounds but again, this is a permanent residence issue vs a tax home issue.

This is where the tax home rules get tricky and the best way to attack this is to look at some common situations that we encounter. Please note- this does NOT address whether the non-military spouse qualifies for the MSRA (Military Spouse Relief Act). The MSRA is a domicile, permanent residence issue, not necessarily a tax home issue.

Can I take a travel assignment in the area of my spouse's base assignment and receive tax free per diems since my “home” has not changed?

No. unless you have a regular job in another geographical where you will make significant income on an annual basis in comparison to the assignment near the base. This illustrates how a tax home and a permanent residence are different. The military spouse may retain their permanent residence but their tax home is a different item. Since the enlisted spouse is most likely assigned to the base more than a year, and “keeping house with spouse” is the expectation, the traveler spouse will also be there more

than a year. Since the “12 month” rule limiting temporary assignments in one area still applies, this precludes the traveler spouse from taking assignments in the area of their spouses duty station and receiving tax free per diems. Just because your legal address stays elsewhere does not mean you can be treated as temporary in the place of the enlisted spouse’s military duty. The traveler in this situation can take a travel assignment in the area of duty BUT the per diems and travel related reimbursements would have to be treated as taxable income.

My enlisted spouse is deployed overseas and I am staying stateside until their return, where is my tax home?

The tax home tests would still apply: 1) does the traveler have a main area of work that they will return to regularly? 2) If, not, does the traveler maintain a principal residence dwelling and uses that home for lodging when not on assignment and incur expenses at both home and at the assignment for lodging? In this case, the traveler has a tax home in that area of the job (Scenario 1) or the area of the home (Scenario 2).

If the traveler spouse has neither of these and simply takes assignments to occupy the time during the enlisted spouse’s deployment, then most likely the traveler spouse is “itinerant” and the per diems etc are taxable.

There is also another scenario. If the traveler spouse stays overseas with the enlisted spouse and occasionally journeys stateside for assignments then the tax home for the traveler would be the home overseas that is shared with the enlisted spouse. This would apply if the custom of the traveler spouse is to return to the overseas dwelling that is maintained by the enlisted spouse. If it is NOT the custom, then the arrangement would be treated like as would an itinerant.

Can I just keep my old tax home I had before I married so long as I continue to pay rent?

Not if you follow your enlisted spouse with their base assignments. That would be the expectation

Can I travel FROM the base housing (or housing near the base) that I share with my enlisted spouse and receive the tax free per diems?

Yes.

But what about duplication of expenses. If our base housing is free or we are given a military stipend we are not duplicating?

Though “duplication” of lodging expenses is not immediately evident, it does occur. There are expenses beyond rent, utilities etc. that go into keeping a home however, this is where military rules can influence the tax home determination especially with a domestic base assignment or an international, non-combat assignment. Since the non-military spouse is expected to keep house with spouse, the tax home can be at the home near the base where the military spouse is assigned IF, again, it is the custom of the traveler spouse to return to their shared home regularly. If it is NOT their habit and only OCASSIONALLY visit their enlisted spouse, then the traveler would be treated as itinerant.