



**HQ RIO**

---

# **IRR Legal Orientation**

---



# HQ RIO

---

How many  
lawyers does it  
take to change a  
lightbulb?

Hourly  
or flat fee?



© 2004



# Roadmap

---

- Military Spouse Residency Relief Act (MSRRA)
  - Uniformed Services Employment and Reemployment Rights Act (USERRA)
  - Servicemember's Civil Relief Act (SCRA)
  - Reserve Tax Relief
  - Military Justice 101 for IMAs
-



# Military Spouse Residency Relief Act: What is it?

---

- Provides Military Spouses Relief related to
    - Taxes
    - Voting
    - Residency
-



# Military Spouse Residency Relief Act: Tax relief?

---

- If a military spouse is present with the Service Member (SM) in a state that's not their shared stated of residency, the spouse will:
    - Not pay taxes on income earned in that state (but will pay it to his or her state of legal residence)
    - Example: Spouse and SM are domiciled in Texas. SM is reassigned to CO and spouse accompanies SM to CO. Spouse gets job in CO, but will pay no income tax to CO on these wages because Texas does not have an income tax
    - But, spouse can't choose any state of residency, spouse must have legitimately established residency in the state claimed
-



# Military Spouse Residency Relief Act: How to get relief?

---

- In the State of Colorado, a military spouse entitled to tax relief under MSRRA he or she should file Form DR 1059 each year
    - For form see: <https://www.colorado.gov/pacific/sites/default/files/DR1059.pdf>
    - If you don't reside in Colorado, Google your state plus MSRRA for the requirements for your state or see a legal assistance attorney
  - If you weren't aware you were entitled to tax relief and have paid taxes you weren't required to, you may amend up to 3 years of tax returns
-



# USERRA Overview

---

- Standard Protections
  - How to get your job back
  - Special Demobilization Protections
  - What to do if employer doesn't comply
-



# USERRA: Four Standard Protections

---

1. No job discrimination based on military service
  2. No mandatory use of vacation time or vacation pay for military duty
  3. No retaliatory action (Does not apply to misconduct by employees)
  4. Reemployment after mobilization or other active service
-



# USERRA: How to get your job back

---

Step 1: Give Advance Notice! (Written notice smart but not required)

Step 2: “Under Honorable Conditions!” (present DD 214 or letter from commander)

Step 3: 5 Years or Less Cumulative Military Service

Step 4: Report Back Promptly

---



# USERRA: Reemployment Protections

---

- Protection #1: Be promptly reinstated
  - Protection #2: Keep same status
  - Protection #3: Keep accrued seniority
  - Protection #4: Health insurance coverage reinstated
  - Protection #5: Receive training, re-training, or other accommodations
  - Protection #6: Special protection from discharge
  - Protection #7: Keep other non-seniority based benefits
-



# USERRA: Information and Enforcement

---

## Where to go for Help

### General Information:

Legal Assistance Attorney

National Committee for Employer Support of Guard  
and Reserve: *1-800-336-4590 or [www.esgr.org](http://www.esgr.org)*

### Enforcement:

The Veterans' Employment and Training Service  
(VETS): *1-866-4-USA-DOL (1-866-487-2365) or  
[www.dol.gov/vets](http://www.dol.gov/vets)*

Private civil action

---



# **Servicemembers' Civil Relief Act Overview**

---

What protections and rights are available  
under the SCRA?

- Reduction of Credit Interest Rates
  - Continuation of Court Actions
  - Avoiding Repossession or Foreclosure
  - Termination of Leases
  - Reinstatement of Health Insurance
-



# Servicemembers Civil Relief Act Overview

---

## Who is Granted SCRA Protections?

- Any Active Duty Service member
    - Includes Reserve Component mobilized to active duty
  - Some Protections Granted to Dependents of Service members
  - Do Not Waive these Protections!
-



## SCRA 6% Interest Rate

---

- Maximum Interest Rate of 6%
  - Applies to Pre-Military Service Obligations
  - Still Possible: Must Apply within 180 days After Release from Military Service
  - Written Notice to Creditor + Copy of Orders
  - Excess Interest Forgiven -- not Accrued
-



# SCRA: Stay of Civil Proceedings

---

## What Can I do if Someone is Suing Me?

- See a Legal Assistance Attorney
  - Applies only to Civil Actions
    - Includes Administrative Hearings
    - Any Actions Commenced within 60 days after REFRAD
  - Extended Time to Respond
    - Automatic stay for 90 days upon request
    - Additional time may be granted by judge
  - Extended Time to Commence Action on Your Own Behalf
-



# SCRA: Default Judgements

## What if a Judgement was Obtained Against Me?

- Set Aside Default Judgment
  - If judgment entered without your knowledge
  - Military service materially affected your defense
  - You have a meritorious defense in the action
- Request relief within 90 days after release from active duty



# SCRA: Private Health Insurance Plans

---

- SCRA Requires Reinstatement of Non-Employment Health Insurance. (See USERRA for Employment Health Coverage)
  - Must apply within 120 days after release from military service
    - No Exclusions
    - No Waiting Periods\*
  - See a Legal Assistance Attorney
-



# SCRA: Repossession & Foreclosures

---

## What can I do if my car was repossessed and my home is in foreclosure?

- See a Lawyer
  - Self-Help Repossession from activated military is prohibited
  - Repossession or foreclosure of mortgage prohibited
    - While on active duty
    - Military service materially affected your defense
    - Foreclosures not in compliance with SSCRA if made during the period of military service or within 3 months thereafter.
  - Storage liens may not be enforced, except by court order
-



# Income Tax Overview

---



"I'm taxes."

---



# Income Tax Overview

---

- **Extensions of Deadlines**
  - **Tax Relief**
  - **Tax Deductions for Reservists**
  - **Retirement Account Basics & Tax Considerations**
-



# Tax Extension: How Long?

---

- Total Time of Extension:  
= 180 Days from Last Day in CZ or QHDA  
+ number of days from deploy date to 15 April
  - Or until last day of continuous hospitalization for injury from service in CZ or QHDA
  - Example:
    - Deployed to CZ 15 Mar 2015; Left CZ on 1 May 2016
    - Must File 2015 Tax Return NLT 1 Dec 2016
-



# Tax Extensions: For What?

---

- Filing Your Return/Claiming a Refund.
  - Paying any Taxes Owed (Except Withholding and Employment Tax).
  - Making an IRA Contribution.
  - Tax Benefits of Selling a Residence.
-



## Tax Extension: Who qualifies?

---

- Armed forces members who serve in a CZ or QHDA
    - Iraq and Kuwait are CZ
  - Armed forces members who serve in direct support of a CZ or QHDA
  - Spouse may be entitled to extension as well.
-



# Income Tax Relief

---



**“After federal, state, and local taxes,  
you get one-third of a wish.”**

---



# Tax Relief: What is it?

---

- Exclusions from Gross Income
    - Base Pay earned in CZ or QHDA
      - All base pay for enlisted personnel and warrant officers
      - Base pay for officers limited to highest rate of enlisted pay
    - Entire month's pay is nontaxable, if present one day in CZ or QHDA during that month
  - Military pay remains subject to Social Security and Medicare taxes
-



## Tax Relief: What else is not taxed?

---

- Non-Taxable Benefits: IDP/HFP
  - Leave earned while in CZ or QHDA
  - Pay received while hospitalized for injuries incurred in CZ (subject to certain time limitations)
  - Other incentives, such as Reenlistment Bonus
-



## Tax Relief: Do I qualify?

---

- For any month of the year:
  - Were you present, for even one day, in a CZ or QHDA?
  - Was your presence there official?
  - If “YES,” then NO tax is owed on military pay for those specific months.
-



## Reservist Tax Deductions: What can I claim?

---

- If you travel more than 100 miles from your home to perform services you can claim travel expenses such as transportation, meals and lodging.
    - These can be claimed as an adjustment to income – you don't have to itemize
  - If you itemize you may deduct additional business expenses (e.g. some uniform items/child care).
  - If you receive military differential pay this should be reported as "other income" on line 21 – it won't be subject to Social Security, Medicare or income tax withholding
-



## Tax Relief: Home Ownership

---

- The IRS allows Americans to exclude capital gains when selling their principal residence if they've lived there for two of the last five years for up to \$250K (500K if married).
    - Military may suspend the years you are away from your primary residence on Qualified Official Extended Duty for up to 10 years. The upshot is that it may be possible for you to avoid capital gains if you've lived in your house two of the last 10 years.
  - If you rent out a home – don't forget to depreciate it. This is the most missed tax for landlords we see.
-



# Retirement Accounts (just the basics)

---

- Two kinds of accounts: Roth and Traditional
    - Traditional IRA : The money you put in is not taxed now, but you will pay taxes when you withdraw the money after age 59 1/5
      - You will pay a penalty & taxes if you withdraw \$ early unless exception applies
      - Can contribute no matter how high your income (\$5,500 in 2018)
      - Mandatory withdrawals after you turn 70 1/2
    - Roth IRA : The money you put in is taxed now, but you will not pay taxes when you withdraw the money
      - You can withdraw your contributions at any age without penalty as long as you've held the contributions in the account for five years (with a few exceptions).
      - There are income limits at higher incomes. Contribution limit is \$5,500
      - No mandatory withdrawals
      - Good if you expect to have a higher income in retirement
-



## TSP (just the basics)

---

- The TSP is a 401K like government sponsored defined contribution plan
    - You may choose either a Traditional or Roth option
    - Civilians and military members opting into the new Blended Retirement System can get matching funds up to 5% of their contribution
    - The TSP charges on average only .038% in fees. The industry standard is 1.0%, which may not sound like a lot but it can reduce your investment over 30% over a lifetime.
    - Can contribute up to \$18,500 in 2018
-



## Savers credit & tax strategy

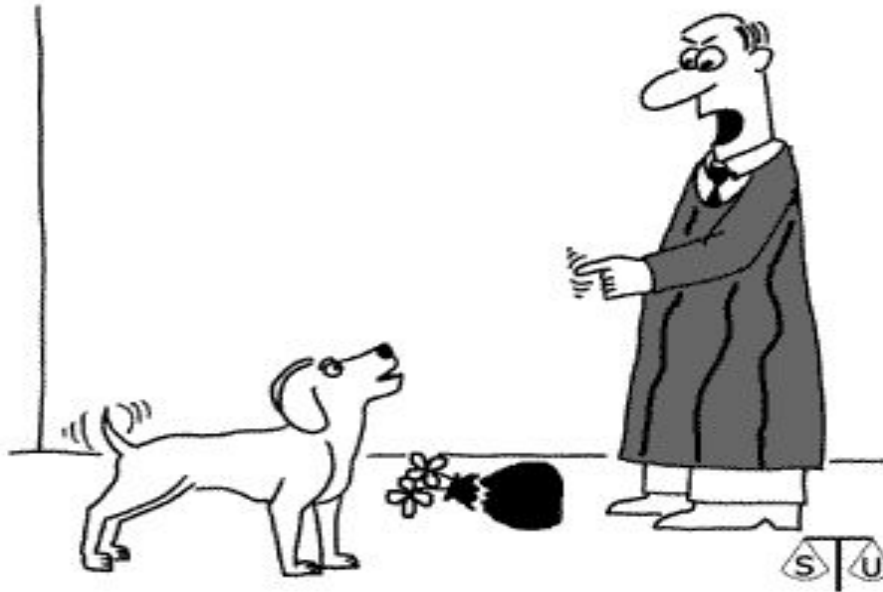
- In addition to tax savings on your retirement account contributions, you may be eligible for an additional credit

2017 Saver's Credit			
Credit Rate	Married Filing Jointly	Head of Household	All Other Filers*
50% of your contribution	AGI not more than \$37,000	AGI not more than \$27,750	AGI not more than \$18,500
20% of your contribution	\$37,001 - \$40,000	\$27,751 - \$30,000	\$18,501 - \$20,000
10% of your contribution	\$40,001 - \$62,000	\$30,001 - \$46,500	\$20,001 - \$31,000
0% of your contribution	more than \$62,000	more than \$46,500	more than \$31,000



# Military Justice 101 for IMAs

---



Alleged BAD dog! Alleged BAD dog!

---



# Military Justice 101 for IMAs

---

- Courts-martial (General, Special, Summary)
  - Article 15, UCMJ Punishment
  - Administrative Actions
    - LOR/LOA/LOC, Demotion Actions, Admin discharge
-



# Jurisdiction

---

- Members must be in status for UCMJ jurisdiction to attach, i.e. they must be on an IDT or active duty service. Otherwise...
  - You can always take administrative action. Typical action for off-status misconduct is LOR/UIF/Admin Demotion/potential discharge
-



# Court-Martial

---

- Three levels: General, Special, Summary
    - Different jurisdiction caps apply to each level
  - Officers can only be tried at a General Court-Martial
  - A Summary Court-Martial does not result in a federal conviction. It is essentially an amped up Article 15 but E-4 and below can receive 30 days in jail. It can be turned down like an Article 15
-



# Article 15s – Nonjudicial Punishment

---

- Appropriate for minor offenses
  - Gives commanders the ability to rapidly respond
  - No standard of proof, but they can be turned down
  - Acceptance ≠ Admission
    - Presentation
    - Decision – Guilty or Innocent
  - Amount of punishment depends on rank of CC & Mbr
-



# Administrative Discharges

---

- Common Involuntary Discharge Bases:
    - Minor Disciplinary Infractions
    - Mental Disorders
    - Failure in Fitness Program
    - Failure to Progress in On-the-Job Training
    - Drug Abuse
    - Pattern of Misconduct
  - Service Characterizations:
    - Honorable
    - Under Honorable Conditions (“General”)
    - Under Other Than Honorable Conditions (UOTHC)
-



## Military Justice: Who has the authority?

Type of Action	Authority	Reference	Comments
Court-Martial	Active Duty convenes	AFI 51-201, 10 U.S.C. § 802	<ul style="list-style-type: none"><li>- Active duty convenes courts-martial as a matter of policy.</li><li>- SECAF approval is required before a member may be sentenced to confinement, so SECAF approval is always sought</li></ul>
Article 15	Shared between Detachment & Active Duty Unit, but defer to AD	AFI 51-201	<ul style="list-style-type: none"><li>- IAW AFI 51-201, para 2.9.2, you cannot involuntarily recall member to AD to serve an Article 15, but...</li><li>- MAJCOM CCs can waive &amp; allow</li></ul>



## Administrative Actions: Who has the authority?

Type of Action	Authority	Reference	Comments
LOC/LOA/LOR	Shared—can be AD unit or Det – but defer to AD	AFI 36-2907	<ul style="list-style-type: none"><li>- Note, reservists get 45 days to respond. We're happy to review these!</li></ul>
Discharge	Reserve CC	AFI 36-3209	<ul style="list-style-type: none"><li>- If enlisted, Det CC will initiate</li><li>- If officer, ARPC/CC will initiate</li><li>- ARPC/CC is the Discharge authority for most cases</li><li>- ARPC/JA will prep the discharge package for you</li><li>- Don't let AD JA prep the package, they will draft it using the AD AFI 36-3208</li><li>- If no nexus to duty, no UOTHC</li></ul>



## Administrative Actions: Continued

Type of Action	Authority	Reference	Comments
Demotion	Detachment or AD Unit CC may initiate	AFI 36-2502	<ul style="list-style-type: none"><li>- For IMAs, the demotion authority is HQ RIO/CC</li></ul>
Denial of Reenlistment	Detachment or AD Unit CC may initiate	AFI 36-2606	<ul style="list-style-type: none"><li>- HQ RIO/CC is the appellate authority.</li><li>- AFI recently changed. Member may now appeal through an appeal board or directly to HQ RIO/CC (who's decision is final)</li><li>- Must inform member of appeal rights</li></ul>
Invol to IRR	Det CC	36-2115	<ul style="list-style-type: none"><li>- Use template in AFI</li></ul>



# Legal Assistance

---

- Available to reservists on EAD orders, for at least 30 days after EAD orders end, and when prepping for deployments
  - Services
    - Advice on *all* types of legal issues; assistance in *most* areas
    - Preparation of documents (e.g., wills, POAs)
    - Tax program
    - Mobility processing, SCRA issues
    - Some criminal matters referred to ADC
  - Legal Readiness - Preparation for Deployment
    - Despite continued emphasis in a routinely deployable unit, many unprepared
-



"Honey, our lawyer wishes us,  
but in no way guarantees,  
a Merry Christmas."