SEC. ___. DETERMINATION OF RESIDENCE OR DOMICILE FOR TAX PURPOSES OF SPOUSES OF MILITARY PERSONNEL.

Section 511(a)(2) of the Servicemembers Civil Relief Act (50 U.S.C. 4001(a)(2)) is amended by striking "if the residence or domicile, as the case may be, is the same for the servicemember and the spouse".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text above would amend existing law.]

Section-by-Section Analysis

This proposal would ensure that all military spouses receive equal treatment under the Servicemembers Civil Relief Act (SCRA). Currently, the SCRA, as amended by section 3 of the Military Spouses Residency Relief Act (MSRRA) (Public Law 111-97), allows some military spouses to maintain their state residency upon a permanent change of station (PCS). Currently, section 511(a)(2) of the SCRA requires military spouses to share the same legal residence or domicile as the servicemember in order for the SCRA's residency and tax protections to apply. This requirement to share the same legal residence or domicile results in a substantial number of military spouses being ineligible to avail themselves of the residency and state tax protections otherwise afforded under the SCRA. Removing the shared residency requirement from section 511(a)(2) of the SCRA will ensure all military spouses receive the protections of the SCRA and alleviate the onerous residency and tax burdens associated with a PCS.

Before the MSRRA amended the SCRA in 2009, all military spouses were required to re-establish legal residency in each new state following a spouse's permanent change of station and cut legal ties with their home state. Conversely, servicemembers did not lose or change their legal residence due to the same move because the SCRA protected both the servicemember's legal residence and, as a result, their military income from state taxation in the non-domiciliary state. The servicemember did, however, have the option to affirmatively change his or her residency status if it would be advantageous to do so. The military spouse had no option; to accompany the servicemember, the military spouse had to establish legal residence in the new state of residence. The absence of the SCRA's residency protections for military spouses caused significant hardships upon military families when it came to state taxation of the military spouse's income. The MSRRA allows the military spouse to be treated the same as the servicemember as long as they share the same state of legal residence.

Without the protections of the SCRA extending to both the servicemember and military spouse, military families likely find their state tax liability increased upon a permanent change of station. Military spouses can face a higher incidence of state tax due to moving to a state with a higher income tax rate. There are significant differences in tax rates within states; some states impose no income tax while some have as high as an 11 percent marginal tax rate. If the military spouse was forced to move with the servicemember to a state with a higher income tax

rate, the result could be a net decrease in income available to support the military family. In addition to a potential loss in income, the military spouse would also face an increased administrative burden of filing multiple state tax returns. These were the residency and tax burdens that the MSRRA was intended to resolve. Yet, the statue has not resolved these burdens for all military spouses, which is fundamentally unfair and can cause substantial financial hardship for a substantial number of military families.

Without shared legal residence with the servicemember, the military spouse is left in the same position as before the MSRRA was enacted. Yet, shared legal residence of a military couple can only occur in one of two ways. First, a married couple who established a state of domicile before one enters active duty service will be able to maintain their shared legal residence no matter the location of military service. However, if a servicemember is stationed outside his state of legal residence and marries in the physical location of his military service, the newly married military couple has two options to have the SCRA apply to the military spouse. One option for the military couple would be for the servicemember to abandon his legal residence and establish domicile in the spouse's state of residence. The military couple would then share the same legal residence and could maintain it in future assignments. The military couple could also seek assignment, if available, in the servicemember's state of legal residence, thereby allowing the military spouse to establish and assume the same legal residence once stationed in the servicemember's home state. But assignments are based upon the needs of the Service, and until a favorable assignment occurs, many military spouses are without the residency and tax protections afforded under the SCRA. The SCRA should not require military families to make difficult choices or wait for chance to determine the scope of its protections for military spouses.

All military spouses, no matter their original states of legal residence upon marriage to a servicemember, equally bear the burdens of a permanent change of station. Moreover, requiring a military couple to decide which legal residence to abandon potentially puts military couples at odds in deciding where they can both establish legal residence. Arbitrarily denying residency and tax burden protections based upon circumstance, and possibly increasing the burdens on certain military couples, is fundamentally unfair and is contrary to the equity promised in the passage of the MSRRA. This legislative proposal will ensure that the SCRA's residency and state tax protections are afforded to all military spouses who accompany their servicemembers to a new state upon a PCS.

Budget Implications: There are no resource requirements or proposed offset associated with this proposal.

Changes to Existing Law: This proposal would make the following change to section 511 of the Servicemembers Civil Relief Act (50 U.S.C. 4001):

Sec. 511. Residence for tax purposes

(a) **Residence or domicile**

(1) **In general**

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) **Spouses**

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders ~~if the residence or domicile, as the case may be, is the same for the servicemember and the spouse~~.

(b) **Military service compensation**

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) **Income of a military spouse**

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) **Personal property**

(1) **Relief from personal property taxes**

The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) **Exception for property within member's domicile or residence**

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) **Exception for property used in trade or business**

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) **Relationship to law of State of domicile**

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) **Increase of tax liability**

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) **Federal Indian reservations**

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) **Definitions**

For purposes of this section:

(1) **Personal property**

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) **Taxation**

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) **Tax jurisdiction**

The term "tax jurisdiction" means a State or a political subdivision of a State.