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NUMBER: PTA 11.2.2009

ISSUE DATE: 02/02/09

Application of the Federal Servicemembers' Civil Relief Act and the Washington Service Members' Civil Relief Act To Property Tax Administration

The Federal Servicemembers' Civil Relief Act

The Servicemembers' Civil Relief Act (50 U.S.C. Appx. § 501 et seq.) (SCRA), as amended effective December 19, 2003, has been in existence in one form or another since 1918 and continues to apply to real and personal property tax matters as well as to other matters. It is commonly asked whether the SCRA provides relief for military personnel from paying real property taxes for the current year. This is **not** one of the provisions of the SCRA. There are no tax exemption provisions for real property in the SCRA. However, the SCRA does provide several forms of relief for the personal property of active military personnel.

1. Relief from the foreclosure or sale of a servicemember's¹ property

The SCRA prevents certain property of a servicemember from being sold or foreclosed upon in order to enforce collection of property taxes. It provides that, unless a court² first allows it, no action can be brought against a servicemember to enforce the collection of taxes or assessments with respect to personal property (including motor vehicles), or with respect to real property owned and occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees, when the tax was due and remained unpaid at the commencement of the servicemember's entry into military service,³ or when the tax became due during the period of military

¹ "Servicemember" means a member of the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service. (50 U.S.C. Appx. § 511(1) and 10 U.S.C. § 101(a)(5).)

² "Court" means a court or administrative agency of the United States or of any state (including any political subdivision of a state), whether or not a court or administrative agency of record. (50 U.S.C. Appx. § 511(5).)

³ "Military service" means active duty, in the case of a service member who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard. (50 U.S.C. § 511(2).) "Active duty" means full-time duty in the active military service of the United States. The term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. The term does not include full-time National Guard duty. (10 U.S.C. § 101(d)(1).) In the case of a member of the National Guard, "military service" includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, U.S.C., for purposes of responding to a national

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service, and the real property was still occupied by the servicemember's dependents or employees. (50 U.S.C. Appx. § 561(a)(2).) When such property is sold or forfeited to enforce the collection of a tax or assessment, the military servicemember also has the right to redeem or commence an action to redeem such property within 180 days after the termination or release from military service (or such longer period allowed by state law). (50 U.S.C. Appx. § 561(c).)

2. Relief from some penalties and interest on delinquent property tax obligations

Interest on delinquent property taxes (that became due prior to or during the period of military service) is limited to 6 percent per year, and no other penalty or interest can be incurred. (50 U.S.C. Appx. § 561(d).) The Department of Revenue has provided a form (REV 63 0025) for active military personnel to make application for relief from penalties and to limit interest to 6 percent per year.

3. Temporary relief from any tax or assessment through court proceedings

The taxpayer may apply to a court for a temporary stay (not more than 180 days after the termination of, or release of, the servicemember from military service) of tax collection enforcement under 50 U.S.C. Appx. § 561(b)(2). The court holds a hearing to determine whether the ability of the servicemember to comply with the terms of his or her tax obligation has been materially affected by reason of the servicemember's military service. If the court finds that it has, it may grant the servicemember a stay of enforcement. Please note that this stay of enforcement is not automatic. The burden is on the taxpayer to petition the court to obtain a court-ordered stay of enforcement.

4. Relief for personal property of nonresident military personnel

A fourth form of relief is provided by section 571 of the SCRA. This statutory provision provides that for purposes of taxation of any servicemember, or of his or her personal property, the servicemember will not be deemed to have lost residence or domicile in any state solely by reason of being absent from the state in compliance with military orders. This provision effectively exempts from property taxation the personal property owned by nonresident military personnel as long as the property is not used in a trade or business.

5. Taxation of mobile homes owned by nonresident military personnel

With respect to a nonresident servicemember who owns a mobile home in Washington, the mobile home must be considered real property under **federal law** in order for Washington State to subject it to property tax. Section 571 does not provide an exemption for real property—only personal property and income. There are several federal court cases where nonresident military personnel challenged state or local taxation of their mobile homes. All of those cases struck down the tax because the mobile homes were, in fact, exempt personal property, even though the state law defined them as real property. The courts, in applying the federal law, used the common law definition of "fixtures." It is not enough that a nonresident servicemember's mobile home is hooked up to utilities; the mobile home has to be permanently affixed to the land in order for it to be subject to real property taxes in this state. Generally speaking, if the mobile home of a servicemember satisfies the definition of real property in RCW 84.04.090, in that it "has substantially lost its identity as a mobile unit by virtue of its being permanently fixed in location," then it is subject to real property tax in Washington and the SCRA does not apply.

**Washington Service Members' Civil Relief Act
Chapter 38.42 RCW**

In 2005, the Washington Legislature passed the Washington Service Members' Civil Relief Act (Act) that became effective May 3, 2005. The Act provides for certain rights and protections for service members who are Washington residents and are called to active duty. The Act has definitions of service members and dependents that differ from the SCRA and generally gives dependents more rights and protections than the SCRA. Although the language of the Act is similar in many respects to the federal SCRA, it does not have provisions similar to the SCRA that apply directly to property tax administration. Therefore, the purpose of this PTA with respect to the state Act is primarily to advise of the Act's existence.
