



National Payroll Reporting Consortium

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Military Spouses Residency Relief Act Implementation Questions & Issues

American Payroll Association¹

National Payroll Reporting Consortium²

We appreciate this opportunity to provide recommendations to State and Municipal Revenue Agencies concerning this Act. Because the Act was signed into law on November 11, 2009, but is retroactively effective to January 1, 2009, and because annual reporting of employer W-2s and withholding will commence in less than four weeks, there is likely to be substantial confusion as to the meaning and effect of the law in each state. It is tremendously helpful that the Federation of Tax Administrators has undertaken an initiative to carefully consider and coordinate, to the extent possible, state responses and requirements of employers. Following are our initial recommendations. We are making efforts to raise awareness and bring other perspectives as well.

- 1. For 2009, allow employer reporting on Forms W-2 (and any other state or local income tax forms that involve wage reporting) to continue as if the law does not take effect until 2010. Instead, let the 2009 relief be taken by the individual when he or she files the 2009 state personal income tax return.** The bill became law on November 11 but is retroactively effective as of January 1, 2009. Employers have been accumulating wages, as well as withholding and depositing income tax, based on the absence of this law and based on the existing state rules for residency, reciprocity, and resident/nonresident taxation. In some states, employee-level wage reporting has already taken place (e.g., California requires quarterly reporting of wages subject to income tax withholding). In addition, many employees who left their jobs in mid-2009 requested and already received their 2009 W-2. Employers will not be able to accept employee claims of exemption under

¹ The American Payroll Association (APA) is a non-profit association of over 23,000 payroll professionals, most of whom are responsible for the payroll of approximately 17,000 employers throughout 50 states, the District of Columbia, and U.S. territories. As payroll specialists, APA's members must issue correct and timely pay; calculate proper tax withholding; remit taxes to federal, state, and local agencies; and file tax and information returns. One of APA's primary missions is to work with legislative and executive branches of all levels of government to find ways for employers to meet their requirements under law and support government objectives, while minimizing administrative burden for government, employers, and individual taxpayers.

² The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services to over 1.4 million employers nationwide, covering over one-third of the private sector work force. Payroll service providers have long served an important role in our nation's tax collection system as a conduit between employers and government tax authorities. Payroll service providers improve the efficiency of government tax collection through electronic filing and tax payment programs and improve tax compliance.

the Act, adjust their payroll systems, and transfer wages from being reported under one state to being reported under a different state in time for the issuance of the 2009 Form W-2 (due to employees by February 1, 2010).

2. **If a state has already amended its withholding allowance certificate for 2009 to provide for this exemption (as Virginia has done), allow the employer to stop withholding, but also allow the employer to continue to accumulate the wages for the rest of 2009 in that state and accordingly report the wages for that state on the W-2 (as well as any other form the state may have) for 2009.** That will allow this issue to be handled the same way across all states – those that amend their withholding allowance certificates and those that don't. Again, let the relief for 2009 be taken by the individual when he or she files the 2009 state personal income tax return. This means that 2009 Forms W-2 will reflect wages earned in a state in which an individual is entitled to exemption under the Act. State personal income tax return forms will need to provide a means to claim the exemption and report the earnings that appear on forms W-2 that are not subject to income tax.
3. **Each state should amend at least one of its withholding allowance certificates to provide a method for the employee to claim exemption from that state's income tax under the terms of the Military Spouses Residency Relief Act. Instructions for such withholding allowance certificates should also be added to notify the taxpayer of the need to file a new withholding certificate in the event that the exemption no longer applies (such as if the employee divorces or becomes a permanent resident of the state in which services are being performed). There should be a separate line for an employee to terminate his or her claim of exemption**
4. **Employers should be expected to process and honor any such claim on only a prospective basis.** Generally, employers will implement these claims as soon as is practical. However, employers should also be allowed some lead time to implement the claim. A deadline could be established, following the model used for federal Forms W-4: the first payroll period ending on or after the 30th day following the provision of the certificate by the employee to the employer.
5. **The amended withholding allowance certificate should also include a space for the employee to identify his or her state of residence/domicile.** If the employer has nexus in that state or if the employer voluntarily withholds and reports for that state, this will allow the employer to withhold and deposit that state's income tax and report the wages and taxes to that state, as required under that state's rules. Related instructions should advise that it may be necessary to provide a separate withholding certificate to the employer for the state of residence/domicile, and that the employer may not be required to withhold tax in the state of residence/domicile. Taxpayers should be advised of the potential need to make periodic estimated payments to the state of residence/domicile directly if the employer does not withhold income taxes for the state in question.
6. **If any state wants the employer to maintain some additional documentation to support an employee's claim of exemption, the withholding allowance certificate should direct the employee to provide that documentation to the employer and make it clear that the exemption cannot be claimed unless that documentation is provided.**
7. **It should be made clear to employers, via the certificate, state withholding instructions, and/or any other state guidance, that for an employee claiming relief under the Act by filing the proper state withholding allowance certificate and providing any other required documentation, income tax should not be withheld for that state and the wages should not be reported to that state.**
8. **If an employee has properly completed the withholding allowance certificate and provided any additional documentation (as described in items 3-6 above), and if the employer has maintained that certificate and documentation (in accordance with that state's records retention requirements), the employer should be held harmless from any liability for the tax or any penalties for failure to withhold tax for, or report wages to, that state, even if the state subsequently determines that the individual was not entitled to relief under the Act.**



9. **We concur with the concept that each claim of exemption should apply only for one year (the tax year for which the withholding allowance certificate is provided to the employer). We prefer that all states adopt the same standard for this item.**
10. **If a state does adopt the standard mentioned in item 9 above, we recommend that no grace period be allowed for each year's withholding allowance certificate.** While some states may allow a grace period for other claims of exemption from withholding (and the federal government allows a grace period through February 15), this claim is different, as it also involves a change in the state to which the wages will be reported. To find out on, for example, February 15, that an employee is no longer entitled to relief under the Act would mean that the employer would have to reclassify the wages paid up to that date from one state to another.
11. **Agreement on item 10 above may have a different impact on the handling of different states' withholding allowance certificates.**
 - a. In states that issue a new certificate each year, an employee claiming relief under the act could be expected to complete the certificate that corresponds to the year for which he or she is claiming relief. We hope these states will issue their new certificates in time for employers to learn about them, distribute them to employees, and collect them from employees before the processing of the first payroll of the year (which may be processed in late December of the prior year).
 - b. In states that do not issue a new certificate each year, the certificate may need to include a mechanism for indicating the year for which the relief is claimed, such as a blank, on the line on the form at which this relief is claimed, in which the employee can indicate the year for which the relief is being claimed.
12. **An employee's communication to an employer that he or she is no longer married, other than by marking the line on the withholding allowance certificate to terminate the claim of relief under the Act (see item 3 above), should not be a trigger for the employer to terminate the relief.** There needs to be one standard by which an employer turns off the relief. We can't rely on other methods. Not all withholding allowance certificates request an employee's marital status. In addition, some married taxpayers use the "Single" designation to gain the higher withholding rates.
13. **Can FTA and/or the states exert influence over any municipal tax authorities within their borders to implement the same methods as the states?**

Again, we appreciate the opportunity to take part in your process. Please feel free to contact either of us at any time for further input.

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