

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 149

June 24, 1958

RESIDENCE: WIFE OF MILITARY PERSONNEL

Syllabus:

For purposes of taxation under the Personal Income Tax Law, a nonresident woman who marries a California resident while he is serving in the Armed Forces outside of California under military orders is not a resident of this State until such time they return to this State.

Advice is requested regarding the residence status of a woman who marries a member of the Armed Forces who is outside of California under military orders for purposes of taxation under the Personal Income Tax Law. And further, to what extent are the earnings of the husband and wife subject to taxation.

The Soldier's and Sailor's Civil Relief Act provides that an individual will not acquire a new, or lose an established residence or domicile, solely by reason of his service in the Armed Forces. The law is equally clear that in the ordinary case the domicile of the wife follows that of her husband. The residence definitions of the Personal Income Tax Law are correlated with presence within the state either past or present, and where, as here, the individual has never been in California, we would be attempting to tax someone that the law was never intended to reach. Therefore, although she acquires a California domicile, for purposes of the Personal Income Tax Law, she has a nonresident status.

Under the Soldier's and Sailor's Civil Relief Act, compensation for military or naval service has its source in the state of original residence. Therefore, the earnings of the resident husband would be liable to taxation. However, the wife's earnings are not from sources within the State, but since she has a California domicile by operation of law, the husband is taxable upon one half of her earnings as they are community property.