

HOME SWEET HOME: A PRACTICAL APPROACH TO DOMICILE

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*There's no place like home.*²

I. Introduction

“So, where are you from?” For those who have traveled or moved before, this is a common question. It comes from the curious new neighbor, the friendly waitress, or even the new Staff Judge Advocate. It seems relatively innocuous. But to many military service members, this is the question that makes them break out in a cold sweat, looking around for somebody, *anybody*, to help them give the right answer. For these unfortunate individuals, there may be no right answer. They might stammer out, “Well, right now I’m living in Virginia.” Perhaps they will name the connection to the last place they lived before they joined the military: “I’m originally from North Carolina, but I haven’t actually lived there since 1986.” For those whose parents were also in the military, the answer becomes even more of a dilemma: “Well, um, my dad was in the Army, and I went to high school in Alexandria, Virginia, so I guess I call Virginia home.”

This question turns even more confusing when clients visit the Legal Assistance office. Both Legal Assistance attorneys and paralegals fre-

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2. THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939).

quently ask the question, “Where are you a legal resident?”³ Often, either because they do not want to have to think about it or because they truly do not know, soldiers will randomly choose a state to claim as their legal residence. What they do not realize, however, is that there are many legal ramifications stemming from a person’s state of legal residence, or domicile. Consequently, it is crucial for soldiers to know where they are domiciliaries.

Unlike many of their civilian counterparts, military service members are in the unique position of having ties to many states. These multiple connections may make it difficult to determine which is the state of domicile. Additionally, they create various forums in which service members can potentially establish a new domicile. As a result, service members should have a basic understanding of domicile, how one acquires a domicile, and the consequences of that choice.

This article is intended to help service members understand the fundamentals of domicile by defining domicile, explaining the acquisition of domicile, and differentiating it from the other terms often connected with domicile. Furthermore, the article will help service members recognize the multiple consequences that stem from domicile by discussing the impact on judicial jurisdiction, choice of law, and governmental benefits and burdens. Finally, the article will provide service members with the necessary tools to determine their current state of domicile, make an informed decision about selecting and acquiring a new domicile,⁴ and take the appropriate steps required to change their domicile. With this background, service members should be less panicked when deciding which state to call “home.”

3. Common situations in which legal residence is important to a Legal Assistance office include preparing powers of attorney, preparing tax returns, drafting wills, and counseling on family law issues.

4. Although this article discusses numerous consequences of domicile that service members should consider, it focuses primarily on financial consequences, to include state individual income tax, in-state tuition consequences, and the Alaska Permanent Fund Dividend.

II. The Basics

There are numerous terms associated with domicile—many of which are frequently misunderstood or misinterpreted. Terms such as domicile, residence, legal residence, and home of record all have different meanings and connotations. Sorting through these terms, their definitions, and requirements is the first step on the path to choosing a state of domicile.

A. Domicile

Domicile refers to “a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.”⁵ A person’s domicile establishes a legal connection to that particular place and ties that person to the legal system of that territory.⁶ Domicile arises in three different ways: (1) by birth (domicile of origin); (2) by the extent of a person’s connections to a certain place (domicile of choice); or (3) by law (domicile by operation of law).⁷

1. Domicile of Origin

Every person acquires a domicile at birth, known as the domicile of origin, or natural domicile.⁸ The domicile of origin is based not on the place of birth, but on the domicile of a child’s parents at the time of his birth.⁹ This domicile continues to be applicable until the parents select a new domicile (if the child is a minor) or until the adult child acquires a domicile of choice.¹⁰

5. BLACK’S LAW DICTIONARY 501 (7th ed. 1999); accord *Gilbert v. David*, 235 U.S. 561, 569 (1915) (citing *Price v. Price*, 27 A. 291, 292 (Pa. 1893)).

6. *Williamson v. Osenton*, 232 U.S. 619, 625 (1914) (citing *Bergner & Engel Brewing Co. v. Dreyfus*, 172 Mass. 154, 157 (1898)).

7. *Adams v. Smith (In re Estate of Jones)*, 182 N.W. 227, 228 (Iowa 1921) (providing a framework for understanding and determining domicile).

8. BLACK’S LAW DICTIONARY 501 (7th ed. 1999).

9. *Prentiss v. Barton*, 19 F. Cas. 1276, 1277 (C.C.D. Va. 1819) (No. 11,384). If the parents have different domiciles and the child is legitimate, it will have the domicile of its father. If the child is born after the death of its father or is illegitimate, it will have the domicile of its mother. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 14 (1971) [hereinafter RESTATEMENT].

2. Domicile of Choice

Domicile of choice is the place that a person chooses for himself to replace a previous domicile.¹¹ Because acquiring a domicile of choice requires the mental capacity to make a legal decision, only adults may make this choice.¹² Consequently, minors are presumed to have the same domicile as their parents.¹³

To acquire a domicile of choice, a person must be physically present at a place and must have the intention to make a permanent home there.¹⁴ A person cannot acquire a domicile without meeting both of these requirements.¹⁵ Furthermore, physical presence and intention to remain must exist at the same time.¹⁶

Traditionally, physical presence has been interpreted to mean actual residence in that place.¹⁷ Even so, the length of time that a person must spend at that place is not settled—it may be a considerable length of time or only a moment.¹⁸ In fact, there is no requirement to actually establish a home there, as long as the intent is to make one's permanent abode in that place.¹⁹ Nevertheless, a person rarely forms enough connections to a place

10. *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989); *Prentiss*, 19 F. Cas. at 1277 (“[B]y the general laws of the civilized world, the domicil of the parents at the time of birth, or what is termed the ‘domicil of origin,’ constitutes the domicil of an infant, and continues, until abandoned, or until the acquisition of a new domicil, in a different place.”).

11. *Adams*, 182 N.W. at 228.

12. RESTATEMENT, *supra* note 9, § 15.

13. *Mississippi Band of Choctaw Indians*, 490 U.S. at 48; RESTATEMENT, *supra* note 9, § 22.

14. *Mississippi Band of Choctaw Indians*, 490 U.S. at 48; *Gilbert v. David*, 235 U.S. 561, 569 (1915); *Prentiss*, 19 F. Cas. at 1277; *Price v. Price*, 27 A. 291, 293 (Pa. 1893); RESTATEMENT, *supra* note 9, § 15.

15. RESTATEMENT, *supra* note 9, § 15.

16. *Id.*

17. See *Texas v. Florida*, 306 U.S. 398, 424 (1939) (citing BEALE, *Conflict of Laws* § 15.2); *White v. Tennant*, 8 S.E. 596, 597 (W. Va. 1888) (citing WHARTON, *Conflict of Laws* § 21).

18. *White*, 8 S.E. at 597; RESTATEMENT, *supra* note 9, § 16 cmt. b.

19. *White*, 8 S.E. at 597; RESTATEMENT, *supra* note 9, § 16.

to acquire a domicile without actually residing there or spending some amount of time there.²⁰

The more scrutinized factor in acquiring domicile is a person's intent to make a place his permanent home.²¹ Courts and scholars agree that a person's domicile is not lost until he establishes a new one.²² Accordingly, a person bears the burden of proof to show that he has acquired a new domicile.²³ In determining where domicile exists, courts will look to "all the circumstances of [a person's] life" for "indicat[ions] that his real attitude and intention with respect to his residence [in a place] were to make it his principal home or abiding place to the exclusion of others."²⁴

Specific evidence considered by the courts to show intent includes formal declarations, informal declarations, and acts by a person.²⁵ Formal declarations, such as affidavits, stating one's intent to establish domicile in a place often are not enough, by themselves, to show the requisite intent.²⁶ Informal declarations made to friends and acquaintances expressing a love for a place or a desire to make a home there carry more weight, as they are usually made without consideration of legal ramifications.²⁷ A person's actions—how he lives his life and where he establishes the most connections—are the most convincing evidence of his intent to establish domicile in a particular place.²⁸

20. RESTATEMENT, *supra* note 9, § 16 cmt. b.

21. *Id.* at Special Note on Evidence for Establishment of a Domicil of Choice.

22. *Von Dunser v. Aronoff*, 915 F.2d 1071, 1072 (6th Cir. 1990); *Adams v. Smith (In re Estate of Jones)*, 182 N.W. 227, 230 (Iowa 1921); RESTATEMENT, *supra* note 9, § 19.

23. RESTATEMENT, *supra* note 9, § 19 cmt. c.

24. *Texas v. Florida*, 306 U.S. 398, 425 (1939).

25. RESTATEMENT, *supra* note 9, at Special Note on Evidence for Establishment of a Domicil of Choice.

26. *Id.*; *see, e.g., Texas*, 306 U.S. at 425 ("[W]hile one's statements may supply evidence of the intention requisite to establish domicile at a given place of residence, they cannot supply the fact of residence there and they are of slight weight when they conflict with the fact.").

27. RESTATEMENT, *supra* note 9, at Special Note on Evidence for Establishment of a Domicil of Choice; *see, e.g., Texas*, 306 U.S. at 425 (placing greater weight on a deceased's prior statements to friends than on his statements to tax assessors).

28. RESTATEMENT, *supra* note 9, at Special Note on Evidence for Establishment of a Domicil of Choice.

The types of activities that show intent are frequently those that are associated with everyday living. For example, the Supreme Court in *Texas v. Florida* paid particular attention to the large size of a decedent's home in a particular state, as well as his furnishing that home with family heirlooms, centering his activities associated with his interests in that state, and spending the majority of his time in that state.²⁹ Other activities considered by common law courts include where a person works, where he votes, where he belongs to a church, where he banks, and where he pays taxes.³⁰ Based on this common law background for examining intent, many states have codified the definition of domicile and the activities that are considered to show intent to make a place one's permanent home.³¹ Common elements of these statutory definitions include where a person owns a house, keeps his personal property, houses his family, works, conducts business, votes, pays taxes, and registers his motor vehicle.³² Some states have taken these elements to the extreme, creating a formulaic approach to demonstrating intent that requires individuals to complete at least a portion of the following tasks: purchasing a residence in the state, registering to vote, registering an automobile, maintaining a driver's license, maintaining a checking, savings, or safety deposit box, having a will or other legal documents on file in the state that indicate residence in the state, having membership in professional organizations in the state, and establishing a business in the state.³³ Although courts, statutes, and other state agencies typically consider similar activities to demonstrate intent, each case should be considered individually based on all the relevant circumstances.³⁴

For service members, the statutory definitions of domicile may be disconcerting. After all, service members frequently change homes pursuant to assignment orders. At each new location, they may purchase or rent a home, maintain their personal property, house their family, work, and attend a church. They are physically located in a new state and have accomplished many of the activities that demonstrate intent to remain permanently. Nonetheless, service members do not automatically gain a new domicile each time they move, nor are they subject to the legal consequences of association with that state.

29. *Texas*, 306 U.S. at 426.

30. RESTATEMENT, *supra* note 9, at Special Note on Evidence for Establishment of a Domicile of Choice; *see, e.g.*, *District of Columbia v. Murphy*, 314 U.S. 441, 447-8 (1941) (applying these elements to determine domicile for tax purposes).

31. *See, e.g.*, ALASKA ADMIN. CODE tit. 15, § 23.173 (2003); MICH. ADMIN. CODE R. 206.5 (2001); VA. CODE ANN. § 24.2-101 (Michie 2003).

32. *See* ALASKA ADMIN. CODE tit. 15, § 23.173 (2003); MICH. ADMIN. CODE R. 206.5 (2001); VA. CODE ANN. § 24.2-101 (2003).

As with any other person, a service member maintains his domicile until he acquires a new one by showing his intent to make a place his new permanent home.³⁵ The Soldiers' and Sailors' Civil Relief Act of 1940³⁶ (SSCRA) ensures that service members are protected from acquiring a new domicile against their will for at least some purposes.³⁷ The SSCRA specifically provides that for the purposes of taxation, service members do not lose their domicile or acquire a new one if they are in a state solely because

33. See, e.g., TEXAS HIGHER EDUCATION COORDINATING BOARD, RULES AND REGULATIONS: DETERMINING RESIDENCE STATUS (2001), available at <http://www.collegefortexas.com/additional/> (last visited Dec. 2, 2003). One of the many formulas used by Texas schools to determine domicile applies specifically to service members. The pertinent text provides:

A member of the U.S. Armed Forces whose state of record is not Texas may change his/her residency to Texas if he/she does the following things at least 12 months prior to the member's enrollment:

(I) is assigned to duty in Texas at least 12 consecutive months, during which the member files proper documentation with the military to change his/her permanent residence to Texas, and

(II) meets four of the 8 conditions listed below for the 12 months prior to enrollment:

(III) purchase a residence in Texas and claim it as a homestead;

(IV) register to vote in Texas;

(V) register an automobile in Texas;

(VI) maintain a Texas driver's license;

(VII) maintain checking, savings or safety deposit box in Texas;

(VIII) have a will or other legal documents on file in Texas that indicate residence in Texas;

(IX) have a membership in professional organizations or other state organizations; and/or establish a business in Texas;

(X) establish a business in Texas.

Id.

34. *Murphy*, 314 U.S. at 458. The court rejects a set approach, stating:

Our mention of these considerations as being relevant must not be taken as an indication of the relative weights to be attached to them, as an implied negation of the relevance of others, or as an effort to suggest a formula to handle all cases that may arise, or the possibility of devising one.

Id.

35. *Von Dunser v. Aronoff*, 915 F.2d 1071, 1072 (6th Cir. 1990); *Adams v. Smith (In re Estate of Jones)*, 182 N.W. 227, 230 (Iowa 1921); RESTATEMENT, *supra* note 9, § 19.

36. 50 U.S.C. App. § 574 (2003).

37. *Id.*

of compliance with military orders.³⁸ Although the SSCRA applies to domicile for all types of taxation, to include income tax and personal property tax, it does not apply to domicile for other purposes.³⁹ For other purposes, service members must look to the applicable state statutes and general common law concerning domicile. In most cases, however, states recognize the unique status of military members and respect their choice of domicile.⁴⁰

After experiencing life in a variety of states, many service members choose to acquire a domicile of choice in a state in which they are stationed. Because a person may only have one domicile,⁴¹ this choice will force them to abandon their original domicile, whether acquired by origin or choice. Once a new domicile is acquired, it will then continue as the service member's domicile until he acquires a new one.

3. *Domicile by Operation of Law*

Finally, domicile by operation of law refers to those circumstances in which the law declares an individual's domicile, ignoring his intent and any actions he may have taken to select a domicile.⁴² One example of a

38. *Id.* The pertinent portion of the statute states:

For the purposes of taxation of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become a resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent.

Id.

39. *Id.*

40. See, e.g., ALASKA STAT. § 15.05.020(1) (Michie 2003) ("A person may not be considered to have gained a residence solely by reason of presence . . . while in the . . . military service of . . . the United States . . ."); CAL. ELEC. CODE § 2025 (2003) ("A person does not gain or lose a domicile solely by reason of his or her presence or absence from a place while employed in the service of the United States. . .").

41. RESTATEMENT, *supra* note 9, § 11(2) ("Every person has a domicil at all times and, at least for the same purpose, no person has more than one domicil at a time.").

person acquiring domicile by operation of law is when a minor child, who is unqualified to choose a domicile of his own, acquires the domicile of his parent.⁴³ Another example of this type of domicile arises from the common law rule that a wife automatically assumes her husband's domicile.⁴⁴ Although several states still apply this rule,⁴⁵ the majority of jurisdictions have abandoned the concept.⁴⁶ Consequently, there are very few cases in which domicile is acquired by operation of law, instead of by choice.

B. Residence

People frequently associate and confuse the term "residence" with "domicile." Residence ordinarily means the place where a person physically lives.⁴⁷ It differs from domicile in that although it requires physical presence in a place, it does not require the intent to make a permanent home at that place.⁴⁸ Consequently, a person may have multiple residences at one time, while only having one domicile.⁴⁹

Legally, "the words 'domicile' and 'residence' are not always synonymous at law, nor are they convertible terms."⁵⁰ Nevertheless, many state statutes confusingly use the terms "residence" and "domicile" interchangeably, such that "residence" takes on the meaning of "domicile."⁵¹

42. *Adams v. Smith (In re Estate of Jones)*, 182 N.W. 227, 228-9 (Iowa 1921).

43. *Id.* at 229.

44. *Id.*

45. Major Mary Hostetter, *TJAGSA Practice Note: Legal Assistance Items*, ARMY LAW., Jan. 1993, at 41 (citing 23 ILL. COMP. STAT. ch. 23, para. 2-10 (West 1992), amended by 305 ILL. COMP. STAT. ANN. 5/2-10 (West 2003)).

46. *Id.* at 42; RESTATEMENT, *supra* note 9, § 21 cmt. a.

47. BLACK'S LAW DICTIONARY 1310 (7th ed. 1999).

48. *Id.*

49. *Adams*, 182 N.W. at 228; BLACK'S LAW DICTIONARY 1310 (7th ed. 1999). For example, a retired married couple that has a permanent home in New York, but spends the winters in a temporary home in Florida, may have a residence in both New York and Florida, but a domicile in only New York.

50. *Adams*, 182 N.W. at 228.

51. See, e.g., N.C. GEN. STAT. § 116-143.1 (2003) ("A . . . 'resident' is a person who qualifies as a domiciliary of North Carolina"); TEX. EDUC. CODE § 54.052 (2003) ("In this subchapter, 'residence' means 'domicile.'"); TEX. ELEC. CODE § 1.015 (2003) ("In this code, 'residence' means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence."); VA. CODE ANN. § 24.2-101 (Michie 2003) ("'Residence' . . . means and requires both domicile and a place of abode.").

While some of these statutes provide definitions that make their intent clear, explaining, for example, that “residence” means “domicile,”⁵² others offer no guidance concerning their use of the term “residence.” In the latter case, state courts have been forced to decide what the statute actually means when it refers to a “resident” or “residence.”

When determining the meaning of “residence” for a particular statute, nearly all state courts base their interpretation on the intent of the statute.⁵³ For example, in motor vehicle statutes that have special service of process provisions for nonresidents who are involved in automobile accidents, both state and federal courts base their analysis on the statute’s purpose of creating a means for serving summons on “transient motorists or nonresidents who are only temporarily within the state.”⁵⁴ Despite their reliance on the same analysis of nearly identical statutes, courts reach different conclusions as to the intended meaning of “residence.” The District Court of Maryland found in *Suit v. Shailer* that residence did not equate to domicile,⁵⁵ while the Court of Appeal of California decided in *Briggs v. Superior Court of Alameda County* that residence meant more than just temporary presence in the state.⁵⁶ Although these two findings are not diametrically opposed, they do not help to create a uniform definition for residence, even as used in this particular type of statute. Courts recognize this weakness, calling the term “residence” a “slippery eel” whose definition

52. See, e.g., TEX. EDUC. CODE § 54.052 (2003) (“In this subchapter, ‘residence’ means ‘domicile.’”).

53. See, e.g., *Briggs v. Superior Court of Alameda County*, 183 P.2d 758, 762 (Cal. Dist. Ct. App. 1947) (“To determine [residence’s] meaning, it is necessary to consider the purpose of the act.”); *State v. Tustin*, 322 S.W.2d 179, 181 (Mo. Ct. App. 1959) (“The meaning of the word ‘resident’ depends upon the purpose in the law where the word is employed.”); *Cincinnati, H. & D. R.R. Co. v. Ives*, 3 N.Y.S. 895, 896 (N.Y. 1889) (“‘Residence’ is the favorite term employed in statutes to express the connection between person and place; its exact significance being left to construction, to be determined from the context, and the apparent object sought to be attained.”) (citing *Bell v. Pierce*, 51 N.Y. 12 (N.Y. 1872)).

54. *Suit v. Shailer*, 18 F. Supp. 568, 571 (D. Md. 1937); accord *Briggs*, 183 P.2d at 762.

55. *Suit*, 18 F. Supp. at 571 (“Looking at the [statute’s] evident purpose . . . and the mischief to be remedied, it seems apparent that [equating residence to domicile] puts an artificial and strained construction upon the term ‘nonresident’ which, for all practical purposes in relation to the subject matter, is far removed from actualities.”).

56. *Briggs*, 183 P.2d. at 758 (holding that a couple who moved all of their belongings to California and lived in the state for six weeks were nonresidents for purposes of the statute). “No one would contend that under the Vehicle Code the mere presence of a defendant in the state constitutes him a resident.” *Id.* at 762.

will “wriggle out of our hands when used in another context or in a different sense.”⁵⁷

Despite the apparent confusion created by different interpretations of “residence,” a few courts choose not to rely on the purpose of a statute when defining the term. For example, the Court of Appeals of Washington in *State v. Pray* based its interpretation of “residence” as it related to a sex offender registration statute on nothing more than the definition in the dictionary.⁵⁸ Similarly, the Supreme Court of Michigan in *Bingham v. American Screw Products Company* relied on its previous definition of “residence” in an unrelated case to interpret the meaning of “residence” in an employment security act.⁵⁹ The court stated that since the statute did not define “residence,” it was required to apply the definition from an 1898 case.⁶⁰ Although the court ultimately also considered the intent of the statute, this consideration was secondary to the court’s application of what it deemed to be an established, unchanging definition.⁶¹

No matter what types of analysis courts use to interpret “residence,” the term has clearly developed different meanings for different purposes.⁶² In an effort to provide some consistency, the Restatement (Second) of the Conflict of Laws offers the following rules for interpreting “residence” within a statute for specific purposes: (1) for judicial jurisdiction, voting, eligibility to hold office, exemptions from the claims of creditors, liability for inheritance and poll taxes, and certain personal property taxes, residence has the same meaning as domicile; (2) for divorce and homestead exemption laws, residence refers to a domicile where a person actually lives; and (3) for income taxation, attachment, school privileges and constructive service on nonresident motorists, residence actually means residence (where a person lives).⁶³ States generally adhere to these

57. *Tustin*, 322 S.W.2d at 180.

58. *State v. Pray*, 980 P.2d 240, 242 (Wash. Ct. App. 1999). In analyzing the meaning of “residence,” the court stated that “[i]n the absence of a specific statutory definition, words in a statute are given their ordinary meaning. A non-technical word may be given its dictionary meaning.” *Id.*

59. *Bingham v. American Screw Prods. Co.*, 248 N.W.2d 537 (Mich. 1976).

60. *Id.* at 546.

61. *Id.*

62. *Suit v. Shailer*, 18 F. Supp. 568, 571 (D. Md. 1937) (“The meaning of the word ‘resident’ varies with the context and subject matter. When used in connection with the exercise of political rights it may have a different connotation from that given where it is used to determine property rights.”).

63. RESTATEMENT, *supra* note 9, § 11 cmt. k.

interpretational rules.⁶⁴ Nonetheless, because the meaning of “residence” has become so ambiguous, it must be evaluated in each case.⁶⁵

Adding to the confusion between residence and domicile is the term “legal residence.” For all purposes, legal residence is synonymous with domicile.⁶⁶ Consequently, legal residence requires both physical presence and the intent to remain permanently.⁶⁷

C. Home of Record

Unlike domicile and residence, “home of record” is a military-specific term that does not carry with it any legal ramifications.⁶⁸ Home of record is used solely to determine the distance for which the Army will pay to move service members and their belongings when they separate from military service.⁶⁹ Home of record is based on the place where the service member entered the Army; it is unrelated to the service member’s domicile or residence.⁷⁰ Essentially, then, home of record is a misnomer, since it has absolutely nothing to do with the service member’s home. Although a service member’s home of record has no independent legal significance,

64. See, e.g., ALASKA STAT. § 15.05.020 (Michie 2003) (a state voting statute that equates residence to domicile); HAW. REV. STAT. § 235-1 (2002) (a state income tax statute that defines resident as anyone who is in the state for more than two hundred days of the taxable year); TEX. FAM. CODE § 6.301 (2002) (a state divorce statute that requires both domicile and present residence in the state).

65. RESTATEMENT, *supra* note 9, § 11.

66. BLACK’S LAW DICTIONARY 907 (7th ed. 1999).

67. See *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989); *Gilbert v. David*, 235 U.S. 561, 569 (1915); *Prentiss v. Barton*, 19 F. Cas. 1276, 1277 (C.C.D. Va. 1819) (No. 11,384); *Price v. Price*, 27 A. 291, 293 (Pa. 1893); RESTATEMENT, *supra* note 9, § 15.

68. Legal Assistance Policy Division, U.S. Army’s Judge Advocate General’s Corps, *Domicile—Questions & Answers* (last visited Dec. 2, 2003), at <http://www.jagc-net.army.mil/Legal>.

69. *Id.*; I JOINT FED. TRAVEL REGS. PU5125A (1 Aug. 2001); U.S. DEP’T OF ARMY, REG. 55-71, TRANSPORTATION OF PERSONAL PROPERTY AND RELATED SERVICES glossary (15 Sept. 1984).

70. *Id.*

many states rely on military home of record when determining residence for individual income tax purposes.⁷¹ This erroneous reliance on military home of record to create potential tax liabilities is yet another reason why it is important for service members to clearly establish domicile in the state of their choice.

III. Consequences of Domicile

Understanding the difference between domicile, residence, and home of record is the first step in determining, selecting, and acquiring domicile. The second step is recognizing the many consequences of domicile. Aside from determining where he calls home, a person's domicile impacts his life in three significant ways: (1) judicial jurisdiction; (2) choice of law; and (3) governmental benefits and burdens.⁷²

A. Judicial Jurisdiction

By establishing domicile in a state, a person subjects himself to the judicial jurisdiction of that state.⁷³ A domiciliary is subject to this jurisdiction at all times, whether present in the state or not, such that the courts may issue personal judgments against him.⁷⁴ Additionally, the state of domicile determines where the courts have jurisdiction for a person to ini-

71. See, e.g., IDAHO DEP'T OF ADMIN., ADMIN. RULES § 35.01.01, R.032 (2002) ("The domicile of a qualified service member is presumed to be that member's military home of record . . ."); Iowa Dep't of Revenue and Finance, *Iowa Withholding and Income Taxes for Military personnel*, at <http://www.state.ia.us/tax/educate/78583.html> ("[a] military person is an Iowa resident if . . . Iowa is declared as his or her Military Home of Record.") (last visited Dec. 2, 2003); Connecticut Dep't of Revenue Services, *Overview of Connecticut Income Tax*, at <http://www.drs.state.ct.us/taxassistance/Indvtxpg/overview.html#FILREQ5> (last visited Sept. 21, 2003) (stating incorrectly that "[p]ersons in the armed forces can only be taxed on their military income in the state of their domicile or home of record, regardless of where they are stationed") (emphasis added).

72. RESTATEMENT, *supra* note 9, § 11 cmt. c.

73. *Id.*

74. *Id.*

tiate a legal action.⁷⁵ The legal bonds that are created by acquiring domicile remain until a new domicile is acquired.⁷⁶

75. *Id.* For service members, issues of judicial jurisdiction most often arise when filing an action for divorce. (In 2001, Army Legal Assistance Offices assisted over 29,000 clients with divorce issues. Legal Assistance Policy Division, Office of the Judge Advocate General, 2001 Client Information Services Report (generated 1/19/2002). This amounts to seventeen percent of all legal assistance clients. *Id.*) The state where at least one of the spouses is domiciled at the time of suit may terminate a marriage, issue a decree of judicial separation, and grant an annulment. RESTATEMENT, *supra* note 9, § 11 cmt. c. Most states will require a period of residence before a petition for divorce may be filed. *See, e.g.*, N.C. GEN. STAT. § 50-6 (2003) (requiring either plaintiff or defendant to reside in the state for a period of six months prior to dissolution of the marriage); TEX. FAM. CODE § 6.301 (2003) (requiring either the petitioner or the respondent to have been a domiciliary for at least six months prior to the suit being filed); VA. CODE ANN. § 20-97 (Michie 2003) (requiring at least one of the parties to have been an “actual bona fide resident” for at least six months prior to suit). Many states, including Georgia, Texas, and Virginia, have special provisions for service members, requiring only that a service member be stationed at a military installation in the state for a period of time before filing suit for dissolution of a marriage. GA. CODE ANN. § 19-5-2 (2002) (permitting a service member to bring suit after one year residence is on a military installation in the state); TEX. FAM. CODE § 6.304 (2003) (permitting a service member to file suit after being stationed at a military installation in the state for six months); VA. CODE ANN. § 20-97 (Michie 2003) (permitting a service member to file for divorce after being stationed at a military installation in the state for six months). As a result, service members wishing to file for divorce should usually do so not in the state of their domicile, but instead in the state in which they currently reside.

76. *See* Von Dunser v. Aronoff, 915 F.2d 1071, 1072 (6th Cir. 1990); Adams v. Smith (*In re* Estate of Jones), 182 N.W. 227, 230 (Iowa 1921); RESTATEMENT, *supra* note 9, § 19.

B. Choice of Law

A person's domicile also determines which state's law will be applied to legal matters concerning personal status, such as validity of a marriage,⁷⁷ legitimacy of a child, and distribution of property at death.⁷⁸ In these types of cases, where the local law of a person's domicile governs an issue, the state that is deciding which law to apply will make the determination of domicile based on its own rules.⁷⁹

C. Governmental Benefits and Burdens

Service members who have limited contact with the judiciary will be most concerned about the domiciliary consequence of the benefits and burdens imposed by the state of domicile, since they impact each and every citizen. For example, a state permits its domiciliaries to vote⁸⁰ and hold public office.⁸¹ It also provides education and support to its domiciliaries.⁸² On the other hand, a state may also subject its residents to forms

77. For example, in cases where relatives marry, states in which the spouses were domiciled prior to their marriage and to which they return after the marriage may apply their own laws to determine the validity of the marriage even if the persons were married outside the state. RESTATEMENT, *supra* note 9, § 283 cmt. c.

78. RESTATEMENT, *supra* note 9, § 11 cmt. c. For example, where a person is domiciled may determine the choice of law that affects service members particularly in the area of decedents' estates. (In 2001, Army Legal Assistance Offices assisted over 36,500 clients with wills. Legal Assistance Policy Division, Office of the Judge Advocate General, 2001 Client Information Services Report (generated 1/19/2002). This amounts to twenty-two percent of all legal assistance clients. *Id.*) Domicile can impact the validity of a service member's will, succession of personal property, and appointment of a personal representative and guardian. RESTATEMENT, *supra* note 9, § 11 cmt. c. The law of the state of domicile at the time of death governs intestate distribution of personal property. *Id.* Likewise, the elective share to which a spouse is entitled is tied to the state of domicile. ALASKA STAT. § 13.12.202 (Michie 2003) ("The surviving spouse of a decedent who dies domiciled in this state has a right of election . . ."). Because the amount of the elective share varies from state to state, service members who wish to disinherit their spouses will be greatly affected by their state of domicile. *See id.* (providing an elective share equal to one-third the estate); N.C. GEN. STAT. § 30-3.1 (2003) (providing an elective share of up to one-half of the estate). Additionally, some states have provisions permitting only residents of the state to serve as a personal representative or guardian. *See, e.g.,* N.C. GEN. STAT. § 35A-1213 (2003) ("An individual appointed as general guardian or guardian of the estate must be a resident of the State of North Carolina."); TENN. CODE ANN. § 30-1-116 (2003) ("No nonresident person, bank or trust company may be appointed as the personal representative of an estate of a decedent . . ."). This type of potential restriction is one more way in which the consequences of domicile can have a serious impact on service members.

79. RESTATEMENT, *supra* note 9, § 11 cmt. c.

of personal taxation.⁸³ Because many of these benefits and burdens have a financial impact, service members will experience this effect of their domicile both in the short and long terms. The following financial consequences are likely to have the greatest significance for service members.

1. Tax

A state may impose a variety of personal taxes on its domiciliaries, to include both individual income tax and personal property tax.⁸⁴ Furthermore, states may impose taxes on its residents who are not domiciliaries for other purposes.⁸⁵ Nevertheless, under the provisions of the SSCRA, service members may only be taxed in their state of domicile and not in the state in which they are working and living pursuant to military orders.⁸⁶ Spouses and dependents, on the other hand, are not covered by the SSCRA

80. See Gilbert Veldhuyzen & Samuel F. Wright, *Domicile of Military Personnel for Voting and Taxation*, ARMY LAW., Sept. 1992, at 15-20 (containing an in-depth discussion of the interrelationship between voting, domicile, and taxation). Domicile (commonly referred to as "residence" in most election codes) for voting purposes is determined by following common law rules. *Id.*; TEX. ELEC. CODE § 1.015 (2003) ("Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by this code."); VA. CODE ANN. § 24.2-101 (Michie 2003) (listing common law factors as considerations for determining domicile). For service members, many election codes indicate that domicile is neither gained nor lost based on assignment under military orders. See, e.g., ALASKA STAT. § 15.05.020 (Michie 2003) ("A person may not be considered to have gained a residence solely by reason of presence nor may a person lose it solely by reason of absence while in the . . . military service of . . . the United States . . ."); CAL. ELEC. CODE § 2025 (2003) ("A person does not gain or lose a domicile solely by reason of his or her presence or absence from a place while employed in the service of the United States.").

81. RESTATEMENT, *supra* note 9, § 11 cmt. c.

82. *Id.*

83. *Id.*

84. *Id.* Property tax is established by municipal governments to generate revenue and is not a state-imposed burden. Legal Information Institute, *Property Tax: An Overview*, at <http://www.law.cornell.edu/topics/property-tax.html> (last visited Sept. 21, 2003). Taxable personal property usually consists of motor vehicles, to include motorcycles and trucks, trailers, campers, mobile homes, boats, airplanes and business personal property. Cumberland County, North Carolina, *General Tax Information*, at <http://mainfr.co.cumberland.nc.us/oasgrinf.htm> (last visited Sept. 21, 2003); Loudoun County, Virginia, *Personal Property Tax Questions and Answers*, at <http://www.loudoun.gov/cor/ppt.htm> (last visited Sept. 21, 2003) [hereinafter Loudoun County].

85. See, e.g., DEL. CODE ANN. tit. 30, § 1103 (2003) ("A resident individual of this State means an individual . . . [w]ho maintains a place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State.")

86. 50 U.S.C. app. § 574 (2003).

for this purpose,⁸⁷ and would be required to pay state income tax if they earn wages or other income in the state.

The SSCRA-imposed exemption from taxation applies to both income and personal property taxes; consequently, military members who do not maintain a domicile in the location to which they are assigned are not responsible for personal property tax.⁸⁸ As with income tax, spouses and dependents would be required to pay local personal property tax.⁸⁹ In many locations, if the property is titled jointly, the military member will be liable for local personal property tax.⁹⁰ A service member's ultimate liability to a state for both income and personal property tax must be evaluated on an individual basis.

2. In-State Tuition Rates

As opposed to the burden of income tax, a benefit of domicile is that states with public colleges and universities charge lower tuition rates for students who are domiciliaries or residents of that state.⁹¹ Whether using the term domicile or residence, most state statutes base eligibility for in-state tuition on the common law requirements for domicile of physical presence and intent to make the state a permanent home.⁹² Additionally, the statutes recognize that many prospective students are minors who share the domicile of their parents and provide that students in this situation (generally referred to as "dependent")⁹³ share the residence of the parent with whom they live.⁹⁴ Some states also permit a dependent child whose

87. See Virginia Dep't of Taxation, *Residency Status*, at <http://www.tax.state.va.us/site.cfm?alias=ResidencyStatus#MILITARY> (last modified Feb. 13, 2003) ("The tax exemption provided for members of the armed forces does not apply to spouses and other family members.").

88. *Id.*

89. See Loudon County, *supra* note 84.

90. See, e.g., *id.* ("If the vehicle is titled jointly with a nonmilitary person, you will be liable for both the regular vehicle decal fee and personal property tax in Loudon County if the same tax is not paid to the registered owner's legal domicile.")

91. See *infra* App. A.

parents are divorced, separated, or otherwise living apart to claim residence in the state if either parent is a domiciliary of the state.⁹⁵

As with all other benefits of domicile, the burden of establishing domicile in a state for in-state tuition purposes rests on the student.⁹⁶ When evaluating eligibility for in-state tuition, states consider the usual common law factors of domiciliary intent, to include:

continuous residence for at least one year prior to the date of alleged entitlement, state to which income taxes are filed or paid, driver's license, motor vehicle registration, voter registration, employment, property ownership, sources of financial support, military records, a written offer and acceptance of employment

92. See, e.g., FLA. STAT. § 1009.21 (2002) (requiring a resident to “[e]stablish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence . . .”); TEXAS EDUC. CODE § 54.052 (2003) (“‘Residence’ means ‘domicile.’”); UTAH CODE ANN. § 53B-8-102 (2003) (“The meaning of ‘resident student’ is determined by reference to the general law on the subject of domicile . . .”); VA. CODE ANN. § 23-7.4 (Michie 2003) (“‘Domicile’ means the present, fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely.”); N.C. GEN. STAT. § 116-143.1 (2003) (using the same language as the Florida code regarding bona fide domicile).

93. See, e.g., FLA. STAT. § 1009.21 (2002) (using the term ‘dependent child’); TEX. EDUC. CODE § 54.052 (2003) (using the term ‘dependent’); VA. CODE ANN. § 23-7.4 (Michie 2003) (using the term ‘dependent student’).

94. See, e.g., CAL. EDUC. CODE § 68062 (2003) (“The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of the unmarried minor child.”).

95. See, e.g., FLA. STAT. § 1009.21 (2002). The Florida statute provides the following:

The legal residence of a dependent child whose parents are divorced, separated, or otherwise living apart will be deemed to be this state if either parent is a legal resident of this state, regardless of which parent is entitled to claim, and does in fact claim, the minor as a dependent pursuant to federal individual income tax provisions.

Id.

96. See FLA. STAT. § 1009.21 (2002); N.C. GEN. STAT. § 116-143.1 (2003); Office of Academic Records and University Registrar, The University of Alabama, *Residency*, at <http://registrar.ua.edu/residency.html> (last visited Dec. 2, 2003) [hereinafter Office of Academic Records and University Registrar, The University of Alabama].

following graduation, and any other social or economic relationships with the Commonwealth and other jurisdictions.⁹⁷

States also place great weight on other factors specific to residence status for tuition purposes, such as where the student graduated high school and earned his high school diploma or its equivalent.⁹⁸ Ultimately, states may require prospective students to overcome the presumption of nonresident status by submitting evidence of connection to the state in the form of a notarized personal statement and supporting documentation.⁹⁹

Many state statutes include provisions to frustrate attempts to bypass domicile requirements. For example, the Texas Education Code addresses otherwise nonresident students who become wards of residents of Texas or are adopted by residents of Texas “under circumstances indicating that the guardianship or adoption was for the purpose of obtaining status as a resident student.”¹⁰⁰ Likewise, the Florida and North Carolina Education

97. VA. CODE ANN. § 23-7.4 (Michie 2003).

98. *See, e.g.*, TEX. EDUC. CODE § 54.052 (2003). The relevant portion of the code states:

Notwithstanding any other provision of this subchapter, an individual shall be classified as a Texas resident until the individual establishes a residence outside this state if the individual resided with the individual's parent, guardian, or conservator while attending a public or private high school in this state and:

- (1) graduated from a public or private high school or received the equivalent of a high school diploma in this state;
- (2) resided in this state for at least three years as of the date the person graduated from high school or received the equivalent of a high school diploma;
- (3) registers as an entering student in an institution of higher education not earlier than the 2001 fall semester; and
- (4) provides to the institution an affidavit stating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so.

Id.

99. *See, e.g.*, Office of Academic Records and University Registrar, The University of Alabama, *supra* note 96 (advising students to “[b]e sure to sign the application before a notary public and attach your personal statement along with photocopies of all supporting documentation.”).

Codes require students to establish that their (or their parents') residence in the state is "for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education."¹⁰¹ These provisions ensure that this benefit is available only to those students truly domiciled in the state.¹⁰² Important for service members, most states do not penalize a student for his or his parents' service in the Armed Forces; if the student (or his parents in the case of a dependent child) is a domiciliary of a state, he does not lose his resident status for tuition because he is serving in the Armed Forces outside the state.¹⁰³

3. Alaska Permanent Fund Dividend

In addition to the benefit of in-state tuition rates, Alaska also helps support its domiciliaries through its Permanent Fund Dividend. In 1977, the Alaska state government established a savings trust and state development fund known as the Alaska Permanent Fund with the proceeds from mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments, and bonuses received by the state.¹⁰⁴ In 1980, the Alaska State Legislature went one step further and created the Permanent Fund Dividend Program, which pays state residents an annual dividend,¹⁰⁵ ensuring that all eligible Alaskans share the wealth from publicly owned resources.¹⁰⁶ For purposes of the payment, the term resident is equivalent

100. TEX. EDUC. CODE § 54.052 (2003) (classifying these students as nonresident students despite their legal relationship to residents of Texas).

101. FLA. STAT. § 1009.21 (2002); N.C. GEN. STAT. § 116-143.3 (2003).

102. Although in-state tuition is usually reserved for domiciliaries, many states grant resident status for tuition purposes to personnel of the U.S. Armed Forces assigned to active duty within the state, as well as to their immediate family members. *See, e.g.*, FLA. STAT. § 1009.21 (2002); N.C. GEN. STAT. § 116-143.3 (2003); TEX. EDUC. CODE § 54.058 (2003); UTAH CODE ANN. § 53B-8-102 (2003). Although some states continue this benefit for family members even after the active duty service member has been reassigned to another state, *see, e.g.*, TEX. EDUC. CODE § 54.058 (2003), most states discontinue this special consideration once the service member is transferred to another state. *See, e.g.*, N.C. GEN. STAT. § 116-143.3 (2003) (continuing the in-State tuition rate only for the remainder of the academic year); UTAH CODE ANN. § 53B-8-102 (2003).

103. *See, e.g.*, FLA. STAT. § 1009.21 (2002) ("A person shall not lose his or her resident status for tuition purposes solely by reason of serving, or, if such person is a dependent child, by reason of his or her parent's or parents' serving, in the Armed Forces outside this state."); N.C. GEN. STAT. § 116-143.3 (2003) ("No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.").

104. Alaska Permanent Fund Dividend Division, *History*, at <http://www.pfd.state.ak.us/OVERVIEW.HTM> (last updated Jan. 2, 2003).

to domiciliary in that it requires both physical presence in the state and intent to remain permanently in Alaska.¹⁰⁷

Military service members may benefit from the Alaska Permanent Fund Dividend in two ways. First, service members who are Alaska domiciliaries, but are absent from the state because of their active duty military service, are still entitled to receive the dividend.¹⁰⁸ Second, service mem-

105. ALASKA STAT. § 43.23.005 (Michie 2003). For 2002, this payment was \$1540.76 per resident. News Release, Alaska Department of Revenue, Permanent Fund Dividend Program, *Dividend Amount By Year* (Sept. 25, 2002), at <http://www.pfd.state.ak.us/YEARAMOU.HTM>.

106. Alaska Permanent Fund Dividend Division, *supra* note 104.

107. See ALASKA ADMIN. CODE tit. 15 § 23.173 (2003). Factors considered by the Department of Revenue as proof of intent to remain permanently in the state include:

- (1) a contract to move household goods to Alaska, except when there is a contract to move household goods from Alaska at the end of the individual's employment;
- (2) proof of home ownership, a home purchase contract, rent receipts, or other proof that the individual maintains a principal place of abode in Alaska, except when housing is provided as a part of an employment contract;
- (3) employment and unemployment records, including a copy of the leave and earnings statement of a military member for
 - (A) December of the year before the qualifying year; and
 - (B) the most recent month;
- (4) tax records;
- (5) school records;
- (6) voter registration and voting records;
- (7) motor vehicle registration records;
- (8) licensing records such as those for hunting and fishing licenses;
- (9) court or other government agency records; or
- (10) birth or other vital statistics records.

Id.

108. ALASKA STAT. § 43.23.008 (Michie 2003).

bers who are stationed in Alaska pursuant to military orders are eligible to receive the dividend upon a showing of intent to make the state their permanent home.¹⁰⁹ Acts that serve as proof of this intent include, but are not limited to, registering to vote, registering a vehicle, purchasing a home, signing a lease for a home, and obtaining an Alaska driver's license.¹¹⁰ Service members who file for the dividend must be honest in their intent, since civil penalties for misrepresenting a material fact relating to eligibility for the payment include a fine of up to \$5000 and loss of eligibility to receive the next five dividends.¹¹¹ Because military service members may find themselves assigned to Alaska and contemplating establishing domicile in the state, the Alaska Permanent Fund Dividend is a significant financial consequence of domicile that warrants consideration.

IV. Determining, Selecting, and Acquiring Domicile

With an understanding of the basics of domicile and its consequences, this section provides guidance for those service members who are confused about where to call home or who want to choose a new home. It takes into account the transient nature of the military and the associated challenges with determining domicile. It assists service members with selecting a new domicile based primarily on the financial consequences of domicile—weighing the relative burden of income tax in each state with the benefits of in-state tuition and Alaska Permanent Fund Dividend payments. Finally, it outlines some of the steps service members should take to acquire a new domicile.

A. Determining Domicile

Determining domicile requires an examination of all aspects of the service member's life, to include governmental, social, familial, and financial contacts.¹¹² In many cases, the service member will still be domiciled in the state of his domicile at the time of his entry onto active duty. If the service member has maintained significant contacts with this state and has

109. ALASKA ADMIN. CODE tit. 15, § 23.173 (2003).

110. Alaska Dep't of Revenue, *Military Guide for the Alaska Permanent Fund Dividend*, at <http://www.pfd.state.ak.us> (last visited Jan. 29, 2003).

111. ALASKA STAT. § 43.23.035 (Michie 2003).

112. See *Texas v. Florida*, 306 U.S. 398, 425 (1939) (looking to "all the circumstances" of the decedent's life to determine domicile).

not made any overtures toward another state showing intent to make a permanent home, he will not have acquired a new domicile.¹¹³

Other service members, however, may have taken actions in one or more other states that indicate an intention to establish domicile. For example, a service member may have entered military service in State A, where his parents were domiciled, and as an operation of law, he acquired domicile. He registers his car in State A and pays taxes to State A. As he is reassigned during the course of his military career, he purchases real property in State B and registers to vote in State B. Both purchasing real property and voting in State B demonstrate intent to acquire domicile in State B. This service member has established ties to both State A and State B.

A service member who has close connections to more than one state will still only have one domicile.¹¹⁴ If he has significantly more connections to one state than another, then the state to which he has closer ties will be his domicile.¹¹⁵ If he has substantially equal connections to both states, then the state in which he first made his home will be his domicile until he takes the necessary steps to acquire a new domicile.¹¹⁶

B. Selecting a Domicile

Once he has determined his state of domicile, a service member who wishes to abandon that domicile and acquire a new one should select his new home based on his honest long-term intent. If he plans to return to a particular state after completion of his military service, he should make that state his domicile. Attempting to make another state his domicile to avoid taxes or secure a lower tuition rate is the type of subterfuge that states, through their statutes and courts, seek to defeat.¹¹⁷ On the other hand, if a service member is unsure of where he would like to settle, he

113. *See* *District of Columbia v. Murphy*, 314 U.S. 441, 456 (1941) (placing emphasis on the remaining ties to a former place of abode to determine domicile).

114. RESTATEMENT, *supra* note 9, § 11.

115. *Id.* § 20 cmt. b.

116. *Id.*

117. *See, e.g., Texas v. Florida*, 306 U.S. 398 (1939) (finding that the decedent made declarations of domicile in Texas solely to evade taxes in Massachusetts and that Massachusetts was his true domicile); FLA. STAT. § 1009.21 (2002) (requiring proof that residence is for the purpose of establishing bona fide domicile); N.C. GEN. STAT. § 116-143.3 (2003) (using the same language as the Florida statute).

may want to weigh the consequences of domicile in each state to select the state that provides the most advantages.¹¹⁸ Service members should consider how domicile will affect many aspects of their lives—submission to the jurisdiction of courts within a particular location, distribution of their estate and the appointment of a personal representative and guardian of their choice at death, and their ability to vote and perhaps someday hold office in the district of their choice. For many service members, however, these consequences will not carry as much weight as those with the greatest financial impact—individual income tax, in-state tuition, and payment of the Alaska Permanent Fund Dividend.

1. *Income Tax Rates*

Perhaps the most significant consequence of domicile for service members is the imposition of individual income tax. Because state income tax is a long-term liability that can have a considerable financial impact,¹¹⁹ most service members would likely prefer to be domiciliaries of a state with no or very little income tax liability. Investigating state tax laws can prove to be extremely beneficial, since over half the states provide some type of tax advantage to military members.¹²⁰

The seven states that do not have a system of personal income tax are the following: Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming.¹²¹ Additionally, New Hampshire and Tennessee only impose income tax liability on dividends and interest income earned in the

118. The Supreme Court has recognized that a person has the right to select a domicile “for any reason that seem[s] good to her.” *Williamson v. Osenton*, 232 U.S. 619, 625 (1914).

119. For example, a soldier domiciled in North Carolina is liable for state individual income tax ranging from a low of 6% of adjusted gross income to a high of 8.25% of adjusted gross income. *See infra* Appendix B. Consequently, an unmarried private first class with under two years of service whose basic pay equals \$1356.90 per month could pay up to \$800 in state income tax. U.S. Dep’t of Defense, Defense Finance and Accounting Service, *2003 Military Pay Rates*, at <http://www.dfas.mil/money/milpay/pay> (last modified June 12, 2003); *see infra* Appendix B. A married major with children and over twelve years of service whose basic pay equals \$5201.40 per month, Defense Finance and Accounting Service, *infra*, could pay up to \$3700 of state income tax. *See infra* Appendix B.

120. Some advantages include excluding all or a portion of military pay, separation pay, and military retirement pay. *See* Retirement Living Information Center, Inc., *Taxes by State*, at <http://www.retirementliving.com/index.html> (last visited Oct. 4, 2003) (containing a comprehensive review of each state’s taxes); *see also Military taxes: A state-by-state guide*, ARMY TIMES, Feb. 17, 2003, at 37.

121. *See infra* Appendix B.

Appendix A

College and University Tuition Rates²⁰²

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
Alabama	Auburn U ²⁰³	\$4426	\$12,886	\$8460
	U of Alabama at Birmingham ²⁰⁴	\$4274	\$9494	\$5220
	U of Alabama at Tuscaloosa ²⁰⁵	\$4134	\$11,294	\$7160
Alaska	U of Alaska at Fairbanks ²⁰⁶	\$3550	\$9280	\$5730
Arizona	Arizona State U ²⁰⁷	\$3595	\$12,115	\$8520
	U of Arizona ²⁰⁸	\$3604	\$12,374	\$8770
Arkansas	U of Arkansas at Fayetteville ²⁰⁹	\$4526	\$11,276	\$6750
California	U of California at Berkeley ²¹⁰	\$5858	\$20,068	\$14,210
	U of California at Davis ²¹¹	\$5853	\$25,047	\$19,194
	U of California at Irvine ²¹²	\$5804	\$19,784	\$13,480
	U of California at Los Angeles ²¹³	\$5820	\$20,510	\$14,210

²⁰² This table includes only four-year or above public institutions with doctoral programs. The figures represent estimated charges to first-time, full-time undergraduates based on a nine-month academic year of twenty-four to thirty semester hours for the 2003-2004 school year. Required fees, along with tuition, are included in the figures.

²⁰³ Office of the Bursar and Special Funds Accounting, Auburn University, *Auburn University Tuition Structure Effective Fall 2003 Through Summer 2004* (2003), at http://www.auburn.edu/administration/iss/business_office/bursar/.

²⁰⁴ University of Alabama at Birmingham Student Affairs, *UAB Tuition and Fees*, at <http://students.uab.edu/academics/> (last visited Oct. 9, 2003).

²⁰⁵ Office of Student Receivables, The University of Alabama, *Undergraduate Tuition Fall 2003 and Spring 2004*, at <http://cost.ua.edu/> (last visited Oct. 9, 2003).

²⁰⁶ Registrar's Office, University of Alaska at Fairbanks, *Spring 2003 Fee Schedule*, at <http://www.uaf.edu/reg/schedule/expenses.html#fees> (last modified Mar. 13, 2003).

²⁰⁷ Arizona State University, *General Semester Tuition/Fee Rates by Credit Hour: Academic Year 2003/2004 Per Semester Rates*, at <http://www.asu.edu/visitors/> (last visited Oct. 9, 2003).

²⁰⁸ Office of Student Financial Aid, The University of Arizona, *Estimated Cost of Attendance*, at <http://www.arizona.edu/admissions/paying.shtml> (last visited Oct. 9, 2003).

²⁰⁹ Office of Admission, University of Arkansas, *Tuition*, at <http://www.uark.edu/admission.html> (last visited Oct. 9, 2003).

²¹⁰ Office of the Registrar, University of California, Berkeley, *2003-2004 Registration Fees*, at <http://www.berkeley.edu/applying/index.html#undergrad> (last updated Aug. 1, 2003).

²¹¹ University of California, Davis, *Fees, Fees, Fees*, at <http://why.ucdavis.edu/finances.cfm> (last updated Sept. 4, 2003).

²¹² University of California, Irvine, *2003-04 General Catalogue*, at <http://www.uci.edu/prospective.html> (last visited Oct. 9, 2003).

²¹³ Registrar's Office, University of California, Los Angeles, *Graduate, Undergraduate 2002-03 Annual Fees* (2003), at <http://www.registrar.ucla.edu/Fees/>.

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
California	U of California at Riverside ²¹⁴	\$5951	\$20,161	\$14,210
	U of California at San Diego ²¹⁵	\$5508	\$19,718	\$14,210
	U of California at Santa Barbara ²¹⁶	\$5639	\$19,849	\$14,210
	U of California at Santa Cruz ²¹⁷	\$6191	\$20,401	\$14,210
Colorado	Colorado State U ²¹⁸	\$3920	\$14,392	\$10,472
	U of Colorado at Boulder ²¹⁹	\$4022	\$20,346	\$16,326
Connecticut	U of Connecticut ²²⁰	\$6806	\$17,590	\$10,784
Delaware	U of Delaware ²²¹	\$6498	\$16,028	\$9530
Florida	Florida International U ²²²	\$3050	\$13,100	\$10,050
	Florida State U ²²³	\$2860	\$13,888	\$11,028
	U of Florida ²²⁴	\$2770	\$13,800	\$11,030
	U of South Florida ²²⁵	\$2700	\$12,244	\$9544

²¹⁴ Division of Student Affairs, University of California, Riverside, *Estimated Expenses*, at <http://www.admissions.ucr.edu/money.html> (last visited Oct. 9, 2003).

²¹⁵ Financial Aid Office, University of California, San Diego, *2003-2004 Estimated UCSD Undergraduate Basic Budgets*, at <http://orpheus.ucsd.edu/finaid/> (last visited Oct. 9, 2003).

²¹⁶ Financial Aid Office, University of California, Santa Barbara, *Budget*, at <http://www.finaid.ucsb.edu/Budget.asp> (last visited Oct. 9, 2003).

²¹⁷ University of California, Santa Cruz, *Tuition & Fees*, at <http://www.admissions.ucsc.edu/> (last visited Oct. 9, 2003).

²¹⁸ Student Financial Services, Colorado State University, *Costs*, at <http://sfs.colostate.edu/> (last updated Sept. 30, 2003).

²¹⁹ University of Colorado at Boulder, *Estimated Expenses*, at <http://www.colorado.edu/prospective/freshman/index.html> (last visited Oct. 10, 2003).

²²⁰ Student Financial Aid Services, University of Connecticut, *Cost of Attendance*, at <http://vm.uconn.edu/~wwwfaid/> (last visited Oct. 10, 2003).

²²¹ Office of Undergraduate Admissions, University of Delaware, *Finance Your Delaware Education*, at <http://www.udel.edu/main/pros-students/> (last visited Oct. 10, 2003).

²²² Financial Aid Office, Florida International University, *Estimating Your Cost of Attendance*, at <http://www.fiu.edu/orgs/finaid/general.html> (last visited Oct. 10, 2003).

²²³ Florida State University, *Estimated Undergraduate Basic Costs 2003-2004*, at <http://www.fsu.edu/prospective/undergraduate/finances.shtml> (last visited Oct. 10, 2003).

²²⁴ Office of the University Registrar, University of Florida, *2003-2004 Average Annual Costs of Attendance (2003)*, at <http://www.ufl.edu/pstudnts.html>.

²²⁵ UNIVERSITY OF SOUTH FLORIDA, 2003-2004 UNDERGRADUATE CATALOG (2003), at <http://www.ugs.usf.edu/catalogs.htm>.

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
Georgia	Georgia Institute of Technology ²²⁶	\$4076	\$16,002	\$11,926
	Georgia State U ²²⁷	\$3920	\$13,544	\$9624
	U of Georgia ²²⁸	\$4078	\$14,854	\$10,776
Hawaii	U of Hawaii-Manoa ²²⁹	\$3464	\$9944	\$6480
Idaho	U of Idaho ²³⁰	\$3348	\$10,740	\$7392
Illinois	Northern Illinois U ²³¹	\$5547	\$9625	\$4078
	Southern Illinois U at Carbondale ²³²	\$5522	\$9766	\$4244
	U of Illinois at Chicago ²³³	\$6798	\$16,494	\$9696
	U of Illinois at Urbana-Champaign ²³⁴	\$7010	\$18,046	\$11,036
Indiana	Indiana U at Bloomington ²³⁵	\$6518	\$17,552	\$11,034
	Purdue U ²³⁶	\$5860	\$17,640	\$11,780
Iowa	Iowa State U ²³⁷	\$5028	\$14,370	\$9342
	U of Iowa ²³⁸	\$4993	\$15,285	\$8428

²²⁶ Georgia Institute of Technology, *Costs*, at <http://www.finaid.gatech.edu/costs/#> (last visited Oct. 10, 2003).

²²⁷ GEORGIA STATE UNIVERSITY, UNDERGRADUATE CATALOG 2003-2004, at <http://www.gsu.edu/gsuhome-v1/students/catalogs.html> (last visited Oct. 10, 2003).

²²⁸ Bursar's Office, The University of Georgia, *Tuition and Fee Schedule Fall/Spring Semester 2003-04: Undergraduates*, at <http://www.uga.edu/admi/> (last updated June 2003).

²²⁹ UNIVERSITY OF HAWAII AT MANOA, 2003-2004 CATALOG (2003), at <http://www.catalog.hawaii.edu/>.

²³⁰ Financial Aid and Scholarships, University of Idaho, *Cost of Attendance*, at <http://www.nss.uidaho.edu/> (last visited Oct. 12, 2003).

²³¹ Office of the Bursar, Northern Illinois University, *Undergraduate Tuition and Fees*, at <http://www.admissions.niu.edu/finaidmain.html> (last visited Oct. 12, 2003).

²³² Southern Illinois University, Carbondale Campus, *Tuition and Fees Schedules*, at <http://www.siu.edu/departments/oar/tuition.htm> (last visited Oct. 12, 2003).

²³³ Registration and Records, University of Illinois at Chicago, *Tuition and Fee Rates*, at <http://www.uic.edu/depts/oar/r/tuition.shtml> (last visited Oct. 12, 2003).

²³⁴ Office of Student Financial Aid, University of Illinois at Urbana-Champaign, *University of Illinois at Urbana-Champaign Estimated Education Expenses for 2003-2004*, at <http://www.osfa.uiuc.edu/#> (last visited Oct. 12, 2003).

²³⁵ Office of the Bursar, Indiana University, *Bursar Rates and Policies*, at <http://www.indiana.edu/~iuaadmit/costs/> (last updated Oct. 10, 2003).

²³⁶ Undergraduate Office of Admissions, Purdue University, *All About Purdue*, at http://www.purdue.edu/Admissions/Undergrad/pages/about/ab_cost_fin_aid.html (last visited Oct. 12, 2003).

²³⁷ Office of the Registrar, Iowa State University, *Tuition and Fees*, at <http://www.iastate.edu/~registrar/fees/> (last updated Aug. 27, 2003).

²³⁸ The University of Iowa, *Estimated First-Year Costs at Iowa*, at http://www.uiowa.edu/admissions/first_year/costs.html (last updated Sept. 17, 2003).

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
Kansas	Kansas State U ²³⁹	\$3826	\$11,190	\$7364
	U of Kansas ²⁴⁰	\$4101	\$11,577	\$7476
Kentucky	U of Kentucky ²⁴¹	\$4547	\$11,227	\$6680
	U of Louisville ²⁴²	\$4450	\$12,166	\$7716
Louisiana	Louisiana State U at Baton Rouge ²⁴³	\$3964	\$9264	\$5300
Maine	U of Maine ²⁴⁴	\$5914	\$14,614	\$8700
Maryland	U of Maryland at College Park ²⁴⁵	\$6759	\$17,433	\$10,674
	U of Maryland - Baltimore County ²⁴⁶	\$7388	\$14,240	\$6852
Massachusetts	U of Massachusetts at Amherst ²⁴⁷	\$6482	\$15,335	\$9068
Michigan	Michigan State U ²⁴⁸	\$6747	\$16,707	\$9960
	U of Michigan at Ann Arbor ²⁴⁹	\$7708	\$24,508	\$16,800
	Wayne State U ²⁵⁰	\$5274	\$11,475	\$6201
	Western Michigan U ²⁵¹	\$5221	\$12,735	\$7514

²³⁹ Office of Student Financial Assistance, Kansas State University, *Financial Aid*, at <http://www.ksu.edu/Prospective/> (last visited Oct. 12, 2003).

²⁴⁰ Office of the University Registrar, The University of Kansas, *Comprehensive Fee Schedule (2003)*, at <http://www.ku.edu/admissions/>.

²⁴¹ Office of the Registrar, University of Kentucky, *Tuition 2003-2004*, at <http://www.uky.edu/Registrar/feesgen.html> (last updated Aug. 13, 2003).

²⁴² Office of Admissions, University of Louisville, *Aid & Scholarships: Funding Your U of L Educational Experience*, at <http://admissions.louisville.edu/aid/> (last visited Oct. 12, 2003).

²⁴³ Office of Budget and Planning, Louisiana State University, *Louisiana State University Tuition and Fees (2003)*, at <http://www.bgplan.lsu.edu/fees.htm>.

²⁴⁴ Office of Student Financial Aid, The University of Maine, *Cost of Attendance*, at <http://www.umaine.edu/prospective.htm> (last updated June 12, 2003).

²⁴⁵ Office of the Bursar, University of Maryland, *Tuition, Fees, and Other Expenses*, at <http://www.umd.edu/prospective/> (last visited Oct. 12, 2003).

²⁴⁶ Office of Undergraduate Admissions, University of Maryland, Baltimore County, *Costs*, at <http://www.umbc.edu/> (last visited Oct. 12, 2003).

²⁴⁷ Office of Enrollment Services, University of Massachusetts, Amherst, *UMass Quick Facts*, at <http://www.umass.edu/admissions/financing/index.html> (last visited Oct. 12, 2003). Figures represent tuition and fees for the 2002-2003 academic year.

²⁴⁸ Controller's Office, Michigan State University, *Tuition, Fees and Housing Calculator*, at <http://www.ctr.msu.edu/studrec/bud1.asp> (last reviewed June 6, 2003).

²⁴⁹ Office of the Registrar, University of Michigan, *University of Michigan Ann Arbor Campus Tuition and Laboratory Fees*, at <http://www.umich.edu/~regoff/tuitmenu.html> (last visited Oct. 12, 2003).

²⁵⁰ Office of the Registrar, Wayne State University, *Tuition and Fees: 2003-2004 Academic Year*, at http://www.wayne.edu/future_students/index.html (last visited Oct. 12, 2003).

²⁵¹ Office of the Registrar, Western Michigan University, *Tuition and Fees*, at <http://www.wmich.edu/registrar/schedule/term-information.html> (updated Oct. 13, 2003).

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
Minnesota	U of Minnesota - Twin Cities ²⁵²	\$7316	\$18,946	\$11,630
Mississippi	Mississippi State U ²⁵³	\$3874	\$8780	\$4906
	U of Mississippi ²⁵⁴	\$3916	\$8826	\$4910
	U of Southern Mississippi ²⁵⁵	\$3874	\$8752	\$4878
Missouri	U of Missouri at Columbia ²⁵⁶	\$6150	\$14,968	\$8818
Nebraska	U of Nebraska at Lincoln ²⁵⁷	\$4840	\$12,422	\$7582
Nevada	U of Nevada at Reno ²⁵⁸	\$2830	\$11,317	\$8487
New Hampshire	U of New Hampshire ²⁵⁹	\$8664	\$19,024	\$10,360
New Jersey	Rutgers U - New Brunswick ²⁶⁰	\$7927	\$14,441	\$6514
New Mexico	New Mexico State U ²⁶¹	\$3372	\$11,250	\$7878
	U of New Mexico ²⁶²	\$3313	\$11,954	\$8641

²⁵² Office of Admissions, University of Minnesota, *Approximate Annual Costs—2003-2004 Academic Year*, at <http://admissions.tc.umn.edu/CostsAid/> (last modified Sept. 26, 2003).

²⁵³ Mississippi State University, *Account Services*, at <http://www.controller.msstate.edu/sas/account.htm> (last modified June 10, 2003).

²⁵⁴ Office of Financial Aid, University of Mississippi, *Financial Aid Policies: Estimated Cost of Attendance*, at http://www.olemiss.edu/depts/financial_aid/policies/cost.html (last updated Sept. 24, 2003).

²⁵⁵ Office of Admissions, The University of Southern Mississippi, *Cost*, at <http://www.admissions.usm.edu/> (last updated July 25, 2003).

²⁵⁶ University of Missouri-Columbia, *Costs & Financial Aid*, at <http://www.missouri.edu/admissions.htm> (last visited Oct. 8, 2003).

²⁵⁷ Office of Scholarships & Financial Aid, University of Nebraska, Lincoln, *Costs*, at <http://www.unl.edu/scholfa/costs.html> (last visited Oct. 14, 2003).

²⁵⁸ Cashier's and Loan Office, University of Nevada, Reno, *Registration Fees: Fall 2003*, at <http://www.howler.unr.edu/controller/cashiers.htm> (last updated Sept. 25, 2003).

²⁵⁹ Undergraduate Admissions, University of New Hampshire, *Fees and Expenses (2003-2004)*, at <http://www.unh.edu/admissions/financialaid/index.html> (last updated July 14, 2003).

²⁶⁰ Rutgers University, *Tuition and Fees*, at <http://admissions.rutgers.edu/html/00.asp> (last visited Oct. 14, 2003).

²⁶¹ University Accounts Receivable, New Mexico State University, *Schedule of Costs*, at <http://www.nmsu.edu/%7Euar/schecosts/schcosts.htm> (last modified Oct. 1, 2003).

²⁶² Bursar's Office, The University of New Mexico, *Tuition Rates*, at <http://www.unm.edu/~bursar/studentnew.html> (last modified June 2, 2003).

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
New York	State U of New York at Albany ²⁶³	\$5770	\$11,720	\$5950
	State U of New York at Binghamton ²⁶⁴	\$5690	\$11,640	\$5950
	State U of New York at Buffalo ²⁶⁵	\$5850	\$11,800	\$5950
	State U of New York at Stony Brook ²⁶⁶	\$5306	\$11,256	\$5950
North Carolina	North Carolina State U ²⁶⁷	\$3970	\$15,818	\$11,848
	U of North Carolina at Chapel Hill ²⁶⁸	\$4072	\$15,920	\$11,848
Ohio	Kent State U ²⁶⁹	\$6882	\$13,314	\$6432
	Ohio State U at Columbus ²⁷⁰	\$6624	\$16,488	\$9864
	Ohio U ²⁷¹	\$7128	\$15,351	\$8223
	U of Cincinnati ²⁷²	\$7623	\$19,230	\$11,607
	U of Toledo ²⁷³	\$6415	\$15,054	\$8639

²⁶³ University at Albany - State University of New York, *Cost/Financial Aid*, at <http://www.albany.edu/admissions/undergraduate/finances/cost.htm> (last visited Oct. 14, 2003).

²⁶⁴ The Office of Student Financial Aid and Employment, Binghamton University - State University of New York, *Costs*, at <http://bingfa.binghamton.edu/> (last visited Oct. 14, 2003).

²⁶⁵ Office of Admissions, University at Buffalo - State University of New York, *2003-04 Annual Costs*, at <http://www.buffalo.edu/home/prospective.shtml> (last visited Oct. 14, 2003).

²⁶⁶ Offices of the Bursar/Student Accounts, Stony Brook University - State University of New York, *Undergraduate Tuition and Fee Information*, at <http://www.stonybrook.edu/bursar/> (last visited Oct. 14, 2003).

²⁶⁷ University Cashier's Office, North Carolina State University, *Undergraduate Tuition and Fees: Fall 2003-Spring 2004*, at <http://www7.acs.ncsu.edu/cashier/> (last updated Sept. 3, 2003).

²⁶⁸ Office of Student Accounts & University Receivables, The University of North Carolina at Chapel Hill, *Tuition and Fees, Academic Year 2003-2004* (Sept. 15, 2003), at http://www.unc.edu/finance/cashiers/03_04YRFINAL.pdf.

²⁶⁹ Admissions Office, Kent State University, *Fees*, at <http://www.admissions.kent.edu/Financing.asp> (last visited Oct. 14, 2003).

²⁷⁰ The Ohio State University, *Tuition and Fees*, at <http://www-afa.adm.ohio-state.edu/undergraduate/index.php> (last visited Oct. 14, 2003).

²⁷¹ Office of Admissions, Ohio University, *Fees and Expenses*, at <http://www.ohiou.edu/admissions/fees.htm> (last visited Oct. 14, 2003).

²⁷² University of Cincinnati, *Tuition & Fees, 2003-2004*, at <http://www.uc.edu/ucinfo/cost.html> (last modified Sept. 18, 2003).

²⁷³ Bursar's Office, The University of Toledo, *Tuition Fall 2003 & Spring 2004*, at http://finadmin.utoledo.edu/bursars_office/tuition.htm (last visited Oct. 14, 2003).

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
Oklahoma	Oklahoma State U ²⁷⁴	\$3493	\$9440	\$5947
	U of Oklahoma at Norman ²⁷⁵	\$4133	\$10,262	\$6129
Oregon	Oregon State U ²⁷⁶	\$4620	\$17,376	\$12,756
	U of Oregon ²⁷⁷	\$3306	\$11,132	\$7826
Pennsylvania	Pennsylvania State U at U Park ²⁷⁸	\$8796	\$18,418	\$9622
	Temple U ²⁷⁹	\$8594	\$15,354	\$6760
	U of Pittsburgh ²⁸⁰	\$9274	\$18,586	\$9312
Rhode Island	U of Rhode Island ²⁸¹	\$5169	\$15,301	\$10,132
South Carolina	Clemson U ²⁸²	\$7134	\$14,732	\$7598
	U of South Carolina at Columbia ²⁸³	\$6778	\$16,116	\$9338
Tennessee	U of Memphis ²⁸⁴	\$3,704	\$10,858	\$7,154
	U of Tennessee at Knoxville ²⁸⁵	\$4450	\$13,532	\$9082

²⁷⁴ Office of the Bursar, Oklahoma State University, *Calculation of Tuition and Fees Fall 2003/Spring 2004*, at <http://bursar.okstate.edu/tuition.html> (last visited Oct. 14, 2003).

²⁷⁵ Office of the Bursar, The University of Oklahoma, *Tuition Estimator*, at <http://www.ou.edu/bursar/> (last modified May 1, 2003).

²⁷⁶ Financial Aid & Scholarships, Oregon State University, *Estimating Your Cost of Attendance*, at <http://oregonstate.edu/admissions/firstYear/FYoutline.html> (last visited Oct. 14, 2003).

²⁷⁷ Registrar's Office, University of Oregon, *Tuition Rates*, at <http://registrar.uoregon.edu/> (last visited Oct. 14, 2003).

²⁷⁸ The Pennsylvania State University, *Penn State Tuition*, at <http://www.psu.edu/ur/prospective.html> (last visited Oct. 14, 2003).

²⁷⁹ Temple University, *Temple University 2003-04 Tuition Schedule*, at <http://www.temple.edu/bursar/> (last visited Oct. 14, 2003).

²⁸⁰ Office of Institutional Research, University of Pittsburgh, *University of Pittsburgh Tuition Rates and Required Fees*, at <http://www.ir.pitt.edu/> (last updated July 14, 2003).

²⁸¹ Enrollment Services, University of Rhode Island, *Tuition and Fee Information (2003-2004)*, at <http://www.uri.edu/es/acadinfo/acadyear/tuition.html> (last visited Oct. 14, 2003).

²⁸² Undergraduate Admissions Office, Clemson University, *Clemson Facts at a Glance*, at <http://www.clemson.edu/attend/undrgrd/academic/ataglance/> (last visited Oct. 14, 2003).

²⁸³ Office of the Bursar, University of South Carolina at Columbia, *University of South Carolina Fee Schedule 2003-2004*, at <http://web.csd.sc.edu/bursar/> (last updated July 8, 2003).

²⁸⁴ Student Financial Aid Office, The University of Memphis, *2003-2004 Cost of Attendance*, at <http://www.enrollment.memphis.edu/FinancialAid/geninfo.html#coa> (last visited Oct. 14, 2003).

²⁸⁵ Undergraduate Admissions, The University of Tennessee, *Costs and Financial Aid*, at <http://admissions.utk.edu/undergraduate/> (last visited Oct. 14, 2003).

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
Texas	Texas A&M U at C Station ²⁸⁶	\$4134	\$11,214	\$7080
	Texas Tech U ²⁸⁷	\$5045	\$12,125	\$7080
	U of Houston ²⁸⁸	\$3798	\$10,878	\$7080
	U of North Texas ²⁸⁹	\$3606	\$9270	\$5664
	U of Texas at Arlington ²⁹⁰	\$3704	\$9368	\$5664
	U of Texas at Austin ²⁹¹	\$5016	\$11,624	\$6608
Utah	U of Utah ²⁹²	\$3646	\$11,292	\$7646
	Utah State U ²⁹³	\$3072	\$8946	\$5874
Vermont	U of Vermont ²⁹⁴	\$9636	\$22,688	\$13,052
Virginia	Old Dominion U ²⁹⁵	\$4770	\$13,920	\$9150
	U of Virginia ²⁹⁶	\$5968	\$21,988	\$16,020
	Virginia Commonwealth U ²⁹⁷	\$4869	\$17,213	\$12,344
	Virginia Tech ²⁹⁸	\$5095	\$15,029	\$9934

²⁸⁶ Division of Finance, Texas A&M University, *Tuition, Fees and Refund Schedule for the 2003-2004 Academic Year*, at http://finance.tamu.edu/sfs/resources/tuition_and_fees/fees-99-00.asp (last visited Oct. 14, 2003).

²⁸⁷ Office of Admissions, Texas Tech University, *Estimated Cost of Attendance 2003-2004 Academic Year*, at <http://www.admissions.ttu.edu/nso/> (updated July 3, 2003).

²⁸⁸ Student Financial Services, University of Houston, *Tuition and Fee Schedule*, at <http://www.uh.edu/sfs/> (last visited Oct. 14, 2003).

²⁸⁹ Student Accounting & University Cashiering Services, University of North Texas, *Tuition and Fees*, at <http://essc.unt.edu/saucs/> (last visited Oct. 14, 2003).

²⁹⁰ Office of Accounting & Business Services, University of Texas at Arlington, *Registration Cost Summary Charts*, at <http://www.uta.edu/uta/about> (last visited Oct. 15, 2003).

²⁹¹ Office of Accounting, The University of Texas at Austin, *Flat Rate Tuition Pilot Project*, at http://www.utexas.edu/business/accounting/sar/t_f_rates.html (revised Apr. 10, 2003).

²⁹² Income Accounting and Student Loan Services, University of Utah, *Tuition Information*, at <http://www.utah.edu/newstudents/finances.html> (updated Sept. 25, 2003).

²⁹³ Controller's Office, Cashier's Office, Utah State University, *Utah State University 2003-2004 Tuition & Fees* (Mar. 18, 2003), at <http://controller.usu.edu/cashier/notifications/2003-04%20tuition.pdf>.

²⁹⁴ The University of Vermont, *Cost and Financial Aid*, at <http://www.uvm.edu/financialaid/> (last modified Oct. 8, 2003).

²⁹⁵ Old Dominion University, *Old Dominion University Campus Facts*, at <http://www.odu.edu/webroot/orgs/LA/campusfacts.nsf/pages/campusfacts> (last visited Oct. 14, 2003).

²⁹⁶ Student Accounts, University of Virginia, *Tuition & Fee Schedule*, at <http://www.virginia.edu/studentaccounts/> (last modified July 11, 2003).

²⁹⁷ Undergraduate Admissions, Virginia Commonwealth University, *Financing College*, at <http://www.vcu.edu/ugrad/admissions101/financingcollege.html> (last modified Oct. 10, 2003).

²⁹⁸ Office of the University Bursar, Virginia Polytechnic Institute and State University, *Tuition & Fees for School Year 2003-2004*, at <http://www.bursar.vt.edu/sp/tuition.shtml> (last visited Oct. 14, 2003).

	INSTITUTION NAME	IN-STATE	OUT-OF-STATE	IN-STATE SAVINGS
Washington	U of Washington at Seattle ²⁹⁹	\$3312	\$10,748	\$7436
	Washington State U ³⁰⁰	\$5280	\$13,382	\$8102
West Virginia	West Virginia U ³⁰¹	\$3548	\$10,768	\$7220
Wisconsin	U of Wisconsin at Madison ³⁰²	\$5140	\$19,150	\$14,010
	U of Wisconsin at Milwaukee ³⁰³	\$5107	\$17,858	\$12,751
Wyoming	U of Wyoming ³⁰⁴	\$2586	\$7266	\$4680

²⁹⁹ Student Fiscal Services, University of Washington, *Tuition Rates*, at <http://www.washington.edu/students/sfs/> (modified July 25, 2003).

³⁰⁰ Office of Student Financial Aid, Washington State University, *Estimated Costs of Attending Washington State University 2003-2004 Academic Year*, at <http://www.finaid.wsu.edu/> (last visited Oct. 14, 2003).

³⁰¹ Financial Aid Office, West Virginia University, *Cost of Attendance*, at <http://www.wvu.edu/~finaid/coa.htm> (last modified Sept. 8, 2003).

³⁰² Undergraduate Admissions, The University of Wisconsin, Madison, *Costs and Financial Aid*, at <http://www.admissions.wisc.edu/> (last updated Sept. 2003).

³⁰³ Business & Financial Services, University of Wisconsin, Milwaukee, *Tuition and Fees*, at <http://www.bfs.uwm.edu/fccs/> (last visited Oct. 14, 2003).

³⁰⁴ University of Wyoming, *Semester Tuition and Fee Schedule 2003-2004*, at <http://www.uwyo.edu/> (last visited Oct. 14, 2003).

Appendix B

State Individual Income Taxes³⁰⁵

	Tax Rates		Income Brackets	
	Low	High	Low	High
Alabama	2.00%	5.00%	\$500	\$3,000
Alaska	No State Income Tax			
Arizona	2.87%	5.04%	\$10,000	\$150,000
Arkansas	1.00%	6.50%	\$2,999	\$25,000
California	1.00%	9.30%	\$5,834	\$38,291
Colorado	4.63%		flat rate	
Connecticut	3.00%	4.50%	\$10,000	\$10,000
Delaware	2.20%	5.95%	\$5,000	\$60,000
Florida	No State Income Tax			
Georgia	1.00%	6.00%	\$750	\$7,000
Hawaii	1.40%	8.25%	\$2,000	\$40,000
Idaho	1.60%	7.80%	\$1,087	\$21,730
Illinois	3.00%		flat rate	
Indiana	3.40%		flat rate	
Iowa	0.36%	8.98%	\$1,211	\$54,495
Kansas	3.50%	6.45%	\$15,000	\$30,000
Kentucky	2.00%	6.00%	\$3,000	\$8,000
Louisiana	2.00%	6.00%	\$10,000	\$50,000
Maine	2.00%	8.50%	\$4,200	\$16,700
Maryland	2.00%	4.75%	\$1,000	\$3,000
Massachusetts	5.00%		flat rate	
Michigan	4.00%		flat rate	
Minnesota	5.35%	7.85%	\$18,710	\$61,461
Mississippi	3.00%	5.00%	\$5,000	\$10,000
Missouri	1.50%	6.00%	\$1,000	\$9,000
Montana	2.00%	11.00%	\$2,200	\$75,400
Nebraska	2.56%	6.84%	\$2,400	\$26,500
Nevada	No State Income Tax			
New Hampshire	Limited to Dividends and Interest Income Only			
New Jersey	1.40%	6.37%	\$20,000	\$75,000
New Mexico	1.70%	8.20%	\$5,500	\$65,000
New York	4.00%	6.85%	\$8,000	\$20,000
North Carolina	6.00%	8.25%	\$12,750	\$120,000
North Dakota	2.10%	5.54%	\$27,050	\$297,350
Ohio	0.74%	7.50%	\$5,000	\$200,000

³⁰⁵ The Federation of Tax Administrators, *State Individual Income Taxes* (last modified Jan. 1, 2003), at http://www.taxadmin.org/fta/rate/ind_inc.html. Tax rates listed are for tax year 2003.

	Tax Rates %		Income Brackets	
	Low	High	Low	High
Oklahoma	0.50%	7.00%	\$1,000	\$10,000
Oregon	5.00%	9.00%	\$2,500	\$6,250
Pennsylvania	2.80%		flat rate	
Rhode Island	25.0% Federal tax liability			
South Carolina	2.50%	7.00%	\$2,400	\$12,000
South Dakota	No State Income Tax			
Tennessee	Limited to Dividends and Interest Income Only			
Texas	No State Income Tax			
Utah	2.30%	7.00%	\$863	\$4,313
Vermont	3.60%	9.50%	\$27,950	\$307,050
Virginia	2.00%	5.75%	\$3,000	\$17,000
Washington	No State Income Tax			
West Virginia	3.00%	6.50%	\$10,000	\$60,000
Wisconsin	4.60%	6.75%	\$8,280	\$124,200
Wyoming	No State Income Tax			

Appendix C

State Income Tax Benefits Provided to Military Service Members

	Military pay excluded ³⁰⁶	Military retirement pay excluded ³⁰⁷
Alabama	No ³⁰⁶	Yes ³⁰⁷
Alaska	NO STATE INCOME TAX ³⁰⁸	NO STATE INCOME TAX
Arizona	No ³⁰⁹	No ³¹⁰
Arkansas	Partial ³¹¹	Partial ³¹²
California	Yes ³¹³	No ³¹⁴
Colorado	No ³¹⁵	Partial ³¹⁶

³⁰⁶ Alabama Department of Revenue, *Frequently Asked Questions – Alabama Individual Income Tax*, at <http://www.ador.state.al.us/incometax/faq80401.html> (last visited Oct. 4, 2003).

³⁰⁷ *Id.*

³⁰⁸ See *supra* app. B.

³⁰⁹ ARIZONA DEPARTMENT OF REVENUE, PUB. 704, TAXPAYERS IN THE MILITARY 2-3, available at <http://www.revenue.state.az.us/brochure.htm> (last visited Feb. 8, 2003).

³¹⁰ Arizona Department of Revenue, *Frequently Asked Questions Regarding Individual Income Tax*, at <http://www.revenue.state.az.us/faqs.htm> (last visited Oct. 4, 2003).

³¹¹ Arkansas Department of Finance & Administration, *Moving to Arkansas: General Taxpayer Information* (last modified July 8, 2002), at <http://www.state.ar.us/dfa/taxes/movingto.html>. Only the first \$6,000 of active duty pay is exempt. *Id.*

³¹² Arkansas Department of Finance & Administration, *Individual Income Tax FAQ & TeleTax Information* (last modified Dec. 11, 2002), at http://www.state.ar.us/dfa/taxes/ind_tax/ITT_index.html. Up to \$6000 of pension is excluded. *Id.*

³¹³ CALIFORNIA FRANCHISE TAX BOARD, PUB. 1032, TAX INFORMATION FOR MILITARY PERSONNEL (2001), available at <http://www.taxes.ca.gov/resident.html>. The exclusion applies only to military pay earned outside the state pursuant to PCS orders. *Id.*

³¹⁴ *Id.*

³¹⁵ Colorado Department of Revenue, *Customer Support Site for Colorado Taxes* (last modified Feb. 4, 2003), at http://revenuestateco.custhelp.com/cgi-bin/revenuestateco.cfg/php/enduser/std_adp.php?p_sid=IS2u8ZUg&p_lva=&p_faaid=327&p_created=1010089028&p_sp=cF9zcmNoPTEmcF9nclkc29ydD0mcF9yb3dfY250PTI0NyZwX3NlYXJjaF90ZXh0PW1pbG10YXJlJ1dGlyZW1lbnQgaW5jb211JnBfc2VhcmNoX3R5cGU9MyZwX2NhdF9sdmwxPTMmcF9jYXRlbHVsMj1_YW55fiZwX3NvcnRlYnk9ZGZsdCZwX3BhZ2U9MQ**&p_li=-. If the service member is stationed and spends at least 305 days during the year outside of the United States, he may file as a nonresident. A nonresident cannot be taxed on military pay earned outside the state. *Id.*

³¹⁶ *Id.* at http://revenuestateco.custhelp.com/cgi-bin/revenuestateco.cfg/php/enduser/std_adp.php?p_sid=IS2u8ZUg&p_lva=327&p_faaid=330&p_created=1010089836&p_sp=cF9zcmNoPTEmcF9nclkc29ydD0mcF9yb3dfY250PTI0NyZwX3NlYXJjaF90ZXh0PW1pbG10YXJlJ1dGlyZW1lbnQgaW5jb211JnBfc2VhcmNoX3R5cGU9MyZwX2NhdF9sdmwxPTMmcF9jYXRlbHVsMj1_YW55fiZwX3NvcnRlYnk9ZGZsdCZwX3BhZ2U9MQ**&p_li=-. Service members aged fifty-five to sixty-four may exclude up to \$20,000 of their military retirement benefits; those aged sixty-five and up may exclude up to \$24,000. *Id.*

	Military pay excluded? ³¹⁷	Military retirement pay excluded? ³¹⁸
Connecticut	Yes ³¹⁷	No ³¹⁸
Delaware	No ³¹⁹	Partial ³²⁰
Florida	NO STATE INCOME TAX ³²¹	NO STATE INCOME TAX
Georgia	No ³²²	Partial ³²³
Hawaii	No ³²⁴	Yes ³²⁵
Idaho	Yes ³²⁶	Partial ³²⁷

³¹⁷ Connecticut Department of Revenue Services, *Income Tax Information for Members of the Armed Forces*, at <http://www.drs.state.ct.us/taxassistance/Indvtxpg/military.html> (last visited Oct. 4, 2003). A service member may qualify as a nonresident for income tax purposes if all of the following are true for the entire taxable year: (1) he did not have a permanent place to live in Connecticut; (2) he had a permanent place to live elsewhere; and (3) he did not spend more than thirty days in Connecticut during the tax year. A nonresident cannot be taxed on military pay earned outside the state. *Id.*

³¹⁸ *Id.*

³¹⁹ DIVISION OF REVENUE, DELAWARE DEPARTMENT OF FINANCE, TAX NEWSGRAM 72-37, PERSONAL INCOME TAX (1972), available at <http://www.state.de.us/revenue/tims/taxnewsgrams/taxnews7237.pdf>.

³²⁰ Office of Personal Taxes, Delaware Department of Finance, *Hot Topics and Most Frequently Asked Questions* (last modified Mar. 25, 2003), at http://www.state.de.us/revenue/per_quest/ptquestions.htm. Service members under age sixty may exclude up to \$2000 of pension; those age sixty or over may exclude up to \$12,500.

³²¹ See *supra* app. B.

³²² Income Tax Division, Georgia Department of Revenue, *Individual Frequently Asked Questions* (last modified Oct. 4, 2001), at <http://www2.state.ga.us/departments/dor/inctax/webfaq/faq-ind.shtml>.

³²³ *Id.* Although military retirement pay is not specifically excluded, Georgia allows a retirement exclusion of up to \$14,500 for individuals age sixty-two or over that includes pay from pensions. *Id.*

³²⁴ HAW. REV. STAT. § 235-2.3 (2003).

³²⁵ *Id.* § 235-7.

³²⁶ IDAHO CODE § 63-3013(2) (2003); IDAHO DEP'T OF ADMIN., ADMIN. RULES § 35.01.01. R.032 (2000). Service members who are absent from the state for at least 445 days in a 15-month period are not considered residents and do not have to file an Idaho income tax return. Classification as a nonresident under this rule does not apply to service members who meet the following criteria: (1) have a permanent home in Idaho where their spouses or minor children live for more than sixty days during the calendar year; or (2) claim Idaho as their tax home for federal income tax purposes. Service members regain their resident status when they spend more than sixty days in Idaho in any calendar year. *Id.*

³²⁷ IDAHO CODE § 63-3022A (2003). Once the service member reaches age sixty-five (sixty-two if disabled), he (or his unremarried widow) may deduct a portion of his military retirement pay. *Id.*

	Military pay excluded?	Military retirement pay excluded?
Illinois	Yes ³²⁸	Yes ³²⁹
Indiana	No ³³⁰	Partial ³³¹
Iowa	No ³³²	Partial ³³³
Kansas	No ³³⁴	Yes ³³⁵
Kentucky	No ³³⁶	Partial ³³⁷
Louisiana	Partial ³³⁸	Yes ³³⁹

³²⁸ ILLINOIS DEPARTMENT OF REVENUE, PUB. 102, ILLINOIS FILING REQUIREMENTS FOR MILITARY PERSONNEL (last modified Mar. 2003), available at <http://www.revenue.state.il.us/publications/pubs/pub-102.pdf>.

³²⁹ Illinois Department of Revenue, *Individuals: Frequently Asked Questions*, at <http://www.revenue.state.il.us/Individuals/Faq/#anchor3> (last visited Oct. 4, 2003).

³³⁰ Indiana Department of Revenue, *Military Personnel: Tax Form Questions*, at <http://www.in.gov/dor/assistance/> (last visited Oct. 4, 2003).

³³¹ INDIANA DEPARTMENT OF REVENUE, INFORMATION BULLETIN #6 INCOME TAX (Jan. 2003), available at <http://www.in.gov/dor/publications/bulletin/income/pdf/ib06.pdf>. Once the service member (or his widow) reaches age sixty, he (or his widow) qualifies for a maximum adjustment of \$2,000. *Id.*

³³² Iowa Department of Revenue and Finance, *Iowa Withholding and Income Taxes for Military Personnel*, at <http://www.state.ia.us/tax/educate/78583.html> (last visited Oct. 4, 2003).

³³³ Iowa Department of Revenue and Finance, *Iowa Income Tax FAQ's*, at <http://www.state.ia.us/tax/educate/faqinc.html> (last visited Oct. 4, 2003). Service members who have reached age fifty-five or are disabled and who file their tax returns using a married status may exclude the lesser of \$12,000 or the taxable amount of the retirement pay. Service members who have reached age fifty-five or are disabled and who file using a single or head of household status may exclude the lesser of \$6000 or the taxable amount of the retirement pay. *Id.*

³³⁴ Kansas Department of Revenue, *Frequently Asked Questions: Taxation—Individual Income* (last modified Apr. 21, 2003), at <http://www.ksrevenue.org/faqs-taxii.htm>.

³³⁵ *Id.*

³³⁶ KENTUCKY REVENUE CABINET, WHO . . . WHAT . . . WHEN . . . WHERE?: INFORMATION ABOUT KENTUCKY INDIVIDUAL INCOME TAX FORMS (2000), available at <http://www.revenue.state.ky.us/pdf/15f002.pdf>.

³³⁷ COMMONWEALTH OF KENTUCKY REVENUE CABINET, TAX FACTS: A DIGEST OF KENTUCKY TAX LAWS (2002) 57, available at http://www.revenue.state.ky.us/pdf/taxfacts_2002.pdf. Military retirement pay is fully excludable with an upper limitation of \$39,400 for 2003. *Id.*

³³⁸ LOUISIANA DEPARTMENT OF REVENUE, 2003 LOUISIANA INCOME TAX RETURN: RESIDENT FORM, available at [http://www.rev.state.la.us/forms/vndrforms/540ResidentInstructions\(2003\).pdf](http://www.rev.state.la.us/forms/vndrforms/540ResidentInstructions(2003).pdf). A service member who is stationed outside the state for 120 or more consecutive days may be entitled to an exemption of up to \$29,999 of military income. *Id.*

³³⁹ *Id.* at 63.

	Military pay excluded ³⁴⁰	Military retirement pay excluded ³⁴¹
Maine	No ³⁴⁰	Partial ³⁴¹
Maryland	No ³⁴²	Partial ³⁴³
Massachusetts	No ³⁴⁴	Yes ³⁴⁵
Michigan	Yes ³⁴⁶	Yes ³⁴⁷
Minnesota	Yes ³⁴⁸	No ³⁴⁹
Mississippi	No ³⁵⁰	Yes ³⁵¹
Missouri	Yes ³⁵²	Partial ³⁵³

³⁴⁰ Maine Revenue Service, *Frequently Asked Questions: Individual Income Tax* (last updated Oct. 14, 2003), at <http://www.state.me.us/revenue/incomestate/faq1040.html>.

³⁴¹ *Id.* Service members may deduct up to \$6000 of their military pensions. *Id.*

³⁴² COMPTROLLER OF MARYLAND, INFORMATION FOR MILITARY PERSONNEL WHO ARE RESIDENTS OF MARYLAND (2003), available at <http://individuals.marylandtaxes.com/incometax/military/resident.asp>.

³⁴³ COMPTROLLER OF MARYLAND, MILITARY RETIREMENT INCOME (2003), available at <http://individuals.marylandtaxes.com/incometax/military/retirement.asp>. If the service member has reached the age of fifty-five and was an enlisted member of the military at the time of retirement, he is eligible for a \$2500 exclusion of military retirement pay. Service members who retired as officers are not eligible for the exclusion. *Id.*

³⁴⁴ MASSACHUSETTS DEPARTMENT OF REVENUE, GUIDE TO FILING YOUR 2002 MASSACHUSETTS INCOME TAXES 25 (2002), available at http://www.dor.state.ma.us/publ/pdfs/tx_gd02.pdf.

³⁴⁵ Massachusetts Department of Revenue, *Personal Income Tax—Pensions and Retirement Plans*, at http://www.dor.state.ma.us/help/guides/abate_amend/personal/issues/military.htm (last visited Oct. 5, 2003).

³⁴⁶ MICH. ADMIN. CODE R. 206.10 (2001).

³⁴⁷ *Id.* R. 206.12 (2001).

³⁴⁸ Minnesota Department of Revenue, *Residency of Active Duty Personnel*, at http://www.taxes.state.mn.us/individ/residency_and_filing_status/military/Residency%20of%20active%20duty%20military%20personnel.shtml (last visited Oct. 5, 2003). A service member is considered a nonresident for income tax purposes when he is stationed outside the state. *Id.*

³⁴⁹ *Id.*

³⁵⁰ MISSISSIPPI STATE TAX COMMISSION, REG. 704, MILITARY (2003), available at <http://www.mstc.state.ms.us/taxareas/individ/rules/IREG704.PDF>.

³⁵¹ MISSISSIPPI STATE TAX COMMISSION, REG. 207, INCOME FROM ANNUITIES, PENSIONS, RETIREMENT PLANS (2003), available at <http://www.mstc.state.ms.us/taxareas/individ/rules/IREG207.PDF>.

³⁵² Missouri Department of Revenue, *Frequently Asked Questions: Individual Income Tax*, at <http://www.dor.state.mo.us/tax/faq/faqindiv.htm#10> (last visited Oct. 5, 2003). Military pay is not subject to Missouri tax if the service member and his spouse did not spend more than thirty days in Missouri and did not maintain permanent living quarters in Missouri. *Id.*

³⁵³ *Id.* Up to \$6000 of military retirement pay is exempt within certain income limitations. *Id.*

	Military pay excluded?	Military retirement pay excluded?
Montana	No ³⁵⁴	Partial ³⁵⁵
Nebraska	No ³⁵⁶	No ³⁵⁷
Nevada	NO STATE INCOME TAX ³⁵⁸	NO STATE INCOME TAX
New Hampshire	NO STATE INCOME TAX ³⁵⁹	NO STATE INCOME TAX
New Jersey	Yes ³⁶⁰	Yes ³⁶¹
New Mexico	No ³⁶²	No ³⁶³

³⁵⁴ MONT. CODE ANN. § 15-30-111 (2002).

³⁵⁵ *Id.* The first \$3600 of military retirement pay is exempt from Montana tax. This amount must be lowered by \$1 for every \$1 of income over \$30,000. *Id.*

³⁵⁶ NEBRASKA DEP'T OF REVENUE, NEBRASKA INCOME TAX FOR MILITARY SERVICE MEMBERS 2 (2003), available at <http://www.revenue.state.ne.us/info/8-364.pdf>.

³⁵⁷ See NEB. REV. STAT. §§ 77-2714-27,123 (2002) (incorporating the Internal Revenue Code of 1986 and remaining silent on military retirement, civilian retirement, or pensions).

³⁵⁸ See *supra* app. B.

³⁵⁹ See *id.*

³⁶⁰ NEW JERSEY DIVISION OF TAXATION, GIT-7, MILITARY PERSONNEL 2 (2002), available at <http://www.state.nj.us/treasury/taxation/pdf/pubs/tgi-ee/git7.pdf>. Service members are considered nonresidents for income tax purposes only when they meet all three of the following conditions: (1) they did not maintain permanent homes in New Jersey; (2) they maintained permanent homes outside of New Jersey; and (3) they did not spend more than thirty days in New Jersey during the tax year. *Id.*

³⁶¹ *Id.* at 8.

³⁶² New Mexico Taxation & Revenue Department, *Frequently Asked Questions*, at http://www.state.nm.us/tax/trd_ques.htm (last visited Oct. 5, 2003).

³⁶³ N.M. ADMIN. CODE tit. 3, § 3.11.13 (2003).

	Military pay excluded?	Military retirement pay excluded?
New York	Yes ³⁶⁴	Yes ³⁶⁵
North Carolina	No ³⁶⁶	Partial ³⁶⁷
North Dakota	Partial ³⁶⁸	Partial ³⁶⁹
Ohio	No ³⁷⁰	Partial ³⁷¹
Oklahoma	Partial ³⁷²	Partial ³⁷³

³⁶⁴ NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, PUB. 361, NEW YORK STATE INCOME TAX INFORMATION FOR MILITARY PERSONNEL AND VETERANS 5-6 (2002), available at http://www.tax.state.ny.us/pdf/publications/Income/pub361_1102.pdf. Service members are considered nonresidents for income tax purposes when they meet all three of the following conditions: (1) they did not maintain a permanent home in New York; (2) they maintained a permanent home outside of New York; and (3) they did not spend more than thirty days in New York during the tax year. Additionally, service members are considered nonresidents for tax purposes if they: (1) were in a foreign country for at least 450 days during any period of 548 consecutive days; (2) spent ninety days or less in New York in a permanent home during this period (and whose spouse and children spent less than ninety days in the state in a permanent home); and (3) spent less than the maximum allowable days in the state according to the following formula: number of days in the nonresident portion of the tax year/548 x 90 = maximum number of days allowed in New York State. *Id.*

³⁶⁵ *Id.* at 9.

³⁶⁶ North Carolina Department of Revenue, *Active Military* (last modified Oct. 1, 2003), at <http://www.dor.state.nc.us/taxes/individual/military.html>.

³⁶⁷ North Carolina Department of Revenue, *Retirement Benefits Deduction* (last modified Feb. 2, 2002), at <http://www.dor.state.nc.us/taxes/individual/retirement.html>. Retirees may deduct up to \$4000 depending on their circumstances. *Id.*

³⁶⁸ STATE OF NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER, INCOME TAX GUIDELINE: MILITARY PERSONNEL (2002) 2, available at http://www.state.nd.us/taxdpt/income/pubs/guide/gl_28243.pdf. If resident service members file using the Form ND-2, they may exclude \$1000 of their military pay. Additionally, they may exclude \$300 per month (or fraction of a month) for each month they served overseas if they were overseas for at least thirty days. *Id.*

³⁶⁹ *Id.* Retirees who are at least fifty years old may exclude up to \$5000 of retirement pay. *Id.*

³⁷⁰ Ohio Department of Taxation, *Individual Links: Military*, at http://www.state.oh.us/tax/individual_taxes_personal_military.html (last visited Oct. 5, 2003).

³⁷¹ Ohio Department of Taxation, *Individual Links: Credits*, at http://www.state.oh.us/tax/individual_taxes_personal_income_credits.html (last visited Oct. 5, 2003). Retirees are entitled to a retirement income credit of up to \$200. *Id.*

³⁷² OKLA. STAT. tit. 68 § 2358 (2002). The first \$1500 of military pay shall be deducted from taxable income. *Id.*

³⁷³ *Id.* Retirement pay not to exceed \$5500 shall be excluded from taxable income. *Id.*

	Military pay excluded?	Military retirement pay excluded?
Oregon	Yes ³⁷⁴	Yes ³⁷⁵
Pennsylvania	Yes ³⁷⁶	Yes ³⁷⁷
Rhode Island	No ³⁷⁸	No ³⁷⁹
South Carolina	No ³⁸⁰	Partial ³⁸¹
South Dakota	NO STATE INCOME TAX ³⁸²	NO STATE INCOME TAX
Tennessee	NO STATE INCOME TAX ³⁸³	NO STATE INCOME TAX
Texas	NO STATE INCOME TAX ³⁸⁴	NO STATE INCOME TAX

³⁷⁴ Oregon Department of Revenue, *Military Personnel Filing Information* (last modified Apr. 2, 2003), at <http://www.dor.state.or.us/InforC/101-657.html>. Military pay is only excluded when the service member meets all of the following requirements: (1) he does not have a permanent residence in Oregon for himself or his family during any part of the tax year; (2) his permanent residence is outside Oregon during the entire tax year; and (3) he spends less than thirty-one days in Oregon during the tax year. *Id.*

³⁷⁵ Oregon Department of Revenue, *Pensions—Federal and State* (last modified June 4, 2001), at <http://www.dor.state.or.us/NewsR/Pension.html>.

³⁷⁶ PENNSYLVANIA DEPARTMENT OF REVENUE, PENNSYLVANIA PERSONAL INCOME TAX GUIDE: ONLINE VERSION 4-6 (2003), available at <http://www.revenue.state.pa.us/revenue/lib/revenue/pitguide.pdf>. Military pay earned outside the state is non-taxable. *Id.*

³⁷⁷ *Id.* at 7-37.

³⁷⁸ STATE OF RHODE ISLAND—DIVISION OF TAXATION, SYNOPSIS: PERSONAL INCOME TAX—RESIDENT AND NONRESIDENT INDIVIDUALS tit. 44, ch. 30 (2000), available at <http://www.tax.state.ri.us/info/synopsis/15.htm>.

³⁷⁹ R.I. GEN. LAWS § 44-30-2 (2002).

³⁸⁰ See SOUTH CAROLINA DEPARTMENT OF REVENUE, MOVING TO SOUTH CAROLINA: TAX GUIDE FOR NEW RESIDENTS, available at <http://www.sctax.org/DOR/Publications/mov2sc.html> (last visited Oct. 5, 2003) (remaining silent on any exclusions or exemptions for military taxpayers).

³⁸¹ *Id.* ("Beginning with the first year you receive retirement income and until you turn 65, you may take an annual deduction of up to \$3000 from retirement income. The retirement deduction increases to \$10,000 at age 65.")

³⁸² See *supra* Appendix B.

³⁸³ See *id.*

³⁸⁴ See *id.*

	Military pay excluded?	Military retirement pay excluded?
Utah	No ³⁸⁵	Partial ³⁸⁶
Vermont	Yes ³⁸⁷	No ³⁸⁸
Virginia	Partial ³⁸⁹	No ³⁹⁰
Washington	NO STATE INCOME TAX ³⁹¹	NO STATE INCOME TAX
West Virginia	Yes ³⁹²	Partial ³⁹³
Wisconsin	No ³⁹⁴	No ³⁹⁵
Wyoming	NO STATE INCOME TAX ³⁹⁶	NO STATE INCOME TAX

³⁸⁵ Utah State Tax Commission, *Residency Issues: Military Personnel* (last modified Dec. 30, 2002), at <http://incometax.utah.gov/residencymilitary.html>.

³⁸⁶ Utah State Tax Commission, *Income Tax Deductions: Retirement Income Exemption/Deduction* (last modified Dec. 30, 2002), at <http://incometax.utah.gov/deductionsretire.html>. Service members under age sixty-five may deduct up to \$4800 of retirement pay depending on total income level; those age sixty-five are entitled to a retirement exemption of \$7500. *Id.*

³⁸⁷ VT. STAT. ANN. tit. 32, § 5823 (2002). Military pay earned outside the state is not included in adjusted gross income. *Id.*

³⁸⁸ See *id.* §§ 5823-4 (adopting federal income tax laws and remaining silent on military retirement, civilian retirement, or pensions).

³⁸⁹ Virginia Department of Taxation, *FAQs for Individuals* (last modified June 6, 2003), at <http://www.tax.state.va.us/site.cfm?alias=IndividualFAQ>. Service members can subtract up to \$15,000 of military pay from their adjusted gross income. For every \$1 of military pay over \$15,000, the maximum subtraction is reduced by \$1. The subtraction does not apply to service members whose military pay exceeds \$30,000. *Id.*

³⁹⁰ See Virginia Department of Taxation, *Individuals: Residency Status* (last modified Feb. 13, 2003), at <http://www.tax.state.va.us/site.cfm?alias=ResidencyStatus> (addressing Social Security and Railroad Retirement Benefits, an \$800 personal exemption for senior citizens, and an age deduction for taxpayers age sixty-two and over, but remaining silent on military retirement, civilian retirement, or pensions).

³⁹¹ See *supra* app. B.

³⁹² WEST VIRGINIA TAX COMMISSIONER, FORTY-FIFTH BIENNIAL REPORT: WEST VIRGINIA TAX LAWS 58, available at <http://www.state.wv.us/taxrev/44thtaxlaws.pdf> (last visited Oct. 5, 2003). Service members may qualify as nonresidents for income tax purposes if they meet both of the following conditions: (1) they had no permanent home in West Virginia during the tax year; and (2) they did not spend more than thirty days in West Virginia during the tax year. *Id.*

³⁹³ *Id.* at 52. The first \$2000 of military pay is excluded from adjusted gross income. *Id.*

³⁹⁴ Wisconsin Department of Revenue, *Frequently Asked Questions: Individual Income Tax—Military* (last modified May 23, 2003), at <http://www.dor.state.wi.us/faqs/military.html>. Although military pay is not excluded and service members who are Wisconsin domiciliaries are not eligible for nonresident status for income tax purposes, service members stationed outside the United States are eligible for a tax credit of up to \$200. *Id.*

³⁹⁵ Wisconsin Department of Revenue, *Frequently Asked Questions: Individual Income Tax—Retired Persons* (last modified Jan. 17, 2003), at <http://www.dor.state.wi.us/faqs/retired.html>.

³⁹⁶ See *supra* app. B.

state.¹²² Without delving further, these states would appear to offer the best tax advantage for military members. However, several other states exclude either all or some of active duty military pay, thus imposing either no or reduced tax liability.¹²³ Both Illinois and Michigan exclude all active duty military pay, regardless of where the service member is stationed.¹²⁴ Eleven more states (California, Connecticut, Idaho, Minnesota, Missouri, New Jersey, New York, Oregon, Pennsylvania, Vermont, and West Virginia) do not tax active duty military pay when the service member is stationed outside the state.¹²⁵ Finally, five more states (Arkansas, Louisiana, North Dakota, Oklahoma, and Virginia) provide partial exemptions for active duty military pay.¹²⁶

The remaining twenty-three states impose full state personal income tax liability on service members.¹²⁷ Although all these states have similar ranges of high and low tax rates, the income brackets for these rates vary greatly.¹²⁸ For example, Vermont does not begin to impose income tax liability until a taxpayer's income reaches \$27,950.¹²⁹ Given this high minimum income level, many single junior enlisted soldiers could potentially not have to pay any state income tax at all.¹³⁰ On the other hand, seven of these states (Alabama, Georgia, Kentucky, Maryland, Mississippi, South Carolina, and Utah) impose their maximum tax rate at an income level so low that the majority of service members would be subjected to the maximum rate.¹³¹ Complicating the matter even more, some states' maximum rate is lower than others' minimum rate.¹³² Accordingly, for those states

122. *See id.*

123. *See infra* Appendix C.

124. *See id.*

125. *See id.*

126. *See id.*

127. *See id.*

128. *See infra* Appendix B.

129. *See id.*

130. Based on a basic pay of \$1356.90 for a private first class with less than two years of service. Defense Finance and Accounting Service, *supra* note 119.

131. *See infra* Appendix B (showing that the minimum gross income required for the maximum tax rate in these states ranges from \$3000 to \$12,000); Defense Finance and Accounting Service, *supra* note 119 (establishing the minimum annual pay for a Private with less than four months service as \$12,776.40).

132. For example, all service members would be subjected to Maryland's maximum tax rate of 4.75% because the income bracket for this rate starts at \$3000. Even so, this maximum rate is still lower than North Carolina's minimum tax rate of 6%. *See infra* Appendix B.

that tax military pay, the service member will have to look closely at the tax laws and rates to determine which state is more advantageous for him.

Another aspect of income tax consequences that service members may want to consider is the income tax liability imposed by states on military retirement pay. As with military pay, there will be absolutely no tax liability in those states that do not have a system of personal tax (Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming). In addition to these states, twelve others (Alabama, Hawaii, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, New York, Oregon, and Pennsylvania) exclude military retirement pay from adjusted gross income.¹³³ The majority of the remaining states provide some type of tax break for retirees.¹³⁴ Only Arizona, California, Connecticut, Minnesota, Nebraska, New Mexico, Rhode Island, Vermont, Virginia, and Wisconsin fail to assist retired taxpayers.¹³⁵

Based on income tax rates, the states that provide the maximum advantage for most service members are those that do not have a personal income tax and those that exclude both military pay and military retirement pay from adjusted gross income (Illinois, Michigan, New Jersey, New York, Oregon, and Pennsylvania). For service members who are nearing retirement, the states that exclude military retirement pay (and not necessarily active duty military pay) may be just as beneficial. The tables at Appendices B and C provide a starting point for evaluating tax consequences.

2. Tuition Rates

The other consequence of domicile that has the most significant impact on service members is the availability of in-state tuition rates at state colleges and universities. The in-state tuition rates vary greatly from

133. See *infra* Appendix C.

134. See Retirement Living Information Center, Inc., *Taxes by State*, at <http://www.retirementliving.com/index.html> (last visited Oct. 4, 2003).

135. See *infra* Appendix C.

state to state, as well as within each state, depending on the school that the student wishes to attend.¹³⁶

For the public national universities,¹³⁷ the states that charge the lowest in-state tuition rates are Wyoming (\$2586/year), Florida (\$2700-\$3050/year), Nevada (\$2830/year), Utah (\$3072-\$3646/year), and New Mexico (\$3313-\$3372/year).¹³⁸ When compared to the in-state tuition rates charged by Vermont (\$9636/year), New Hampshire (\$8664/year), Pennsylvania (\$8594-\$9274/year), New Jersey (\$7927/year), and Connecticut (\$6808/year), domiciliaries of the five least expensive states can save up to \$7050 per year in college tuition costs.¹³⁹

Another consideration for parents of college students is the amount saved by paying in-state versus out-of-state tuition. Parents may have a particular school that they would like their child to attend—perhaps an alma mater—and may be concerned with being able to send their child to that particular school at the lowest cost available to the family. Since the lowest tuition rates are available only for domiciliaries of the state, parents can significantly lower the amount of tuition they will have to pay by obtaining the in-state tuition rate. For example, the minimum savings a parent would encounter would be in Illinois at Northern Illinois University, where the difference between in-state and out-of-state tuition is \$4078 per year.¹⁴⁰ The greatest savings for in-state students can be found in California (\$19,194/year at the University of California at Davis and \$14,210/year at six of the remaining seven universities in the University of California system), Michigan (\$16,800/year at the University of Michigan at Ann Arbor), Colorado (\$16,326/year at the University of Colorado at Boulder), Virginia (\$16,020/year at the University of Virginia), and Wisconsin (\$14,010/year at the University of Wisconsin at Madison).¹⁴¹ Assuming that parents are interested in having their child attend a school in one of these states, they can save a significant amount by acquiring domicile there.

A final consideration is overall ability to pay for a college education. In 2000, the National Center for Public Policy and Higher Education evaluated all fifty states in terms of affordability and awarded each state a

136. *See infra* Appendix A.

137. This considers only four-year and above schools with doctoral programs.

138. *See infra* Appendix A.

139. *See id.*

140. *See id.*

141. *See id.*

grade on a scale of A to F.¹⁴² Of the fifty states, only five received an A: California, Illinois, Minnesota, North Carolina, and Utah.¹⁴³ Likewise, only three states received an F: Maine, New Hampshire, and Rhode Island.¹⁴⁴ Service members who are concerned about their ability to finance their child's college education may want to consider domicile in one of the "A" states and avoid domicile in one of the "F" states.

For many students, finances are not the sole consideration in choosing a school. If a school is not the best suited for a student, then the least expensive school does not often provide the best savings. When comparing the costs of schools, then, service members may also want to note the quality of the schools. While certainly not a definitive guide to the quality of a school or the fit of a school to a particular student, the *U.S. News & World Report* annual ranking of schools is a starting point in assessing the quality of a school.¹⁴⁵ According to the most recent *U.S. News & World Report* ranking, the top five public national universities with doctoral programs are the University of California at Berkeley, the University of Virginia, the University of Michigan at Ann Arbor, the University of California at Los Angeles, and the University of North Carolina at Chapel Hill.¹⁴⁶ Notably, these are also the schools that provide the greatest tuition

142. *Grading the States*, THE CHRONICLE OF HIGHER EDUCATION, Dec. 8, 2000, at A25, available at <http://chronicle.com/free/v47/i15/15a02501.htm>. The survey evaluated each state's affordability, as follows:

Measure by the percentage of a family's income needed to pay for college expenses minus financial aid at both two- and four-year colleges; percentage of state grants awarded to low-income families compared with federal Pell grants given to low-income families in the state; share of income that poorest families need to pay for tuition at lowest-priced colleges in the state; and average loan amount that students borrow each year.

Id.

143. *Id.*

144. *Id.*

145. *U.S. News & World Report* assesses national colleges and universities based on the following factors: peer assessment, retention, faculty resources, student selectivity, financial resources, graduation rate performance, and alumni giving rate. USNews.com, *America's Best Colleges 2004*, at <http://www.usnews.com/usnews/edu/rankguide/rghome.htm> (last visited Oct. 16, 2003).

146. *Id.*

savings for residents,¹⁴⁷ and three of the five schools are located in states with the top affordability grades.¹⁴⁸

Whether in-state tuition is a benefit for a service member depends on many factors, to include the quality of the school and whether the service member's child wishes to attend that particular school. Additionally, some service members may be more concerned with the cost of the school than the in-state savings. The chart at Appendix A provides a starting point for evaluating this domiciliary benefit.

3. Alaska Permanent Fund Dividend

Although limited to Alaska domiciliaries, the Alaska Permanent Fund Dividend can have a significant impact for service members. At a minimum, a service member would receive an annual payment for himself, which in 2002 was valued at \$1540.76.¹⁴⁹ Married service members with children would receive an even larger payment, since all domiciliaries, including children, are eligible for the dividend payment.¹⁵⁰ For example, a service member who is married with four children, would receive a household total of \$9244.56 per year.¹⁵¹ Additionally, because Alaska does not have personal income tax¹⁵² and many Alaskan municipalities do not have personal property tax,¹⁵³ service members do not need to balance the burden of tax with the benefit of the dividend payment. The Alaska

147. See *infra* Appendix A.

148. California and North Carolina both received affordability grades of "A." *Grading the States*, THE CHRONICLE OF HIGHER EDUCATION, Dec. 8, 2000, at A25, available at <http://chronicle.com/free/v47/i15/15a02501.htm>.

149. ALASKA STAT. § 43.23.005 (2003). For 2002, this payment was \$1540.76 per resident. News Release, Alaska Department of Revenue Program, *Permanent Fund Dividend Will Be \$1540.76* (Sept. 25, 2002), at <http://www.pfd.state.ak.us/YEAR-AMOU.HTM>.

150. Alaska Permanent Fund Dividend Division, *Kids' Page*, at <http://www.pfd.state.ak.us/KIDSPAGE.HTM> (last updated Jan. 2, 2003).

151. This total is based on the 2002 payment rate and assumes that the service member and his wife combine their income and assets.

152. See *infra* Appendix B.

153. Telephone Interview with Steve Van Sant, State Assessor, Alaska Department of Community and Economic Development (Mar. 18, 2003). For example, the city of Juneau exempts individual motor vehicles from tax and levies a tax only against commercial vehicles. City and Borough of Juneau Finance Department, *Local Tax Information*, at <http://www.juneau.org/financeftp/taxinfo.php> (last visited Oct. 4, 2003).

Permanent Fund Dividend is an unqualified advantage for service members considering Alaska as their domicile of choice.

C. Acquiring a New Domicile

Once a service member has selected the state that he would like to eventually call home, he must begin to take the appropriate steps to establish domicile. The first of these steps is to meet the requirement of physical presence.¹⁵⁴ A person cannot simply choose to make a state his new domicile without spending at least some amount of time there.¹⁵⁵

The next step to establish domicile is to take some of the actions that will prove intent to make a permanent home in the state.¹⁵⁶ A service member may consider making a formal declaration, either oral or written, of his intent.¹⁵⁷ Sharing his decision to ultimately settle in a certain state with his family and friends would serve as an informal declaration of his intent.¹⁵⁸ Other affirmative acts to demonstrate intent to remain in a state permanently include the following:

1. Moving his family to the state;
2. Having his children attend school in the state;
3. Declaring his residence in the state on documents such as wills, deeds, mortgages, leases, contracts, insurance policies, and hospital records;
4. Declaring his residence in the state in affidavits or litigation;
5. Paying income and personal property taxed to the state and county;
6. Purchasing land or a home in the state;
7. Leasing a home in the state;
8. Moving his personal property to the state;
9. Registering to vote in the state;
10. Registering his vehicle in the state;
11. Obtaining a driver's license in the state;
12. Opening and maintaining bank and investment accounts in the state;

154. See RESTATEMENT, *supra* note 9, § 15.

155. See *id.*

156. See *id.*

157. See *id.* at Special Note on Evidence for Establishment of a Domicil of Choice.

158. See *id.*

13. Joining church, civil, professional, service, or fraternal organizations at that location;
14. Marrying in the state;
15. Purchasing a burial plot at that location;
16. Burying immediate family members at that location;
17. Donating to charitable contributions at that location;
18. Investing in business interest in the state;
19. Filing DD Form 2058, State of Legal Residence Certificate, with his local personnel office;
20. Providing that address on his federal income tax return;
21. Explaining temporary changes in residence; and
22. Paying nonresident tuition to an institution of higher learning in another state.¹⁵⁹

While this list is not exhaustive, it provides a starting point for those who are unsure about how to acquire a domicile of choice. Additionally, the more consistent a service member is in his actions, the easier it will be for him to establish domicile in a new state.¹⁶⁰ Service members should keep in mind that a state that had been receiving tax payments from a service member may question the service member's motive for acquiring a new domicile; therefore, service members should be prepared to prove that they have legitimately changed their domicile.¹⁶¹

D. Examples

The following hypothetical situations apply the principles of determining, selecting, and acquiring domicile. Although these situations are similar to those in which service members might actually find themselves, they are meant to be only an example of how all the pieces fit together. No two-service members' circumstances are exactly the same; consequently, each specific case should be evaluated based on its own unique set of facts.

159. Major L. Sue Hayn, *Soldiers' and Sailors' Civil Relief Act Update*, ARMY LAW., Feb. 1989, at 40; Legal Assistance Policy Division, *supra* note 68.

160. Legal Assistance Policy Division, *supra* note 68.

161. *District of Columbia v. Murphy*, 314 U.S. 441, 456 (1941) (citing *Anderson v. Watt*, 138 U.S. 694, 706 (1891) when stating "If one has at any time become domiciled here, it is his burden to establish any change of status upon which he relies to escape the tax.").

1. Private First Class (PFC) A

Private First Class A is unmarried with no children. He has less than two years of active duty service. He joined the Army from Texas, where his parents lived at the time he entered the Army. Private First Class A's parents are originally from New Mexico, but since PFC A turned eighteen, have made Texas their permanent home. Private First Class A's extended family (grandparents, aunts, uncles, and cousins) still live in New Mexico. Because his father was in the military, PFC A moved frequently during his childhood—both within the United States and overseas. His father's last duty station before retiring to Texas was Fort Bragg, North Carolina. Private First Class A graduated from high school at Fort Bragg, has a North Carolina driver's license, registered his car in North Carolina, and registered to vote in North Carolina. His girlfriend still lives there. After graduating high school, he moved to Texas with his parents, where he enrolled in a local college for two years, had a part-time job, and lived with his parents. His DD Form 2058, State of Legal Residence Certificate, lists New Mexico as his state of legal residence. Private First Class A, stationed in Hawaii, is unsure about his domicile.

The starting point for determining PFC A's current state of domicile is his initial domicile, or domicile of origin. When he was born, PFC A acquired the same domicile as his father, which in this case was New Mexico.¹⁶² While still a minor, PFC A's domicile remained the same as his parents' domicile.¹⁶³ Because his parents were domiciled in New Mexico until after he turned eighteen, PFC A continues to be domiciled in New Mexico unless he has acquired a new domicile of choice since he reached the age of majority.¹⁶⁴ Whether PFC A has acquired that new domicile is dependent on his intent. If he plans to return to New Mexico when he separates from the service, then New Mexico is still his domicile. PFC A needs to know that as a New Mexico domiciliary, he will be required to continue to pay state individual income tax to New Mexico, since the state does not exclude military pay.¹⁶⁵ Based on New Mexico's tax rate range of 1.7% to 8.2%,¹⁶⁶ he could potentially pay significant amounts to the state over the course of his military career. If, after consideration of the financial impact of New Mexico domicile, PFC A still desires to make his

162. See RESTATEMENT, *supra* note 9, § 14.

163. See *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989); RESTATEMENT, *supra* note 9, § 22.

164. See *Mississippi Band of Choctaw Indians*, 490 U.S. at 48.

165. See *infra* Appendix C.

166. See *infra* Appendix B.

home in New Mexico, then he does not need to take any further action, since the state is his current domicile. To solidify his relationship with the state, however, he should consider severing his ties with North Carolina and getting a New Mexico driver's license, registering his car in New Mexico, and registering to vote in New Mexico. Taking these steps will show his desire to remain a New Mexico domiciliary.

On the other hand, if PFC A plans to settle permanently in a state other than New Mexico, and has taken some steps to show this intent, he may have already begun the process to acquire a new domicile of choice in another state. Based on PFC A's most recent past, the two states in which he has the most significant connections appear to be North Carolina and Texas. Based on his intent, he may consider taking additional steps to complete the transition to a new domicile in either one of these states.

First, PFC A established significant ties to North Carolina when he was there. Not only did he graduate high school there, but he also acquired a North Carolina driver's license, registered his car in the state, and votes there. If, at the time that he was there, he intended to make North Carolina his permanent home, and if he still has that desire, he may claim North Carolina as his domicile. To make this an effective claim, he should change his DD Form 2058 to reflect North Carolina and begin paying North Carolina taxes. Additionally, he should maintain his contacts in North Carolina by renewing his driver's license, re-registering his car in North Carolina, and voting by absentee ballot. He should consider making some charitable contributions to the community in North Carolina, such as donating to his old high school. Additionally, PFC A should claim North Carolina as his domicile in all official documents, such as wills, powers of attorney, and affidavits. If he wants to change his domicile to North Carolina, PFC A needs to consistently claim North Carolina as his legal residence.

More recently, PFC A also established significant ties to Texas. He completed two years of college there and earned income in the state for two years by working there. Additionally, it is his military home of record.¹⁶⁷ If, at the time that he was there, he intended to make Texas his permanent home, and if he still has that desire, he may potentially claim Texas as his domicile. As with the previous North Carolina example, he should change his DD Form 2058 to reflect Texas. Furthermore, he should sever all ties to North Carolina by obtaining a Texas driver's license, registering his car in Texas, and registering to vote in Texas. He should also obtain a will naming Texas as his state of legal residence and maintain a checking or

savings account in the state. He should maintain all contacts in Texas, to include visiting his parents at regular intervals. As with North Carolina, if PFC A wants to make Texas his domicile, he should be consistent with his actions and declarations.

If PFC A knows that he would like to settle down in a state other than New Mexico, North Carolina, or Texas, he should take the steps necessary to acquire domicile there, to include visiting the state and beginning to establish a home. If, however, PFC A has no idea where he wants to be when he settles down, he should weigh the consequences of establishing domicile in one of the states to which he has ties. Because acquiring a new domicile requires physical presence, the states in which he has lived are the best candidates. Given his background, PFC A should probably choose between New Mexico, North Carolina, Texas, and Hawaii, where he currently lives. When he makes this decision, it should be with an honest intent to make that state his home until some as yet unknown factor changes his circumstances and desires.

Examining the income tax factor, Texas appears to be a better choice than North Carolina or Hawaii. Not only does North Carolina not exclude military pay,¹⁶⁸ but the state also has a high individual income tax rate, with the minimum set at 6%.¹⁶⁹ Because PFC A already earns more than \$12,750 per year,¹⁷⁰ he could potentially be required to pay at least the full six percent to North Carolina.¹⁷¹ Although his girlfriend is currently located in North Carolina, if he is not confident about his long-term plans with her and his desire to live permanently in the state, he should not change his domicile to North Carolina because of the high tax rate. Likewise, Hawaii does not exclude military pay for income tax purposes,¹⁷² and has a tax rate ranging from 1.4% to 8.25%.¹⁷³ Since it offers him no

167. While military home of record is unrelated to domicile, many states consider it to be a relevant factor in determining domicile. See, e.g., IDAHO DEP'T OF ADMIN., ADMIN. RULES 35.01.01 (2000), R.032 (2002) at <http://www2.state.id.us/adm/adminrules/rules/idapa35/35index.htm> (“[t]he domicile of a qualified service member is presumed to be that member’s military home of record . . .”); Iowa Dep’t of Revenue and Finance, *Iowa Withholding and Income Taxes for Military Personnel*, at <http://www.state.ia.us/tax/educate/78583.html> (“A military person is an Iowa resident if . . . Iowa is declared as his or her Military Home of Record.”).

168. See *infra* Appendix C.

169. See *infra* Appendix B.

170. See Defense Finance and Accounting Service, *supra* note 119 (establishing the minimum annual pay for a Private with less than four months service as \$12,776.40).

171. See *infra* Appendix B.

172. See *infra* Appendix C.

tax advantages and he has no real ties to the state, Hawaii is not the best choice for PFC A. Finally, Texas does not levy a personal income tax,¹⁷⁴ which is a huge financial advantage. Because of the lack of tax and because his immediate family is in Texas and he has a history there, a decision to make Texas his permanent home would be a wise one for now. To make Texas his domicile of choice, he should return home for at least a brief visit, and while there, begin transferring his ties from North Carolina to Texas and tell his parents of his plans to eventually settle down in Texas. All other steps to acquire a domicile in Texas would remain as previously discussed.

Despite the tax advantage of making Texas his domicile, PFC A might also consider education and in-state tuition. If he were considering separating from the service after his first term of enlistment and finishing his college education, he should look at what school he would like to attend. Since he already has ties to North Carolina and Texas, he might want to attend school in one of these states. Comparing the main four-year universities in the states, PFC A would find that although both the University of North Carolina at Chapel Hill and the University of Texas at Austin are ranked as top tier schools by *U.S. News*, the University of North Carolina is ranked higher than the University of Texas.¹⁷⁵ Additionally, he would discover that tuition at the University of North Carolina would be approximately \$2500 less per year than at the University of Texas.¹⁷⁶ Although the University of North Carolina appears to be more appealing, PFC A should still investigate both schools, considering factors such as academic programs and campus life. If after evaluating their programs, he decides that he likes and wants to attend the University of North Carolina at Chapel Hill, he should go ahead and take the steps to become a domiciliary of North Carolina. As a North Carolina resident, he would save nearly \$16,000 in tuition per year,¹⁷⁷ which would still offset the amount of personal income tax he would pay while enlisted in the Army.¹⁷⁸ To acquire

173. See *infra* Appendix B.

174. See *id.*

175. USNews.com, *supra* note 145. The University of North Carolina is ranked 29th, while the University of Texas is ranked 53rd. *Id.*

176. The University of North Carolina's tuition and fees for the 2003-2004 academic year equal \$4072; the University of Texas' tuition and fees for residents equal \$6608. See *infra* Appendix A.

177. See *id.*

178. An unmarried PFC with under two years of service whose basic pay equals \$1356.90 per month, Defense Finance and Accounting Service, *supra* note 119, could pay up to \$800 of state income tax. See *infra* Appendix C.

a North Carolina domicile, he should visit his girlfriend and her family, and while there, tell them of his intent to settle in North Carolina. Additionally, he should change his DD Form 2058 and take the additional steps previously discussed. If, on the other hand, PFC *A* decides that the University of Texas is more to his liking, he should take similar steps to make Texas his domicile. He would save over \$5600 in tuition per year¹⁷⁹ without being burdened with state income tax. Financially, PFC *A* would only benefit by becoming a Texas domiciliary.

The case of PFC *A* illustrates the need for service members to determine their state of domicile and assess the consequences of that domicile. It shows some of the confusion that arises with service members' connections to multiple states and evaluates some of the ties that show intent to make a state a permanent home. Additionally, this example demonstrates the application of financial consequences, such as state income tax and in-state tuition, to select a new state of domicile. Finally, this case highlights some of the steps a service member would take to establish domicile in the selected state.

2. *Lieutenant Colonel (LTC) B*

Lieutenant Colonel *B* is married with two children, ages seventeen and fifteen. He is currently preparing for his retirement after twenty-two years in the service. He was born and raised in New York, which is his military home of record. Although his parents have always been New York domiciliaries, they recently retired to Florida. Additionally, his sister took her family there to help take care of their parents. Lieutenant Colonel *B* has been stationed throughout the country and Europe; however, he visits his family in Florida when he can.

Lieutenant Colonel *B*, now stationed in Germany, is trying to decide where to settle down once he retires. He is still registered to vote in New York and sends periodic donations to his hometown church. Lieutenant Colonel *B* still claims New York as his residence for state income tax purposes. Although he still feels tied to New York, he rarely visits, since his family is no longer in the state. Over the years, he has purchased real estate in several locations, to include Florida and Virginia. He was stationed in Virginia and has a Virginia driver's license and most recently registered his

179. *See infra* Appendix A.

car there. Lieutenant Colonel *B* believes that he could be happy in any one of the three states to which he has ties.

Before deciding where to settle, LTC *B* should first determine which state is his current domicile. Looking to his domicile of origin, it appears that LTC *B* acquired domicile in New York at birth, since his parents were both New York domiciliaries.¹⁸⁰ Lieutenant Colonel *B* is still a domiciliary of New York because his strongest connections are to New York, and he has made no apparent move to acquire a new domicile.¹⁸¹ Settling in New York would be easy for him, in that it would not change either his voting or tax status. Even so, if he is not confident that this is where he wants to live, he may want to consider making one of the other states his new home. Lieutenant Colonel *B* should examine some of the consequences associated with each of his other potential domiciles.

Lieutenant Colonel *B* should first consider the income tax ramifications in each state. Florida does not have a system of personal income taxation¹⁸² and is the most beneficial state for LTC *B*. New York, which provides some benefits for military service members and retirees, such as excluding active duty military pay while a service member is stationed outside the state and excluding military retirement pay,¹⁸³ is second best for tax purposes. Although he currently does not have to pay New York state income taxes, since his active duty military pay is exempt,¹⁸⁴ once he moves to the state and gains employment there, he will be subject to state tax at a rate of 6.85%.¹⁸⁵ On the other hand, because New York does not tax military retirement pay,¹⁸⁶ approximately \$41,000 of his income will be excluded.¹⁸⁷ If he does not get another job after retirement, he would not have to pay New York taxes at all. Finally, for tax purposes, Virginia should be LTC *B*'s last choice. Virginia does not exempt either his active

180. See RESTATEMENT, *supra* note 9, § 14.

181. See *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989). Additionally, the SSCRA has protected him from acquiring a new domicile based solely on his military assignments. See 50 U.S.C. app. § 574 (2003).

182. See *infra* Appendix B.

183. See *infra* Appendix C.

184. See *id.*

185. This rate is based on an assumption that he will earn more than \$20,000 per year. See *infra* Appendix B.

186. See *infra* Appendix C.

187. This annual retirement pay is based on the assumption that he retires in 2003 after twenty-two years of service under the High-3 retirement plan. See Office of the Undersecretary of Defense for Personnel and Readiness, *Military Pay and Benefits* (May 2003), at <http://www.dod.mil/militarypay/>.

duty pay¹⁸⁸ or his retirement pay,¹⁸⁹ and if he were to return to work, he would be subject to a state income tax of 5.75%.¹⁹⁰

Although Florida is the best choice for tax purposes, LTC *B* should also consider in-state tuition for his children to attend college in each of the states. Lieutenant Colonel *B* has always dreamed of sending his kids to a “big name” school and would like for them to attend the best school possible. He knows that short of their winning scholarships, he will only be able to send them to state schools. Of the state schools in the three states he is considering, only the University of Virginia is ranked in the top 50 schools in the nation.¹⁹¹ He can save over \$16,000 annually per child by sending his children to the University of Virginia as residents.¹⁹² Furthermore, this annual savings would likely exceed any income tax obligations he would have to the state.¹⁹³ Even so, LTC *B* would not receive the full benefit of his income and retirement pay. If, however, he is more flexible with where he will send his kids to school, LTC *B* will find that the Florida schools have the lowest resident tuition and would save him between \$2600 and \$2800 annually per child in tuition fees and costs.¹⁹⁴ When it comes to tuition, the New York schools should be the last choice for LTC *B*. Not only is their in-state tuition rate higher than the schools in Florida or Virginia (with the exception of the University of Virginia), but the savings for attending the schools as a resident versus a nonresident is also the lowest of the states.¹⁹⁵

188. As a LTC with twenty-two years in service, he makes \$35,000 over the annual limit of \$30,000 to receive Virginia’s exclusion of military pay. *See* Defense Finance and Accounting Service, *supra* note 119; *infra* Appendix C.

189. *See infra* Appendix C.

190. This rate is based on the assumption that he will earn more than \$17,000 per year, which will put him into the highest tax bracket. *See infra* Appendix B.

191. Based on the *U.S. News & World Report* ranking system. *See* USNews.com, *supra* note 145.

192. *See infra* Appendix A.

193. Based on a tax rate of 5.75%, LTC *B* would have to make over \$243,000 annually to incur a \$14,000 income tax liability.

194. *See infra* Appendix A.

195. *See id.*

If LTC *B* truly does not have a solid preference about where to settle down, it appears as though Florida offers the most financial benefits for his family. With no state income tax, he can receive his military retirement pay and pursue a second career without having to lose a portion of his income. Additionally, the state universities in Florida are less expensive than in any other state. Since his family also lives in Florida, this appears to be an excellent choice for LTC *B*. On his next visit to Florida, he should begin to take the appropriate steps to change his domicile to that state.

The case of LTC *B* balances the financial consequences of state income tax and in-state tuition to select a state of domicile. It also illustrates how individual circumstances, such as the desire to attend a specific university, can change the analysis. This example highlights the need for individual examination of each case.

3. *Staff Sergeant (SSG) C*

Staff Sergeant *C* was born and raised in Michigan, which he still calls home. He is registered to vote in Michigan and pays Michigan state income tax. In fact, his current state of domicile is Michigan. Staff Sergeant *C* is divorced and his two young children, ages four and two, live with his ex-wife in his hometown in Michigan.

Staff Sergeant *C* has been in the Army for twelve years and is currently stationed in Alaska. He loves everything about Alaska and would like to make his home there after he leaves the military. He has become an integral part of the community, participating in numerous church and civic groups. He also purchased land in an undeveloped area of town and registered his car in the state. Since joining the Army, this is the first time that SSG *C* has taken any steps toward becoming a member of a community other than his hometown in Michigan. Staff Sergeant *C* wonders if he should change his domicile from Michigan to Alaska.

To decide whether to change his domicile, SSG *C* must consider all the consequences associated with the change. Financially, Alaska would offer substantial benefits for SSG *C*. It has no system of personal income taxation,¹⁹⁶ compared to the 4% flat rate charged by Michigan.¹⁹⁷ While the income tax consequences would not impact SSG *C* while he is in the

196. See *infra* Appendix B.

197. See *id.*

military because Michigan excludes active duty military pay,¹⁹⁸ it would have an effect once SSG *C* separates from the service and finds a civilian job. Additionally, if he switches his domicile to Alaska, SSG *C* will be entitled to receive the annual payment from the Alaska Permanent Fund Dividend, which is currently over \$1500.¹⁹⁹ Of the financial factors, income tax and the Alaska Permanent Fund Dividend are the two most important for SSG *C*'s purposes. Evaluating in-state tuition right now would not be particularly helpful for SSG *C*, since it will be at least fourteen years until his oldest child attends college and predicting the costs of tuition that far in the future would be impracticable.

In addition to financial consequences, SSG *C* should look at other ramifications of changing his domicile to Alaska. If he makes his home in Alaska, SSG *C* will be separated from his children by over 2,800 miles.²⁰⁰ He will not be able to participate in their daily lives and will be forced to see them relatively infrequently. Depending on the type of relationship he wishes to have with his children, this one drawback may far outweigh the financial benefit of changing his domicile to Alaska. Because SSG *C* can only change his domicile based on his honest intent to make Alaska his permanent home,²⁰¹ he cannot merely claim domicile in Alaska to receive the financial benefits while residing elsewhere to be close to his family. Staff Sergeant *C* should only change his domicile to Alaska if he is willing to accept the separation from his family.

The case of SSG *C* illustrates that financial considerations are only one factor in selecting domicile. Personal circumstances such as proximity to family and other non-financial consequences of domicile also play a significant role. There is no set formula for choosing a state of domicile.

V. Conclusion

Although tackling the question of where to call home may appear daunting to some service members, it can be simplified with an application of the basic rules of domicile. For most legal purposes, to include judicial

198. *See id.*

199. *See* Alaska Department of Revenue, Permanent Fund Dividend Program, *Dividend Amount By Year* (Jan. 2, 2003), at <http://www.pfd.state.ak.us/YEARAMOU.HTM>.

200. This mileage is calculated based on the assumption that SSG *C* settles in Fairbanks and his family lives in Lansing. *See* Mileage Calculator (Nov. 1, 2002), at <http://www.symsys.com/~ingram/mileage.html>.

201. *See* *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989).

jurisdiction, voting, and income taxation, a service member's legal residence is the place where he plans to one day establish a permanent home. Practically, a service member's domicile is in the state to which he has the closest social, financial, and governmental connections. Where a service member lives, votes, owns property, pays taxes, visits while on leave, and claims on his DD Form 2058 are some of the considerations used to determine domicile. Importantly, where one is domiciled can potentially have significant consequences for service members.

Service members who are unsure of where they want to settle after separating from the military should consider all the consequences of domicile when making a decision about where to call home. Although some service members will be concerned about consequences such as judicial jurisdiction, application of estate law, and eligibility to hold political office, the consequences that have the greatest daily impact on service members are those that affect finances, such as income tax, in-state tuition rates, and the Alaska Permanent Fund dividend. An evaluation of these factors can assist service members in making an informed decision.

The greatest financial benefit for service members comes from being domiciled in a state that does not levy a personal income tax. Service members can also benefit greatly, however, from being domiciled in one of the many other states that do not tax active duty military pay or military retirement pay. Another benefit provided by states is the lower in-state tuition rates at public colleges and universities. Because the amount of savings varies from state to state, service members must balance the potential tuition savings with the amount paid in state income tax to determine if maintaining a residence in a state for future tuition savings is financially sound. Finally, receiving an annual stipend, such as payment from the Alaska Permanent Fund Dividend, is an added bonus for service members.

Even though some states provide significant financial advantages, service members should avoid establishing domicile for the sole purpose of avoiding tax liability in another state. Not only may this type of subterfuge fail in avoiding taxes, but it may also undermine a service member's ability to claim the benefits of domicile in a state to which he has allegiance and in which he would like to establish a home. Ultimately, financial considerations are only one factor that can assist service members who are unsure about where they would like to settle.

With the basics of domicile and how it is acquired that are contained in this article, service members should be able to determine which state is

their domicile. Furthermore, they should be able to recognize the consequences of domicile and weigh these factors to make an informed decision about changing that domicile. The next time a service member is asked that daunting question—“So, where are you from?”—he can relax, smile, and talk about his home.