Kansas Department of Revenue
Office of Policy and Research

Notice 09-12

SPOUSES OF UNITED STATES MILITARY SERVICEMEMBERS

On November 11, 2009, President Obama signed into law the Military Spouses Residency Relief Act (S. 475). This act is effective for taxable years that begin on or after January 1, 2009 and all tax years thereafter.

INCOME: Under the new law, the spouse of a military servicemember may be exempt from Kansas Individual Income Tax for Tax Year 2009 and thereafter on income from services performed in Kansas if: 1) the servicemember is serving in Kansas in compliance with military orders, 2) the spouse is residing in Kansas solely to be with the servicemember, and 3) the servicemember and spouse are not residents of Kansas (the servicemember and spouse are legal residents of another state of the United States or a foreign country).

Spouses of servicemembers who meet the above requirements and who have had Kansas withholding on 2009 wages or who have made other Kansas tax payments for Tax Year 2009, such as estimated tax payments, may receive a refund of these taxes by filing a Kansas Individual Income Tax return, K-40. The Kansas income tax return can be filed electronically, using KDOR's free on-line return – www.kswebfile.org – on or after January 1, 2010. The spouse's nonmilitary Kansas income will be subtracted from Federal Adjusted Gross Income. Only tax payments on 2009 income will be subject to refund. Carry forward of prior years' tax payments to Tax Year 2009 are not subject to refund.

The scope of the income subject to refund is limited to "income for services performed by the spouse of a servicemember" in Kansas. This would include Kansas income from wages, salaries and business income from "service performed by the spouse". It would not include, for example, income derived from Kansas real estate or a trade or business carried on in Kansas that does constitute "income for services performed by the spouse of a servicemember".

This law does not exempt any nonmilitary income earned by the servicemember in Tax Year 2009 and thereafter from Kansas income tax. Nonresident servicemember's military compensation continues to be exempt from Kansas Individual Income and is also subtracted from Federal Adjusted Gross Income on line A13 of Schedule S.

WITHHOLDING: The spouse of a military servicemember whose wages/salary is exempt from Kansas income tax under the above provisions should file a Kansas Form K-4 with their employer claiming the exemption from Kansas Withholding tax.

Kansas employers should request evidence that the military spouse is indeed a legal resident of a state other than Kansas. Employers may also want to inquire with military spouses' state of residency as to whether the Kansas employer is required to withhold income tax for that state.

Spouses claiming an exemption from Kansas Withholding tax may want to consider the impact that exemption will have on their income tax liability in their state of residency. They may be required to make estimated income tax payments to their state of residency in order to avoid penalties for underpayment of their state's income tax.

KANSAS RESIDENT:

1) **Spouses -** Kansas residents (who have NOT established residency in another state) and who are residing outside of Kansas solely to be with their servicemember spouse in compliance with military orders, and earn income in that other state are subject to Kansas income tax on the income earned in that other state.

2) **Servicemember -** Military compensation earned by a Kansas resident servicemember is subject to Kansas income tax. Nonmilitary income earned by a Kansas resident servicemember in Kansas is subject to Kansas income tax. Nonmilitary income earned by a Kansas resident servicemember in a state other than Kansas is subject to that's state's income tax and is also reported on the Kansas income tax return. If an income tax was paid to that other state, a credit can be taken on the Kansas income tax return for taxes paid to another state.

TAXPAYER ASSISTANCE: Additional copies of this notice, publications and most forms are available from our web site, **www.ksrevenue.org**. Copies of Form K-40, Schedule S and the K-4 are available from KDOR's Forms Order Line: 785-296-4937. If you have questions, please contact:

Taxpayer Assistance Center
Kansas Department of Revenue
915 SW Harrison St., 1st Floor
Topeka, KS 66612-1588
Phone: 785-368-8222
Fax: 785-291-3614