

RESIDENT TUITION FOR MILITARY MEMBERS AND THEIR DEPENDENTS ENROLLING IN CALIFORNIA COLLEGES AND UNIVERSITIES

Provided by the
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GENERAL RULE: A nonresident tuition fee must be paid by a person who has not lived in California with the intent of making California his permanent home (domicile or legal residence) for more than one year immediately before the residence determination date for the semester he proposes to attend the state educational institution.

A CALIFORNIA RESIDENT IS ONE WHO:

The laws governing residence for tuition purposes in California are contained in the California Education Code starting at section 68060. Under these rules, certain classes of persons can establish residence for tuition purposes. The particular rules vary, according to the type of state-supported institution of higher education; University of California, California State University, or California Community College.

Legal residence may be established by a person who is: 1) physically present in the state and 2) at the same time intends to make California his permanent home. Steps must be taken at least one year prior to the residence determination date (Education Code Section 68041 and 68023) to show intent to make California the permanent home. Also, there must be a relinquishment of the prior state of legal residence. The steps necessary to show California residency will vary from case to case, but the steps may include:

- Registered to vote and voting in California.
- **Paid California state income taxes.**
- Owns residential property or renting an apartment where one's permanent belongings are kept.
- Maintains active memberships in California professional or social organizations.
- Maintains a California resident vehicle registration and driver's license.
- Maintains a savings and/or checking account in banks located in California.
- Maintains a permanent military address in California.
 1. Admission offices at California colleges and universities consider the payment of state income taxes an important factor in determining whether one has established residency in California.

ACTIVE DUTY MILITARY: An exception to the general residency requirements may apply to military personnel.

- 1) **UNIVERSITY OF CALIFORNIA, CALIFORNIA STATE UNIVERSITIES:** At these universities, active duty military members stationed in California (unless assigned for educational purposes to a state supported institution of higher education) are exempt from the nonresident tuition fee, until the member has lived in California long enough to become a resident. There is, in effect, a one-year grace period in which military personnel can establish legal residence by some or all of the means previously mentioned (registering to vote, paying state income taxes on their active duty pay, etc.). If the facts fail to establish residence, the member must pay the nonresident fee. See California Education Code Section 68075.
- 2) **CALIFORNIA COMMUNITY COLLEGES:** At these colleges, residency status is automatically granted to military members on active duty (except those assigned for educational purposes to state-supported institutions of higher education), as long as the member is stationed in the state. Therefore, at community colleges, military members are not required to take additional affirmative steps to establish California residency.

DEPENDENTS OF MILITARY PERSONNEL:

- 1) **UNIVERSITY OF CALIFORNIA SCHOOLS AND CALIFORNIA COMMUNITY COLLEGES:** At these institutions, dependents are entitled to a one-year grace period in which to establish legal residence. See Education Code Section 68074.
- 2) **CALIFORNIA STATE UNIVERSITIES:** At California State Universities, dependent children and spouses of active duty members stationed in California are classified as California residents and are exempt from the payment of nonresident tuition. See Education Code Section 68074.1.

TAX IMPLICATIONS OF RESIDENCY STATUS FOR THE ACTIVE DUTY MEMBER:

The Servicemembers Civil Relief Act (SCRA) 50 U.S. Code Appendix §561 provides that active duty military pay will only be taxed by the state of domicile. A military person does not acquire a domicile in the particular state solely by being present in that state in compliance with military orders. Thus, military members domiciled in a state other than California while assigned in California are considered nonresidents for tax purposes and California cannot tax the member's active duty military pay.

For tax purposes, a military member stationed in California is not a resident of California, unless he lives in the state and intends to permanently remain here, even if temporarily away on active duty.

Whether a person has changed his domicile to California is a matter of fact and intent. Factors indicating the intent to permanently remain are:

- voter registration,
- payment of state income taxes,
- statements to others,
- ownership of real estate,
- driver's license,
- payment of property taxes on vehicles and boats, etc.

Military members should be aware of the tax implications when taking affirmative steps to acquire California residency in order to qualify for the payment of resident tuition. A "cost-benefit" analysis may be the approach used by some members (depending on the amount of state income taxes in the member's domicile and the amount of a nonresident tuition fee at a particular institution, it might actually be less expensive to remain a domiciliary of that particular state and simply pay the nonresident tuition fee in California). However, the issue regarding state of domicile is not a "shell game" between the member and the state. It is an issue of actual intent by the member regarding permanent residency.

TAX IMPLICATIONS OF RESIDENCY STATUS FOR DEPENDENTS:

The domicile of civilian spouses and children is not covered by the Soldier's and Sailor's Civil Relief Act. Generally, a civilian spouse living in California is considered a California resident for tax purposes and must pay state income taxes to California.

NOTE: This is provided as general legal advice. If you have specific questions regarding your situation you should call the LSC 4 Legal Assistance Branch, at (510) 437-5891 for an appointment with a legal assistance attorney.