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ARIZONA INDIVIDUAL INCOME TAX RULING ITR 12-2

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

What compensation received by a National Guard member or a member of the United States Reserves is considered compensation received for active service and eligible to be subtracted under Arizona Revised Statutes (A.R.S.) § 43-1022(19)?

RULING:

A.R.S. § 43-1022(19) provides a subtraction for compensation received for active service as a member of the National Guard or of the United States Reserves, to the extent not already excluded from Arizona gross income.

The following are considered compensation for active service as either a member of the United States Reserves or the National Guard and eligible for subtraction under A.R.S. § 43-1022(19):

1. Compensation received by a National Guard member or a Reserve member for active duty ordered under 10 United States Code (U.S.C.) § 12301, 10 U.S.C. § 12302, 10 U.S.C. § 12303, 10 U.S.C. § 12304, or 10 U.S.C. § 12304a, during times of war or other national emergency.
2. Compensation received by a Reserve member for drilling activities required under 10 U.S.C. § 10147.
3. Compensation received by a National Guard member or a Reserve member who is ordered to active duty under 10 U.S.C. § 12310 for the purpose of organizing, administering, recruiting, instructing or training the reserve component units.
4. Compensation received by a National Guard member for drilling activities required under 32 U.S.C. § 502(a).

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5. Compensation received by a National Guard member for training or other duty in addition to drilling activities required under 32 U.S.C. § 502(a) ordered under 32 U.S.C. § 502(f).

Compensation received by a “military technician (dual status)” as defined under 10 U.S.C. § 10216(a)(1) for federal civil service employment under 32 U.S.C. § 709(a) for the National Guard or under 5 U.S.C. § 3101 for the United States Reserves, **is not** income received for active service as a National Guard member or a Reserve member even though the employee may be required to wear a military uniform while at work. Compensation received for full-time civil service employment as a military technician does not qualify for the subtraction under A.R.S. § 43-1022(19). Compensation received by a military technician for their service as a National Guard or Reserve member pursuant to items one through five above will still qualify for the subtraction.

DISCUSSION:

A.R.S. § 43-1022(19) provides a subtraction for compensation received for active service by a member of the National Guard or of the United States Reserves, to the extent not already excluded from Arizona gross income. Therefore, Arizona will not tax compensation received by a National Guard member or a Reserve member for active service as a member of the National Guard or of the United States Reserves. However, for the purpose of the Arizona income tax subtraction, the term “active service” as a member of the National Guard or of the United States Reserves is not defined.

Federal law governs the National Guard and the United States Reserves. Therefore, the department will look to federal law to determine what constitutes active service as a member of the National Guard or the United States Reserves. When federal law requires a National Guard member or a Reserve member to perform duties as a National Guard member or a Reserve member, then that activity will be considered to be active service for the purpose of the Arizona subtraction.

The reserve components of the Armed Forces are the Army National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve and the Coast Guard Reserve. 10 U.S.C. § 10101. The ready reserve is comprised of military members of the Reserve and National Guard, organized as units or as individuals, liable for recall to active duty to augment the active components in time of war or national emergency.

During times of war or other national emergency, members of the National Guard and/or the United States Reserves can be ordered to active duty under 10 U.S.C. § 12301, 10 U.S.C. § 12302, 10 U.S.C. § 12303, 10 U.S.C. § 12304, or 10 U.S.C. § 12304a. When members are called to active duty under these statutes, all income received for performing these duties is considered to be compensation received for active service as a member of the National Guard or of the United States Reserves.

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Generally, under 10 U.S.C. § 10147, members of the United States Reserve must participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of travel time) during each year, or serve on active duty for training not more than 30 days during each year. When members participate in these scheduled drills and training, all income received for participation in these drills and training is considered to be compensation received for active service as a member of the United States Reserves.

National Guard or Reserve members may be ordered to active duty to perform active Guard or Reserve duty organizing, administering, recruiting, instructing or training the reserve component units. 10 U.S.C. § 12310. When members are ordered to active duty for these purposes, all income received for performing these duties is considered to be compensation received for active service as a member of the National Guard or of the United States Reserves.

Part-time National Guard Members are required to assemble for drill and instruction at least 48 times each year and participate in training at encampments, maneuvers, outdoor target practice or other exercises at least 15 days each year. 32 U.S.C. § 502(a). When members participate in these scheduled drills and training, all income received for participation in the drills and training is considered to be compensation received for active service as a member of the National Guard.

A member of the National Guard may be ordered to perform training or other duty in addition to the training prescribed under 32 U.S.C. § 502(a). 32 U.S.C. § 502(f). When members are ordered to perform training or other duty under 32 U.S.C. § 502(f), all income received for performing that training or other duty is considered to be compensation received for active service as a member of the National Guard.

Military Technicians (Dual Status) Employees

Under 10 U.S.C. § 10216(a), a “military technician (dual status)” is a federal civilian employee who is employed under 5 U.S.C. § 3101 or 32 U.S.C. § 709. As a condition of that employment, the military technician is required to maintain membership in the Selected Reserve (National Guard or Reserves) and is assigned to a civilian position as a technician. Military technicians are authorized and accounted for as a separate category of civilian employee. During the week, these civilian employees work in the same job they fill on drill weekends, but for civil service pay (even though they may wear uniforms to work). These civilian employees are traditional Reserve or Guard members who happen to also be employed by the unit as civilians during the week. Even though National Guard technicians work for state organizations under the authority of state officials, they are considered to be civilian employees of the Department of Army or the Department of the Air Force. Compensation received by a military technician as defined under 10 U.S.C. § 10216(a) for federal civil service employment under 32 U.S.C. § 709(a) for the National

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Guard or under 5 U.S.C. § 3101 for the United States Reserves is compensation received for civil service employment and **is not** income received for active service as a National Guard or Reserve member.

APPLICABLE LAW:

A.R.S. § 43-1022(19) provides, in part, a subtraction for compensation received for active service by a member of the National Guard or of the United States Reserves, to the extent not already excluded from Arizona gross income.

10 U.S.C. § 10101 provides that the reserve components of the armed forces are the Army National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve and the Coast Guard Reserve.

10 U.S.C. § 10147 provides, in part, that each person who is enlisted, inducted, or appointed in an armed force, and who becomes a member of the Ready Reserve shall be required, while in the Ready Reserve, to participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of travel time) during each year.

10 U.S.C. § 10216(a)(1) provides that a “military technician (dual status)” is a federal civilian employee who is employed under 5 U.S.C. § 3101 or 32 U.S.C. § 709(b) and is required as a condition of that employment to maintain membership in the Selected Reserve and is assigned to a civilian position as a technician.

10 U.S.C. § 10216(a)(2) provides that military technicians shall be authorized and accounted for as a separate category of civilian employees.

10 U.S.C. § 12301 provides, in part, that in time of war or of national emergency declared by Congress, any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component may be ordered to active duty for the duration of the war or emergency and for a specified period thereafter.

10 U.S.C. § 12302 provides, in part, that in time of national emergency declared by the President, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty for not more than 24 consecutive months.

10 U.S.C. § 12303 provides, in part, that notwithstanding any other provision of law, the President may order to active duty any member of the Ready Reserve of an armed force who (1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

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(2) has not fulfilled his statutory reserve obligation; and (3) has not served on active duty for a total of 24 months.

10 U.S.C. § 12304, provides in part, that any member not assigned to a unit organized to serve as a unit of the Selected Reserve, or any member in the Individual Ready Reserve may be called to active duty when the President determines that it is necessary to augment the active forces for any operational mission or that it is necessary to provide assistance in responding to an emergency involving a use or threatened use of a weapon of mass destruction or a terrorist attack or threatened terrorist attack in the United States to active duty for not more than 365 days.

10 U.S.C. § 12304a provides that when a Governor requests federal assistance in responding to a major disaster or emergency, the Secretary of defense may, order any unit of the Army Reserve, Navy Reserve, Marine Corps Reserve and Air Force Reserve to active duty for a continuous period of not more than 120 days.

10 U.S.C. § 12310 provides that the Secretary concerned may order a member of a reserve component under the Secretary's jurisdiction to active duty pursuant to 10 U.S.C. § 12301(d) to perform Active Guard and Reserve duty organizing, administering, recruiting, instructing, or training the reserve components.

32 U.S.C. § 502(a) provides, in part, that the Secretary of the Army or the Secretary of the Air Force, as the case may be, shall assemble for drill and instruction at least 48 times each year and participate in training at encampments, maneuvers, outdoor target practice or other exercises at least 15 days each year.

32 U.S.C. § 502(f) provides, in part, that under regulations prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may be ordered to perform training or other duty in addition to that prescribed under 32 U.S.C. § 502(a).

32 U.S.C. § 709(a), provides, in part, that under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, persons may be employed as technicians in: (1) the administration and training of the National Guard; and (2) the maintenance and repair of supplies issued to the National Guard or the armed forces.

32 U.S.C. § 709(b), provides that except for non-dual status employees, a person employed under 32 U.S.C. § 709(a) must meet each of the following requirements:

- (1) Be a military technician (dual status) as defined in 10 U.S.C. § 10216(a).
- (2) Be a member of the National Guard.
- (3) Hold the military grade specified by the Secretary concerned for that position.

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- (4) While performing duties as a military technician (dual status), wear the uniform appropriate for the member's grade and component of the armed forces.

John A. Greene, Director

Signed: December 10, 2012

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning application of the law. Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.