

IT 16-0003-GIL 07/12/2016 SUBTRACTION MODIFICATIONS-MILITARY

Compensation paid to members of the National Guard qualifies for the subtraction modification under IITA Section 203(a)(2)(E)

July 12, 2016

Re: Illinois income tax

Dear Xxxxx:

This is in response to your letter dated June 16, 2016. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.tax.illinois.gov.

Your letter states as follows:

I have been instructed to contact the Legal Services Department to request a private letter ruling on a question where we have been given multiple answers by various agents at the Department of Revenue.

I have several clients, including myself (my husband actually), who are members of the Illinois National Guard. Over time, these individuals in question have become TITLE as well.

The TITLE is a federal job however, the requirements to hold this federal position are that the individual must 1) "be a military technician (dual status) as defined in section 10216(a) of title 10," 2) "be a member of the National Guard," 3) "hold the military grade specified by the Secretary concerned for that position," and 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."

The question that has been coming up repeatedly with varying answers each time is the treatment of the W-2 from the US Army on the Illinois return. I know that the law states that the Illinois National Guard income is exempt, or able to be subtracted, in Illinois. The question is whether or not the federal technician job, for which dual-status is required, is also exempt in Illinois?

I am enclosing page 41 of Title 31 from the Illinois National Guard, Section 709. Technicians: employment, use, status. Subsection (b)(2) explains that these federal technicians must be members of the National Guard. Subsection (e) also explains that as technicians these individuals are employed by the Department of the Army.

I am also enclosing a military document called the TRP 303. Chapter 2, page 4. Section 2-1 Position assignments subsections (a) and (b) also explains the dual status requirement.

I do understand that military pay received as a civilian is not an income that can be subtracted but again, the question is whether or not the military pay received as a dual-status technician is income that should be subtracted.

The final enclosures are redacted copies of the email sent to me with a list of required attachments if an amended return were to be filed per an agent of the Illinois Department of Revenue. That list contained in the email requests copies of the W-2s received so you can see that they are both military W-2; redacted copies are enclosed. The list also requests a memorandum stating the dual status held by an individual; a friend of one of my clients has provided his letter as an example. Other items in the list are already included.

RULING

Section 203(a)(2)(E) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/203) provides the following subtraction modification in the computation of base income:

For taxable years ending before December 31, 2001, any amount included in such total in respect of any compensation (including but not limited to any compensation paid or accrued to a serviceman while a prisoner of war or missing in action) paid to a resident by reason of being on active duty in the Armed Forces of the United States and in respect of any compensation paid or accrued to a resident who as a governmental employee was a prisoner of war or missing in action, and in respect of any compensation paid to a resident in 1971 or thereafter for annual training performed pursuant to Sections 502 and 503, Title 32, United States Code as a member of the Illinois National Guard or, beginning with taxable years ending on or after December 31, 2007, the National Guard of any other state. For taxable years ending on or after December 31, 2001, any amount included in such total in respect of any compensation (including but not limited to any compensation paid or accrued to a serviceman while a prisoner of war or missing in action) paid to a resident by reason of being a member of any component of the Armed Forces of the United States and in respect of any compensation paid or accrued to a resident who as a governmental employee was a prisoner of war or missing in action, and in respect of any compensation paid to a resident in 2001 or thereafter by reason of being a member of the Illinois National Guard or, beginning with taxable years ending on or after December 31, 2007, the National Guard of any other state. The provisions of this subparagraph (E) are exempt from the provisions of Section 250.

Your letter states that under 32 U.S.C. §709(a), the Secretary of the Army or Secretary of the Air Force may employ certain TITLE. Employment under Section 709(a) is generally limited to persons that meet all of the following requirements: (i) a military TITLE (dual status) under 10 U.S.C. §10216(a), (ii) a member of the National Guard, (iii) hold the specified military grade, and (iv) wear the specified uniform.

Compensation paid to members of the National Guard pursuant to employment under 32 U.S.C. §709(a) qualifies for the subtraction modification under IITA Section 203(a)(2)(E). Such compensation should be shown as a subtraction modification on the Schedule M, Other Additions and Subtractions for Individuals, Line 19, and Form IL-1040, Line 7.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)