

IT 16-0008-GIL 12/07/2016 SUBTRACTION MODIFICATION

Civilian income paid for a position that requires membership in the Illinois National Guard does not qualify for tax-exemption status for Illinois income tax purposes. (This is a GIL.)

December 7, 2016

Re: Tax Exempt Military Pay

Dear Xxxxx:

This is in response to your letter received by this office August 19, 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](http://www.tax.illinois.gov).

Your letter states as follows:

I, NAME, worked for the State of Illinois Military Affairs as a TITLE from MONTH 20XX through MONTH 20XX. This position is a civilian position that required me to me [sic] a member of the Illinois National Guard to obtain and maintain my employment. I am requesting a ruling regarding my wages earned during this period and whether or not these wages are exempt from Illinois Income Tax. To the best of my knowledge the Department has not previously ruled on the same or a similar issue. I have not previously submitted the same or similar issue to the Department but withdrew it before a letter ruling was issued. It is my understanding that income is exempt from Illinois Income Tax if your income was received from wages earned from employment in which you were required to be a member of [the] Armed Forces or National Guard to obtain and maintain that employment. If this is the reason used to determine taxability of the income then I believe my income earned may be exempt as well. Below are the material facts to my situation: I held a military exempt position with the State of Illinois Department of Military Affairs Office from MONTH 20XX through MONTH 20XX. My title was a TITLE. As stated above, this position is a civilian position that required me to me [sic] a member of the Illinois National Guard to obtain and maintain my employment. I have enclosed Exhibit A and Exhibit B as verification. Exhibit A, a Military Affairs employment verification letter, states my dates of employment and my requirement to be an active member of the Illinois National Guard. Exhibit B, a TITLE job Classification and position posting, states under REQUIREMENTS [sic]. "Requires active or retired (minimum of 20 years) membership in the Illinois National Guard..." I have recently applied for refunds of my Illinois income tax withheld for tax years 20XX through 20XX, but do not want to cash any refunds approved until I have a private letter ruling to support my claim. The tax year[s] 20XX and 20XX was recently processed for a refund.

My review of the statutes and publications by the department don't lead me to a definitive answer on the taxability of my wages. I was unable to find any previous General or Private

Letter Rules that were similar to my situation. The Illinois Department of Revenue Publication 120 [sic], Illinois Filing Requirement for Military Personnel, explains pay you received from the military as a civilian may not be subtracted as military pay. The wages I received from my position were paid by the State of Illinois, not the military, and they are civilian wages. In reviewing the Section 203(2)(E) of the Illinois Income Tax Act for taxable years ending before December 31, 2001 it describes income must be active duty income or annual training income. In this situation, I agree my civilian income may not be a military pay subtraction and is taxable. However, for the taxable years ending on or after December 31, 2001 the statute became more vague and for Illinois National Members states "...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...". Based on this information and my requirement to be a member of the Illinois National [sic] Guard to have had my employment, then I believe my income qualifies as exempt.

Once again, I request that a Private Letter Ruling determination be made on the wages I earned for my employment with the State of Illinois Military Affairs Office as a Military Environmental Specialist. In the event a Private Letter Ruling cannot be made, I request a General Information Letter regarding the taxability of wages earned if earned by employment in a civilian position that requires you to be a member or [sic] the Armed Forces or National Guard.

## **RULING**

35 ILCS 5/203(a)(2)(E), as originally written, only exempted Illinois National Guard active duty pay from Illinois income tax. Section 203(a)(2)(E) was amended on August 3, 2001 under Senate Bill 52 to include:

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 government 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... Public Act 92-0244 (eff. 8/3/2001).

The legislative intent behind Senate Bill 52 was to clarify that, ...Currently, their [National Guardsmen] pay is exempt from State tax when they are on active duty status, whether they are called to a conflict around the world or their two-week annual training. This clears up a conflict and allows their pay, when they are training two days a month, to also be tax-exempt. State of Illinois 92<sup>nd</sup> General Assembly Senate Transcript, 19<sup>th</sup> day, pg. 86 (Mar. 29, 2001).

The legislative intent for the 35 ILCS 5/203(a)(2)(E) amendment under Senate Bill 52 was to clarify tax-exempt status for National Guard training pay. The amendment did not extend tax-exempt status to civilian pay received while being a member of the Illinois National Guard.

Military pay received as a civilian is not eligible for tax-exempt status. Pub. 102. The statute and publication are silent to a situation where the State of Illinois pays civilian wages to a member of the Illinois National Guard, but the disallowance of the exemption flows naturally from the established principle that civilian income paid by the military is not eligible for tax-exempt status. Pub. 102. Moreover, the requirement that an employee must hold membership in the Illinois National Guard is immaterial, because the legislative intent to the section 203(a)(2)(E) amendment was to clarify the tax-exempt status of National Guard non-active duty, training pay, and not to exempt all pay received as consequence to a membership in the Illinois National Guard.

Therefore, income paid from the State of Illinois to a civilian for employment that requires membership in the Illinois National Guard falls outside the scope of 35 ILCS 5/203(a)(2)(E), and is not tax-exempt from Illinois income tax.

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 Fliflet  
Deputy General Counsel