

**Final Order Denying Refund: 01-20182107R
Individual Income Tax
For Tax Years 2016 and 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Indiana National Guard Member's income did not qualify for the National and Reserve Component Members Deduction, therefore, he is not entitled to the refunds claimed.

ISSUES

I. Individual Income Tax - National Guard and Reserve Component Members Deduction.

Authority: 32 U.S.C. § 502; IC § 6-3-1-3.5; [IC 6-3-1-34](#); Information Bulletin 27 (January 2014)

Taxpayer protests the denial of the National Guard and Reserve Component Members Deductions claimed on his returns.

STATEMENT OF FACTS

Taxpayer, an Indiana resident, is an active/reserve (AGR) with the Indiana National Guard. For tax years 2016 and 2017, Taxpayer filed Indiana Amended Individual Income Tax Returns. In those amended returns, taxpayer claimed he qualified for the National Guard and Reserve Component Members Deduction. As a result, Taxpayer's amended returns state an overpayment of tax for both years. The Indiana Department of Revenue ("Department") denied those claimed refunds "because the orders [Taxpayer has] submitted indicate that [Taxpayer is] on active duty in Active Guard or Reserve Status. As such you do not meet the Status of a reservist being called up as the law is intended." Taxpayer protested this denial and waived his right to a hearing. Thus this Order is based on the information provided in Taxpayer's file and discussions with Taxpayer's representative. Additional facts will be provided as necessary.

I. Individual Income Tax - National Guard and Reserve Component Members Deduction.

DISCUSSION

Taxpayer filed amended 2016 and 2017 individual tax returns claiming a deduction for his service in the National Guard Reserve. The amended returns resulted in refunds for both years. The Department denied those refunds.

"Indiana adjusted gross income tax applies to members of the armed forces of the United States, which include the Army, Air Force, Marines, Navy, Coast Guard, Air National Guard, National Guard, and Navy Merchant Marines." Information Bulletin 27 (January 2014), 20140129 Ind. Reg. 045140013NRA. To arrive at Indiana adjusted gross income, a taxpayer must start with their Federal adjusted gross income, add certain items back, and take certain deductions out. IC § 6-3-1-3.5. One such deduction an eligible individual may take is the National Guard and Reserve Component Members Deduction.

As described in Information Bulletin #27 as in effect for the tax years at issue:

Service members eligible to claim [the National Guard and Reserve Component Members Deduction] include members of the Indiana Army National Guard; Indiana Air National Guard; and members of the reserve components of the Air Force, Army, Coast Guard, Marine Corps, Merchant Marine, and Navy.

In calculating Indiana adjusted gross income, these service members may claim the deduction for any combination of periods when they were:

1. On full-time involuntary orders;
2. Mobilized and deployed, either voluntarily or involuntarily, for full-time service; or

3. A member of a unit that was federalized (in the case of a National Guard member).

These service members are entitled to deduct the amount of their qualified military income that was not excluded from their gross income for federal income tax purposes under Section 112 of the Internal Revenue Code. Military withholding statements must be enclosed with the tax return when claiming this deduction.

Under IC § 6-3-1-34, "Qualified military income" is defined as wages that are paid:

- (1) to a member of:
 - (A) a reserve component of the armed forces of the United States; or
 - (B) the National Guard; and
- (2) for any of the following applicable periods, or any combination of the following applicable periods, in a calendar year:
 - (A) The member's full-time service on involuntary orders in:
 - (i) a reserve component of the armed forces of the United States; or
 - (ii) the National Guard.
 - (B) The period during which the member is mobilized and deployed for full-time service in:
 - (i) a reserve component of the armed forces of the United States; or
 - (ii) the National Guard.
 - (C) The period during which the member's National Guard unit is federalized.

Taxpayer provided copies of his orders which covered both tax years. The orders state that Taxpayer was ordered to "full-time National Guard duty . . . in an Active Guard/Reserve (AGR) status. . . ." Further, Taxpayer's orders read that "[i]n the event your ARNG unit of assignment is called or ordered to Federal active duty, you will be terminated automatically from your 32 US 502(f) AGR status the day before the effective date of federalization." 32 U.S.C. § 502 pertains to National Guard training. Section (f) therefore reads:

- (1) Under regulations to be 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--
 - (A) without his consent, but with the pay and allowances provided by law; or
 - (B) with his consent, either with or without pay and allowances; be ordered to perform training or other duty in addition to that prescribed under subsection (a).
- (2) The training or duty ordered to be performed under paragraph (1) may include the following:
 - (A) Support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense.
 - (B) Support of training operations and training missions assigned in whole or in part to the National Guard by the Secretary concerned, but only to the extent that such training missions and training operations--
 - (i) are performed in the United States or the Commonwealth of Puerto Rico or possessions of the United States; and
 - (ii) are only to instruct active duty military, foreign military (under the same authorities and restrictions applicable to active duty troops), Department of Defense contractor personnel, or Department of Defense civilian employees.
- (3) Duty without pay shall be considered for all purposes as if it were duty with pay.

A review of Taxpayer's orders confirms that Taxpayer was called, under an involuntary order, to participate in reserve activities. Taxpayer's unit was not federalized and Taxpayer was not a reserve National Guard member who was called to active duty under Title 10 Subtitle E (Armed Forces, Reserve Component) of the United States Code. Therefore, Taxpayer's income does not qualify for the National Guard and Reserve Component Members Deduction. Taxpayer's protest is respectfully denied.

FINDING

Taxpayer's refund requests for tax years 2016 and 2017 are denied.

December 17, 2018

Posted: 02/27/2019 by Legislative Services Agency
An [html](#) version of this document.