

Colonel Richard L. Palmatier, Jr.
Arizona Army National Guard

October 23, 2000

**Re:State Income Taxation of Members of the
Arizona National Guard
I00-025
(R00-033)**

Question Presented

You have asked whether the pay and allowances paid to individual members of the Arizona National Guard are subject to Arizona's income tax.⁽¹⁾

Summary Answers

The Soldiers' and Sailors' Civil Relief Act does not exempt members of the Arizona National Guard who are residents of Arizona from Arizona income tax on their compensation and allowances.

Background

The National Guard is the modern militia reserved to the states by Article I, section 8, clauses 15 and 16 of the United States Constitution. *Maryland v. United States*, 381 U.S. 41, 46 (1965), *vacated on other grounds*, 382 U.S. 159 (1965); *see also* Ariz. Const. art. XVI, § 2 ("The organized militia shall be designated the National Guard of Arizona . . ."). Except when activated for service by the President of the United States, the National Guard of Arizona is considered a State organization. *Williams v. Superior Court*, 108 Ariz. 154, 158, 494 P.2d 26, 30 (1972); *see also* Ariz. Const. art. V, § 3 ("The Governor shall be commander-in-chief of the military forces of the State, except when such forces shall be called into the service of the United States."). The Governor is the commander-in-chief, and the Arizona Adjutant General acts as the Governor's military chief of staff. A.R.S. § 26-102(A). When on duty, members of the National Guard are under the command and at least indirect supervision of the Arizona Adjutant General. *Id.* The National Guard is governed by State, as well as federal laws. *See, e.g.*, 32 U.S.C.

§§ 101 through 502; A.R.S. §§ 26-101 through -253.

Your opinion request describes two types of affiliation with the National Guard. First, there is the traditional guardsman who serves essentially one weekend a month and a two-week annual training period. For these periods, the guardsman receives pay and allowances from the Department of Defense due to the dual status of being a part of the Reserve Forces of the United States. The second category is the full-time member, who receives full-time pay and allowances.

This second category is considered "full-time National Guard duty" under federal law. *See* 32 U.S.C. § 101(19). According to your opinion request, there are individuals in both categories who reside in Arizona and perform their duties primarily within the State of Arizona. *See* A.R.S. § 26-155 (able-bodied residents of the State may be enlisted as members of the National Guard).

The Soldiers' and Sailors' Relief Act

The Soldiers' and Sailors' Civil Relief Act of 1940 ("Act"), 50 U.S.C. app. §§ 501- 593 applies special legal rules to persons in the military service of the United States. Among other things, the Act defines the residence of military personnel for tax purposes. *See* 50 U.S.C. app. § 574. For income tax purposes, the Act has two components. First, a person shall not be deemed to have

lost a residence or domicile in a state because he or she is absent from the state in compliance with military or naval orders, and the person does not acquire a residence or domicile in any other state solely by reason of being absent from his or her home state. See 50 U.S.C. app. § 574. Thus, a person's residence or domicile remains the same even if the person moves to other states while in the military. Second, compensation for military or naval service shall not be deemed income for services within a state if the recipient is not a resident or domiciliary. In other words, if a military person is working within a state but is not a resident or domiciliary of that state, the state of actual physical location may not impose an income tax on that person's military compensation.

Your question concerns the application of these principles to members of the Arizona National Guard subject to State command. This Opinion does not apply to federal military personnel on active duty assigned to assist the National Guard, such as the Property and Fiscal Officer ("PFO"). See Ariz. Att'y Gen. Op. I99-007 ("The PFO is an active duty federal officer subject to federal control, and does not fall within the State command.").

Analysis

Arizona residents and domiciliaries are subject to Arizona income taxation because Arizona taxes its residents on all of their income, even from sources outside the State. A.R.S. § 43-102(4). Under Arizona law, compensation paid to members of the Arizona National Guard who are Arizona residents is subject to Arizona income tax.⁽²⁾

The Act does not limit Arizona's ability to tax National Guard members who are Arizona residents and are subject to State command because the Act does not apply to them. The Act applies to any "person in military service," which includes "persons and no others" who are members of the Army, Navy, Marine Corps, Air Force, Coast Guard, and all officers of the Public Health Service. 50 U.S.C. app. § 511(1). "Military service" under the Act includes "Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service." *Id.* Although annual training of National Guard personnel may, to some extent, be under the supervision of the United States, it is not "preliminary to induction into the service" within the meaning of the Act. See A.R.S. § 26-171 (National Guard training). Therefore, the members of the National Guard subject to State command are not "person[s] in military service" under the Act. Consequently, the Act's provisions regarding residency for income tax purposes do not apply to members of the National Guard, either part- or full-time, who are subject to State command.

Conclusion

Members of the Arizona National Guard who are residents of Arizona are subject to Arizona income tax on their compensation and allowances. The Soldiers' and Sailors' Relief Act does not prevent such persons from being treated as Arizona residents for purposes of income taxation.

Janet Napolitano
Attorney General

1. You submitted your request under Arizona Revised Statutes ("A.R.S.") § 26-177, which provides "the attorney general shall, upon request of the adjutant general or the staff judge

advocate of the national guard, give opinions upon legal questions pertaining to military affairs of the state."

2. Whether a particular person is a resident of Arizona requires a fact-specific inquiry beyond the scope of this Opinion. *Cf.* A.R.S. § 43-104(19) (defining "resident" for purposes of the income tax).

 [Back to 2000 Opinions](#)

