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SC TECHNICAL ADVICE MEMORANDUM #89-16

TO: Mr. William F. Bray, Director  
Office Services Division

FROM: John Swearingen, Manager  
Tax Policy and Procedures Department

DATE: May 31, 1989

SUBJECT: Deduction for Compensation Paid to Members of  
National Guard or Reserve Units  
(Income Tax)

REFERENCE: S.C. Code Ann. Section 12-7-435(f) (Law. Co-Op. Supp. 1988)  
S.C. Code Ann. Section 12-7-570 (Law. Co-Op. 1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)  
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. What is "income derived from tours of active military duty extending beyond the customary training periods established for national guard and reserve units" for purposes of determining the income tax deduction for compensation paid to members of the National Guard and Reserve?
2. Are Active Guard/Reserve (AGR) personnel allowed an income tax deduction for a portion of their annual salaries received as an employee of the National Guard?

Facts:

Members of National Guard and Reserve units are allowed an income tax deduction for compensation for services in performing their duties. The deduction does not include compensation for active military duty beyond the customary training periods established for

National Guard and Reserve units. Upon review of their returns, the Commission determined that some National Guard and Reserve members are excluding compensation in excess of the compensation for the two week annual training period and weekend drills. Also, some AGR personnel are excluding a portion of their annual salaries as annual training period and weekend drill pay.

Discussion:

Section 12-7-435(f) allows a deduction from South Carolina income for amounts received and excluded from income by Section 12-7-570. Section 12-7-570 provides as follows:

No part of the compensation received by the members of the South Carolina National Guard from the State or from the Federal Government or by members of the reserve components of the armed forces of the United States who are residents of this State from the Federal Government for services in performing their duties shall be considered as any part of the income, gross or net, of the respective members in computing income taxes payable to the State of South Carolina. But the provisions of this section shall not be applicable to income derived from tours of active military duty extending beyond the customary training periods established for national guard and reserve units.

1. Section 12-7-570 was enacted in 1950 as additional compensation for members of the National Guard and resident members of the Reserves. (1950 S.C. Acts 1032). The first sentence of the statute excludes all compensation paid to members for services in performing their duties. The second sentence of the statutes establishes a limitation upon the exclusion. The exclusion does not apply to income derived from tours of active military duty extending beyond the customary training periods established for units.

Section 502(a) of Title 32 of the United States Code sets the minimum training for members of the National Guard as follows:

- (1) assemble for drill and instruction, including indoor practice at least 48 times each year; and
- (2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

As a general rule, a National Guard unit goes to annual training for 15 days each year and participates in 48 weekend drills. Occasionally, a unit may go to annual training for 3 weeks particularly when the camp is in Germany or another foreign country. Additionally, units consisting of pilots are usually required to participate in 36 additional drills.

Section 270(a) of Title 10 of the United States Code sets the minimum training for members of the reserve as follows:

- (1) 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;

- (2) serve on active duty for training not more than 30 days during each year.

As a general rule, Reserve units go to annual training for 14 days (exclusive of travel time) each year and participate in 48 weekend drills. Like National Guard units, Reserve units may occasionally go to three weeks annual training and units with pilots participate in 36 additional drills.

When a National Guard or Reserve member is at annual training, the member is on active duty. The 48 weekend drills and the 36 additional drills are classified as inactive duty. Individual members may receive additional active duty training (based on rank and/or specialty), be called to active duty or go through basic training which is considered active duty.

For purposes of the deduction from income allowed by Section 12-7-570, a determination must be made as to what constitutes income derived from tours of active military duty extending beyond the customary training periods established for units.

The term "active military duty" is synonymous with the term "active duty" which is defined by U.S.C., Title 10, Armed forces, Section 101(2) as follows:

The term "active" duty means full-time duty in military service of the United States. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty.

It should be noted that the last sentence excluding full-time National Guard duty was added by a 1984 amendment.

There is no military definition of "tours" or "customary". The dictionary defines tour as "a period of duty at a single place or job". Customary is defined as "commonly practiced or used as a matter of course; usual."

The Attorney General's Office referred to the customary training period as one weekend a month and two weeks of active duty (1981 Op. Atty. Gen. No. 81-16). The limitation of the second sentence of Section 12-7-570 relates to the customary training periods for units and not for individual members. The customary annual training period for National Guard units is 15 days active duty for training. Thus, a member of the National Guard could exclude compensation for the 15 days active duty for training. The customary annual training period for Reserve units is 14 days (exclusive of travel time) active duty for training. Thus, a member of the Reserve could exclude compensation for the 14 days active duty for training plus travel time. Any and all compensation for active duty beyond the National Guard's customary 15 day period or the Reserve's customary 14 day period (plus travel time) would be subject to South Carolina income tax.

The limitations of the exclusion refer only to active military duty. Weekend drills and the 36 additional drills are classified as inactive duty. Compensation for weekend drills, the 36 additional drills or any inactive duty is not subject to South Carolina income tax.

In support of the above conclusions, the annual training of National Guard members does not normally exceed 15 days, by regulation. Air National Guard regulation ANGR 50-1, Section 3-7 states "Annual training will not normally exceed a total of 15 days per fiscal year per individual member." Army National Guard Regulation NGR 350-1, Section 3.3 (6) states, that, "All units exceeding 15 days AT will require CNGB approval."

Furthermore, S.C. Code Section 8-7-90 provides up to 15 days leave of absence with pay annually for all officers or employees of this State and its' political subdivisions who are members of the National Guard or Reserve while in training or engaged in other duties under order. This statute was enacted in 1950, the same year that 12-7-570 was enacted. A subsequent amendment provides that in the event such person is called to serve in an emergency, he is entitled to an additional 30 days leave of absence with pay. Thus, it appears that at the time of the original enactment of 12-7-570, the Legislature was aware of a customary training period of approximately 15 days.

It is a general rule that the courts may not, by construction, insert words or phrases in a statute,...when applied to a subject about which nothing whatever is said, and which, to all appearances was not in the minds of the legislature at the time of the enactment of the law. Under such circumstances, new provisions or ideas may not be interpolated in a statute, or ingrafted thereon. 73 AmJur 2d 203

2. Active Guard/Reserve (AGR) personnel are assigned as full-time support for National Guard or Reserve units. AGR personnel are considered to be employees and are required to be members of the National Guard or Reserve as a condition of their employment. Although they are required to participate in annual training and weekend drills, they receive no additional compensation.

AGR personnel are considered to be on full time active duty or full- time National Guard duty. Therefore, their "tour of duty" would extend beyond the "customary training periods for Guard and Reserve units.

As many AGR personnel are required to attend the annual training and weekend drills they will be allowed to deduct their daily pay while attending the customary training periods. For example a major with two years or less duty receives a daily pay of \$31.73. If he is in the Guard, and attends 15 days annual training and 24 days of weekend drill, he will be allowed a deduction of \$1,237.47 (\$31.73 x 39). It should be noted that an AGR does not receive 2 days pay for each weekend drill day. Further, if AGR personnel attend more than the required or customary 48 drills, they will not be allowed a deduction for those.

#### Conclusion:

1. Any compensation for tours of active duty beyond the annual training period of 15 days for guard members and 14 days (plus travel time) for Reserve members, is considered taxable income. All weekend drill and inactive duty training is deductible in arriving at South Carolina taxable income.

2. Active Guard/Reserve (AGR) personnel are allowed a deduction for customary training pay as members of the Guard or Reserve. This deduction is computed by multiplying their daily pay times the number of days they actually attend annual training or drill not to exceed 39 days for members of the Guard or 38 days plus travel for members of the Reserve.