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I was the contact person for SB 378 which became SECTION 15-30-2117, MCA.

I am concerned over the inconsistency between the statute, ARM, and Department of Revenue (DOR) frequently asked questions (FAQ) for military personnel.

The statute states: (b) (i) The salary received by residents of Montana for active duty in the national guard is exempt from state income tax. (ii) For the purposes of this subsection (2)(b), "active duty" means duty performed under an order issued to a national guard member pursuant to: (A) Title 10 U.S.C.; or (B) Title 32 U.S.C. for a homeland defense activity, as defined in Title 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

The ARM states: 42.15.214 RESIDENT MILITARY SALARY EXCLUSION

(1) The following items of military compensation received by a resident service member are exempt from Montana income tax:

- (a) basic, special, and incentive pay received for serving on active duty as a member of the regular armed forces;
- (b) basic, special, and incentive pay received by a member of a reserve component of the armed forces or a member of the National Guard, for active duty in a "contingency operation" as defined in 10 USC 101; and
- (c) basic, special, and incentive pay received by a member of the National Guard performing a "homeland defense activity" as defined in 32 USC 901.

(2) Military compensation that is not exempt from Montana income tax includes:

- (a) salary received for annual training and inactive duty training for service not described in (1)(b) or (1)(c);
- (b) salary received by a member of a reserve component of the armed forces for service not described in (1)(b) or (1)(c);
- (c) salary received by a member of the National Guard engaged in "active Guard and Reserve duty" as defined in 10 USC 101, for service not described in (1)(b) or (1)(c); and

DOR FAQ states:

**Q. Did the 2015 Montana legislature change the tax law regarding military salary exemptions so that my military salary is now exempt from Montana income tax?**

**A.** No. The changes made to the Montana tax law during the 2015 legislative session simply clarify who is exempt from Montana income tax but do not extend the exemption to military members who were not previously exempt. Military compensation received while serving on active duty as a member of the regular armed forces remains exempt from Montana income tax. The following military compensation is not exempt:

- 1) Salaries received for annual training and inactive duty training;
- 2) Salaries received while a member of a reserve component of the armed forces that is not received as part of a "contingency operation" as defined in 10 USC 101 or as part of a "homeland defense activity" as defined in 32 USC 901;
- 3) Salaries received while a member of the National Guard engaged in "active Guard and Reserve duty" as defined in 10 USC 101.

The ARM is inconsistent with the statute because in plain and simple language ARM indicates that National Guard pay for annual training under Title 10 is not exempt unless it is part of a contingency operation or homeland defense activity while the statute exempts National Guard pay under all Title 10 orders.

FAQ is inconsistent with ARM and statute because it indicates that NO annual training is exempt.

I favor modifying the DOR FAQ to state:

**Q. Did the 2015 Montana legislature change the tax law regarding military salary exemptions so that my annual training military salary may now be exempt from Montana income tax?**

**A. Yes.**

The changes made to the Montana tax law during the 2015 legislative provide:

- Annual training orders issued to National Guard member pursuant to Title 10 U.S.C. are now exempt.
- Annual training orders issued to National Guard member pursuant to Title 32 U.S.C. for a homeland defense activity, as defined in Title 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation are now exempt.

This was not true under previous ARM.

This was not true according to Montana Department of Revenue Legal Opinion IT OP 12-02.

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