



H.B. 399

124th General Assembly
(As Introduced)

Reps. Evans, Callender, Calvert, Carmichael, Collier, Core, Faber, Fessler, Flowers, Grendell, Hagan, Hollister, Hughes, Latta, Lendrum, Metzger, Reidelbach, Roman, Schaffer, Schmidt, Seitz, Webster, White, Willamowski, Barnes, Carano, Distel, Fedor, Jones, Krupinski, Oakar, Otterman, Perry, Rhine, Seaver, S. Smith

BILL SUMMARY

- Creates an income tax exemption for military pay and allowances received by members of reserve components of the Armed Forces and members of the National Guard for active duty outside a declared combat zone or area where special pay is awarded for being in an area where exposed to hostile fire or imminent danger (applies to taxable years beginning on or after January 1, 2001, and ending on or before December 31, 2003).

CONTENT AND OPERATION

Income tax exemption for military personnel

Current law

Current federal and Ohio law grant members of the Armed Forces various forms of relief for periods when they are on active duty in a combat zone. Among the forms of relief is a federal and state income tax exemption for military pay and allowances received by members of the Armed Forces on account of active duty service in a combat zone, or during hospitalization as a result of injury incurred while serving in a combat zone. For the purposes of the tax exemptions, "Armed Forces" includes the Army, Air Force, Navy, Marine Corps, and Coast Guard and their respective reserve components; it does not include National Guard units. (Internal Revenue Code secs. 112 and 7701; R.C. 5747.024.)

The bill

The bill expands the Ohio income tax exemption so that it also exempts the military pay and allowances received by members of the Armed Forces reserves and members of the National Guard for active duty regardless of whether they serve in an officially designated combat zone or an area qualifying members for special pay for being exposed to hostile fire or imminent danger.¹ The bill does not similarly expand the exemption for members of the regular Armed Forces serving outside a combat zone or hazardous duty area, but such regular members continue to be entitled to the existing exemption if they serve in a combat zone or hazardous duty area.

Unlike the existing exemption, a reservist or National Guard member must claim the exemption by deducting the military pay and allowance on the Ohio income tax return. By contrast, the existing exemption operates by virtue of the military pay and allowance not being considered as gross income for federal (and, therefore, Ohio) income tax purposes.

The exemption applies to pay and allowances received in taxable years beginning on or after January 1, 2001, and ending on or before December 31, 2003. (For almost all members, this means active duty military pay and allowances received during 2001, 2002, and 2003, since most, if not all, members' taxable years will coincide with calendar years.) (R.C. 5747.01(A)(20).)

"Active duty"; "combat zone"; "military pay and allowances"

For the purpose of the existing federal and state tax exemptions, "active duty" means full-time duty in the active service of the regular and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard. It does not include full-time National Guard duty. (See 10 U.S.C.A. 101.)

"Combat zone" means an area in which the Armed Forces are engaged in combat, as designated in an executive order of the President.² Occasionally, Congress extends the tax exemption to members of the Armed Forces who, while not serving in a designated combat zone, serve in areas qualifying the members for

¹ *Special pay for being exposed to hostile fire or imminent danger is only available to a member of a uniformed service who is entitled to basic pay, which includes members of the Army, Navy, Air Force, Marines, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service who are on active duty.*

² *For example, recently designated combat zones include Yugoslavia and Albania (including airspace and adjacent waters) on and after March 24, 1999, and the Arabian Peninsula (including airspace and adjacent waters) on and after January 17, 1991.*

hazardous duty pay.³ The exemption applies to pay and allowances received from the date the President or Congress designates as the date hostilities began, which typically precedes the date the designation is made. (See Internal Revenue Code sec. 112.)

"*Military pay and allowances*," although not defined specifically for the purposes of the tax exemptions, means the various forms of pay, including basic pay, special pay, retainer pay, incentive pay, and equivalent pay (and excludes retirement pay), and the various forms of allowances, including those for housing, subsistence, travel and transportation, cost-of-living, and high-deployment per diem. (For descriptions of the various forms of pay, see 37 U.S.C.A. 301 to 323; for descriptions of the various forms of allowances, see 37 U.S.C.A. 401 to 436.)

Note that the existing federal and state income tax exemptions are limited for commissioned officers. The exemptions do not apply to compensation in excess of the highest rate of basic pay for enlisted personnel at the highest enlisted pay grade plus any hazardous duty pay the officer is entitled to; any compensation above this level is taxable. (For the purposes of this limitation, a commissioned warrant officer is not considered a commissioned officer; commissioned warrant officers are entitled to the exemption of all of their pay and allowances, as are enlisted personnel.) The bill's expanded exemption is not subject to this limitation, however, because the exemption applies to all pay and allowances regardless of whether a person is a commissioned officer or not.

HISTORY

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³ For example, service as part of a United Nations force in Bosnia, Croatia, or Macedonia on and after November 21, 1995.