

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 43

ARMED FORCES - Income tax exemption;  
TAXATION - Income tax: special military exemption;  
MONTANA CODE ANNOTATED - Section 15-30-116(2);  
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No.  
64;  
UNITED STATES CODE - Title 10: sections 101(4), 101(22),  
101(33), 261(a); Title 32: sections 101(2), 101(12).

HELD: The salary earned by members of the National  
Guard operating under the CFTM program does  
not qualify for a tax exemption pursuant to  
section 15-30-116(2), MCA.

11 December 1981

Ellen Feaver, Director  
Department of Revenue  
Room 455, Mitchell Building  
Helena, Montana 59620

Dear Ms. Feaver:

You have requested my opinion on the following question:

Whether the salary earned by members of the  
National Guard operating under the CFTM  
(Conversion Full Time Military) program is

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entitled to a tax exemption pursuant to section 15-30-116(2), MCA.

Section 15-30-116(2), MCA, provides: "The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax." Persons in the CFTM program formerly served in such positions as technicians and engineers and now have been converted to full-time military service in the National Guard. The answer to your question therefore depends upon whether such service falls within the ambit of the phrase "on active duty in the regular armed forces" as used in the statute.

The Montana Legislature did not provide a definition of this pivotal phrase when it enacted section 15-30-116(2), MCA, in 1975. Because the statute involves military matters, however, its meaning may logically be determined by reference to pertinent sections of the United States Code.

"Active duty" is defined in various sections of the federal code as meaning full-time duty in the active military service, including such federal duties as duty on the active list, full-time training duty, and annual training duty. 10 U.S.C. § 101(22); 32 U.S.C. § 101(12); see Vashon v. United States, 369 F. Supp. 202, 205 (N.D. Ga. 1973). Plainly, a member of the Montana National Guard who is in the CFTM program and has thus been converted to a full-time military position would be considered to be on "active duty" under the general definitions of that term.

Section 15-30-116(2), MCA, contains the further condition that the active duty be performed "in the regular armed forces." According to the United States Code, the phrase "armed forces" encompasses the Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. § 101(4); 32 U.S.C. § 101(2). "Regular" is defined as pertaining to "a regular component of an armed force." 10 U.S.C. § 101(33). The regular components of the armed forces are distinguished from the recognized reserve components, which are statutorily enumerated to include the Army and Air Force National Guards and the Reserves of the various service branches. 10 U.S.C. § 261(a).

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When all these commonly-accepted definitions relating to military affairs are read together, it becomes clear that, as a general rule, duty "in the regular armed forces" does not include service in reserve components--that is, in the Reserves or the National Guard. Therefore, National Guard personnel in the CFTM program, although on active duty, are not entitled to the tax exemption allowed by section 15-30-116(2), MCA.

An earlier Attorney General's opinion on a similar issue held that members of the Air National Guard called to active duty in the Air Defense Alert program are entitled to Montana's statutory tax exemption for the salary received while serving in that program. 36 Op. Att'y Gen. No. 64 at 443 (1976). The Air Force regulations pertinent to that opinion specifically provided that members of the program were operationally considered and employed as regular Air Force active air defense units under the command and control of the Air Force. Thus, duty in the Air Defense Alert program must be distinguished from duty in the CFTM program discussed here, because CFTM personnel are considered to be members of the National Guard rather than members of the regular Army or regular Air Force.

THEREFORE, IT IS MY OPINION:

The salary earned by members of the National Guard operating under the CFTM program does not qualify for a tax exemption pursuant to section 15-30-116(2), MCA.

Very truly yours,

MIKE GREELY  
Attorney General