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DATE: February 17, 2017
FROM: Al Timko, Executive Director
SUBJECT: Questions on Military Service and taxable earnings

ACT 6 OF 2016 – ACTIVE DUTY EXEMPTION

On February 23, 2016 Governor Wolf sign PA ACT 6 of 2016 into law. This ACT exempts all active duty military service from the Earned Income Tax, no matter where the active duty was served. The law is not retro-active. This ACT takes effect for taxes levied and collected after December 31, 2015. A copy of the law is attached.

Please note that prior to ACT 32 (before 2012) Active Duty pay, no matter where it was earned, was not-taxable. In 2012 ACT 32 made the definition of earned income mirror the PA Department of Revenue's definition of compensation (except for clergy housing) and thus Active Duty pay earned in Pennsylvania became taxable for Local Income Tax purposes.

How does this affect Local Income Tax Returns?

For the years 2012 through and including 2015 active duty military pay earned in Pennsylvania is taxable. When processing prior years returns for the tax years 2012, 2013, 2014 and 2015 YATB will tax active duty military pay earned in Pennsylvania.

For tax years prior to 2012 and after 2015 active duty military pay earned in Pennsylvania will be not taxable. All active duty military pay is exempt from Local Income Tax effective 1/1/2016.

MILITARY SPOUSES RESIDENCY RELIEF ACT (MSRRA)

The MSRRA is a federal law that provides certain protections for spouses of service members performing military service in a state other than their "home" state under military orders.

The income earned by spouses of service members shall not be deemed to be income for services performed or from sources within the taxing jurisdiction. In other words, the spouse of a service member MAY BE EXEMPT from both the resident and non-resident local income tax, if that spouse is considered a resident of another state.

Required Documents:

To prove the exemption, the service member's spouse must supply the Tax Bureau with the following documents (Note – these are the same documents required by the PA Department of Revenue when filing a state tax return):

1. The military spouse's current military orders stationing them in PA
2. A copy of the military spouse's military ID card
3. A copy of the non-military spouse's driver's license from their resident state
4. A copy of the non-military spouse's W-2 form
5. A copy of the non-military spouse's tax return filed in their resident state
6. A copy of the non-military spouse's military ID card identifying them as a spouse
7. A copy of the military spouse's State of Legal Residence Certificate – Dept. of Defense Form 2058

If YATB receives the proper documentation to prove that an individual is a spouse of a service member claiming a state other than Pennsylvania as their "home" state, their tax return will be filed as a "0" (zero) return and all local tax withheld is eligible for refund.

Homestead Exemptions

Prior to making a refund under the MSRRA the Tax Bureau will check the Adams or York County Real Estate Tax Assessment records to determine if the service member and their spouse own property in the county AND IF THEY CLAIMED A HOMESTEAD EXEMPTION. A homestead exemption is only available to a property owner who claims the property as their PRINCIPAL PLACE OF RESIDENCE. It is the opinion of the Tax Bureau that such a claim would make the service member and spouse residents of Pennsylvania, and therefore liable for the Local Income Tax.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 561 Session of 2015

INTRODUCED BY KAUFFMAN, CONKLIN, KNOWLES, KORTZ, PASHINSKI, BARRAR, A. HARRIS, HARHART, MARSICO, D. MILLER, CUTLER, WATSON, MULLERY, KINSEY, BIZZARRO, GILLEN, TALLMAN, MURT, RAPP, MILLARD, METCALFE, SAYLOR, EVERETT, DeLUCA, GABLER, M. K. KELLER, HICKERNELL, GIBBONS, MOUL AND HEFFLEY, FEBRUARY 23, 2015

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 23, 2015

AN ACT

Amending the act of December 31, 1965 (P.L.1257, No.511), entitled "An act empowering cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second class, school districts of the second class, school districts of the third class and school districts of the fourth class including independent school districts, to levy, assess, collect or to provide for the levying, assessment and collection of certain taxes subject to maximum limitations for general revenue purposes; authorizing the establishment of bureaus and the appointment and compensation of officers, agencies and employes to assess and collect such taxes; providing for joint collection of certain taxes, prescribing certain definitions and other provisions for taxes levied and assessed upon earned income, providing for annual audits and for collection of delinquent taxes, and permitting and requiring penalties to be imposed and enforced, including penalties for disclosure of confidential information, providing an appeal from the ordinance or resolution levying such taxes to the court of quarter sessions and to the Supreme Court and Superior Court," in consolidated collection of local income taxes, further providing for definitions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "earned income" in section 501 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, added July 2, 2008 (P.L.197, No.32), is amended to read:

Section 501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Earned income." The compensation as required to be reported to or as determined by the Department of Revenue under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section[.] subject to the following:

(1) Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code of 1971 shall constitute allowable deductions in determining earned income.

(2) The term does not include [offsets]:

(i) Wages or compensation paid to individuals on active military service, regardless of whether it is earned for active military service inside or outside this Commonwealth.

(ii) Offsets for business losses.

(iii) The amount of any housing allowance provided to a member of the clergy [shall not be taxable as earned income].

* * *

Section 2. This act shall apply to income taxes levied and collected after December 31, 2015.

Section 3. This act shall take effect immediately.