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November 4, 2009

Dear Mr. Rash:

This letter serves as the Department of Revenue's response to your inquiry of November 2, 2009 concerning the military pay exemption that was a result of the passage of HB 3 of the 2009 Special Session.

You have asked if officers of the US Public Health Service and National Oceanic and Atmospheric Administration are included within this military pay exemption legislation.

KRS 141.010(10)(u) states:

"For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205."

To answer your inquiry, we have to determine the Commonwealth's definition of "**Armed Forces of the United States**" and "**active duty**." Additionally our current Code update statute, KRS 141.010(3) states:

"Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under

Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and **including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act.**"

Also, we must consider our "same as federal" authority in KRS 141.050(1) which states:

"Except to the extent required by differences between this chapter and its application and the federal income tax law and its application, the administrative and judicial interpretations of the federal income tax law, computations of gross income and deductions therefrom, accounting methods, and accounting procedures, for purposes of this chapter shall be as nearly as practicable identical with those required for federal income tax purposes. Changes to federal income tax law made after the Internal Revenue Code reference date contained in KRS 141.010(3) shall not apply for purposes of this chapter unless adopted by the General Assembly."

The definition of "armed forces of the United States" in Section 7701(a)(15) of the Internal Revenue Code is:

"all regular and reserve components of the **uniformed services** which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces."

A frequent term used in various federal income tax and military-related regulations is "uniformed services" or "uniformed services of the United States". This term is not specifically defined in the IRC or regulations for purposes of the exclusion of military benefits. However, the Committee Reports accompanying the **Military Family Tax Relief Act of 2003** includes the Armed Forces, the Army and Air National Guard, and the commissioned corps of both the National Oceanic and Atmospheric Administration and the Public Health Service in the definition of "uniformed services of the United States".

Additionally, both DOR and the IRS have relied for decades on "The Soldiers and Sailors Civil Relief Act of 1940" in relation to military personnel domicile issues. See 103 KAR 17:010, Section 6. That Act, now known as the Service Members Civil Relief Act is codified as Section 101 of Title 10 of the United States Code. In those provisions, "military service" means: "Active duty of a service member who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, and active service of a service

member who is a commissioned officer of the Public Health Service or the national Oceanic and Atmospheric Administration.

Title 10, Section 101(a)(5) does define "uniformed services" to mean: A) the Armed Forces; B) the commissioned corps of the national Oceanic and Atmospheric Administration; and C) the commissioned corps of the Public Health Service.

Finally, Title 10, Section 101(d)(1) of the U.S. Code defines "active duty" to mean "full-time duty in the active military service of the United States. Such term 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. Such term does not include full-time National Guard duty."

Based upon the definitions provided by the IRS for "uniformed services", "armed forces of the United States, and the Department's "same as federal" statute (KRS 141.050(1), uniformed officers of the National Oceanic and Atmospheric Administration; and Public Health Service are included in the military pay exemption provided for within the language of HB 3.

Please direct any questions or requests for additional information to my attention.

Sincerely,



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c: Bruce Nix, Director
Division of Individual Income Taxes