

STATE OF ARIZONA

Department of Revenue
Office of the Director
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Janice K. Brewer
Governor

David Raber
Director

The Director's Review of the Decision)
of the Hearing Officer Regarding:)
[REDACTED])
TID Number [REDACTED])
_____)

ORDER

Case No. 201400014-I

On August 12, 2014, the Hearing Officer issued a decision regarding the protest of [REDACTED] (“Taxpayers”). Taxpayers appealed this decision. Because the appeal was timely, the Director of the Department of Revenue (“Director”) issued a notice of intent to review the decision.

In accordance with the notice given the parties, the Director has reviewed the Hearing Officer's decision and now issues this order.

Statement of Case

The only issue on appeal is whether active duty military pay compensation from the U.S. Public Health Service (“Health Service”) is exempt under Arizona law. The Arizona statutes allow a subtraction from Arizona gross income for compensation received for active service as a member of the reserves, the national guard, or the armed forces of the United States. A.R.S. § 43-1022(13).¹ Taxpayers argue that active duty in the armed forces includes active duty in the Health Service. The Hearing Officer concluded that the term “armed forces of the United States” as used in the Arizona statute did not include the Health Service.

Findings of Fact and Conclusions of Law

The Director adopts from the Hearing Officer’s findings of fact and conclusions of law from the Hearing Officer’s Decision and makes additional conclusions as follows:

¹In 2008, the tax year at issue, this subtraction was number A.R.S. § 43-1022(19). The substantive provisions of the subtraction have not changed.

1. Federal statutes consistently define the term “armed forces” to mean the Army, Navy, Air Force, Marine Corps, and Coast Guard. *See, e.g.* 10 U.S.C. § 101(a)(4); 37 U.S.C. § 101(4); 38 U.S.C. § 101(10). There is no definitional provision in federal law that defines “armed forces” to include the Health Service.
2. Federal statutes consistently define the term “uniformed services” to include the Army, Navy, Air Force, Marine Corps, and Coast Guard, as well as the commissioned corps of the National Oceanic and Atmospheric Administration and the commissioned corps of the Health Service. *See, e.g.* 10 U.S.C. § 101(5); 37 U.S.C. § 101(3); 42-U.S.C. § 201(p).
3. Certain rights, privileges immunities and benefits given to members of the armed forces are extended to commissioned officers of the Health Service while on detail for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard. 42 U.S.C. § 213. Congress’ decision to treat active duty commissioned officers of the Health Service as if they were active duty members of the armed forces for the specific purposes set forth in 42 U.S.C. § 213 does not make the Health Service part of the armed forces. *Hedin v. Thompson*, 355 F.3d 746, 748-49 (4th Cir. 2004).
4. The Servicemembers Civil Relief Act defines the term “servicemember” to mean a member of the uniformed services. 50 Appendix U.S.C. § 511(1). The term “military service” is also defined to explicitly include commissioned officers of the Health Service. 50 Appendix U.S.C. § 511(2)(B). The Act does not define the term “armed forces.” It does not indicate that the Health Service is part of the armed forces.
5. The Servicemembers Civil Relief Act does not prohibit a State from taxing an Arizona resident’s military wages.
6. The courts have recognized that there are significant differences between the Health Service and the armed forces. *Milbert v. Koop*, 830 F.2d 354, 358-59 (D.C. Cir. 1987).
7. The Hearing Officer correctly determined that the Arizona subtraction for compensation received from active service as a member of the armed forces did not apply to service in the Health Service.

Discussion

Arizona law provides that in computing Arizona adjusted gross income, taxpayers may subtract any compensation they receive from active service as a member of the armed forces. A.R.S. § 43-1022(13). The term “armed forces” is not defined in the Arizona statutes. Federal law, however, consistently defines the term “armed forces” to mean the Army, Navy, Air Force, Marine Corps, and Coast Guard. *See, e.g.* 10 U.S.C. § 101(a)(4); 37 U.S.C. § 101(4); 38 U.S.C. § 101(10). Because federal law does not include the Health Service in the term “armed forces,” compensation received from active duty in the Health Service does not fall within the Arizona deduction for wages received as a member of the armed forces. .

On appeal Taxpayers argue that 42 U.S.C. § 213 defines the Health Service as active military service in the armed forces of the United States. This section is not a definitional provision. For purposes of Title 42, terms are defined in 42 U.S.C. § 201. That statute defines the term “uniformed service” to mean “the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, or National Oceanic and Atmospheric Administration.” 42 U.S.C. § 201(p). Nothing in Title 42 defines armed forces to include the Health Service.

The provisions that Taxpayers rely upon merely extend certain rights, privileges immunities and benefits given to members of the armed forces under federal law to commissioned officers of the Health Service while on detail for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard. 42 U.S.C. § 213. Provisions that deem service in the Health Service to be active military service in the armed forces with respect to certain federal laws, do not alter the statutory definition of the term “armed forces” or make the Health Service part of the armed forces for other purposes. As a federal court has explained:

In mandating that one status is “deemed to be” another, Congress recognized that the two are not identical, and so expressly provided that one status was to be “considered” or “treated as if” the other. *See* Black’s Law Dictionary 415 (6th ed.1990).

Hedin v. Thompson, 355 F.3d 746, 748-49 (4th Cir. 2004). The provisions of 42 U.S.C. § 213 are necessary because without them members of the Health Service would not receive any of the federal

benefits given to those in active military service in the armed forces because members of the Health Service are not actually members of the armed forces. The provisions of 42 U.S.C. § 213 give members of the Health Service various federal benefits as if there were members of the armed forces even though they are not actually members of the armed forces. The provisions do not alter the definition of the term “armed forces” under federal or state law.

Indeed, the courts have recognized significant differences between the commissioned corps of the Health Service and members of the armed forces. *Milbert v. Koop*, 830 F.2d 354 (D.C. Cir. 1987) (finding that the “military exception” to Title VII of the Rehabilitation Act did not apply to members of the Health Service). In that case, the court noted that the Health Service does not fall within the definition of the “armed forces.” *Id.* at 358. In addition, the primary mission of the Health Service is aiding and improving the public health and not military assistance. *Id.* at 359.

Taxpayers argue that 50 U.S.C. § 513 makes the Servicemembers Civil Relief Act applicable to the states. There is nothing in the Servicemembers Civil Relief Act, however, that prohibits a state from imposing income tax on its own residents. Therefore, this Act does not require Arizona to grant a tax subtraction for all servicemembers.

The income tax subtraction at issue is found in Arizona law. As the Hearing Officer’s decision states, tax statutes are narrowly construed against tax subtractions. The Arizona Legislature chose to limit the subtraction at issue to compensation for active service as a member of the armed forces. Federal law consistently defines the “armed forces” to include just the Army, Navy, Air Force, Marine Corps and Coast Guard. If the Arizona Legislature wanted to include members of the Health Service in the subtraction, it could easily have used the term “uniformed service” or “servicemembers” or stated that the subtraction also applies to members of the Health Service on detail to the armed forces. As written, however, the subtraction is limited to members of the “armed forces.”

As an administrative agency, the Department of Revenue must enforce the laws as written and cannot expand exemptions beyond the clear and unambiguous language of the statute. The Arizona Legislature used the term “armed forces.” All federal definitional provisions consistently

define the term “armed forces” to not include members of the Health Service. Therefore, Taxpayers are not entitled to the subtraction.

Based on the foregoing, the Hearing Officer’s Decision and the Division’s proposed assessment for tax year 2008 are affirmed.

ORDER

The Hearing Officer's decision is affirmed.

This decision is the final order of the Department of Revenue. Taxpayers may contest this order by filing an appeal to the State Board of Tax Appeals, 100 North 15th Avenue, Suite 140 Phoenix, AZ 85007, within 60 days of the receipt of the order. For appeal forms and other information from the Board of Tax Appeals, call (602) 364-1102.

Dated this ____ day of December, 2014.

ARIZONA DEPARTMENT OF REVENUE

David Raber
Director

Certified original of the foregoing
mailed to:

[REDACTED]

DR:sb

cc: Individual Income Tax Appeals Section
Individual Income Tax Audit Section
Audit Division