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Letter Ruling 77-12: Withholding from Pay of National Guardsmen

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June 23, 1977

You inquire as to whether the Commonwealth may withhold state income taxes from the paychecks of persons who are in the Massachusetts National Guard and are paid for weekend duty and two weeks active duty during the summer.

Prior to its amendment by P.L. 94-955, 26 U.S.C. 5517, providing for withholding of state income taxes by the federal government specifically excluded pay for service as a member of the armed forces from its provisions.

The Army National Guard, while in the service of the United States is a component of the Army (10 USC 3078).

Sec. 5517 of Title 5 of the United States Code was amended by P.L. 94-955, s. 1207 to permit withholding of state income tax on the pay for service as a member of the armed service. The amendment specifically excludes from withholding pay received for participation in exercises or the performance of duty under section 502 of Title 32, USC, by a member of the National Guard. Said section 502 prescribes the required drill and field exercises of the National Guard. This service includes weekend duty and the two weeks' active duty during summers.

Based on the foregoing, withholding of Massachusetts income tax from pay of a member of the Massachusetts National Guard for weekend duty and participation in two weeks' active duty during summers is not permissible.

This ruling is not to be interpreted as exempting from state income tax such pay. Where no withholding is provided for, a Massachusetts resident must file a Declaration of Estimated Tax and make quarterly payment of any tax due.

Very truly yours,

/s/Owen L. Clarke

Owen L. Clarke

Commissioner of Corporations
and Taxation

LR 77-12