

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Taxpayer Guidance Division**

TSB-A-07(5)I  
Income Tax  
August 27, 2007

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I070522A

On May 22, 2007, a Petition for Advisory Opinion was received from Todd K. Gorman, c/o Charles J. Balog, CPA, 10 Bevell Lane, North Syracuse, New York 13212-3507.

The issue raised by Petitioner, Todd K. Gorman, is whether military pay and other compensation received as a result of being called to active service pursuant to federal active duty orders issued in accordance with Title 10 of the United States Code is allowed to be subtracted from federal adjusted gross income in computing New York adjusted gross income under section 612(c)(8-b) of the Tax Law.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a Master Sergeant in the United States Army Reserve. Pursuant to federal active duty orders issued in accordance with Title 10 of the United States Code, Petitioner was called to active service in January 2003. Petitioner was assigned to Fort Drum in New York. During his mission at Fort Drum, Petitioner was temporarily assigned to Fort Dix in New Jersey. Petitioner received active service military pay as a result of being called to active duty.

In addition, as an employee of the New York State Police, Petitioner received a supplement to his military pay from the New York State Police while on active military duty.

**Applicable law**

Section 612(c) of the Tax Law provides, in part:

Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

\* \* \*

(8-b) Income received by an individual who is a member of the New York state organized militia, as such term is defined in subdivision one of section two of the military law, as compensation for performing active service within the state pursuant to either (i) state active duty orders issued in accordance with subdivision one of section six of the military law or (ii) active service of the United States pursuant to federal active duty orders, for service other than training, issued in accordance with title 10 of the United States code.

Section 2.1 of the Military Law provides:

The militia of the state shall be divided into the organized militia, the state reserve list, the state retired list and the unorganized militia. The organized militia shall be composed of the New York army national guard; the New York air national guard; the inactive national guard; the New York naval militia; the New York guard whenever such a state force shall be duly organized and such additional forces as may be created by the governor.

### **Opinion**

For purposes of the subtraction modification under section 612(c)(8-b) of the Tax Law, compensation must be attributable to active service performed within New York State by a member of the New York State organized militia as defined in section 2.1 of the Military Law. Section 2.1 provides that members of the New York State organized militia include the New York Army National Guard, the New York Air National Guard, the inactive National Guard, the New York Naval Militia, and the New York Guard. Petitioner is a Master Sergeant in the United States Army Reserve who was called to active duty and is not a member of the New York State organized militia. Since the subtraction modification under section 612(c)(8-b) of the Tax Law applies only to military pay received by a member of the New York State organized militia while on active duty, Petitioner's compensation for performing active service for the United States Army does not qualify for the subtraction modification under section 612(c)(8-b). The supplemental pay received from the New York State Police while on military active duty also does not qualify for such subtraction modification.

DATED: August 27, 2007

/s/  
Jonathan Pessen  
Tax Regulations Specialist IV  
Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.