

1981 S.C. Op. Atty. Gen. 35 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-16, 1981 WL 96543

Office of the Attorney General

State of South Carolina

Opinion No. 81-16

February 27, 1981

***1 SUBJECT: Income tax—Taxability of compensation to members of the Army Reserve called to active duty.**

Compensation paid to a member of the Army Reserve is taxable when the compensation is derived from tours of active military duty extending beyond the customary training periods established for reserve units.

TO: Mr. C. H. Brooks
Director
Income Tax Division

QUESTION:

Is compensation from the federal government to a member of the Army Reserve excludable from income where the member has been assigned to active duty for a training period of three years?

APPLICABLE LAW:

10 U.S.C.A., Armed Forces, Section 270(a) and [§ 12-7-570, 1976 South Carolina Code](#) of Laws.

DISCUSSION:

[Section 12-7-570](#) provides as follows:

‘No part of the compensation received by the members of the South Carolina National Guard from the State or from the Federal Government or by members of the reserve components of the armed forces of the United States who are residents of this State from the Federal Government for services in performing their duties shall be considered as any part of the income, gross or net, of the respective members in computing income taxes payable to the State of South Carolina. But the provisions of this section shall not be applicable to income derived from tours of active military duty extending beyond the customary training periods established for national guard and reserve units.’

The taxpayer in this case is a member of the Army Reserve but has been called to active duty for a period of one thousand ninety-six (1096) days. Under [§ 12-7-570](#), the exclusion from income is not applicable to income derived from tours of active military duty extending beyond the customary training periods established for reserve units. The United States Code, Title 10, Armed Forces, § 270(a) sets forth the customary training period as follows:

‘(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is inducted, enlisted, or appointed in an armed force after August 9, 1955, and who becomes a member of the Ready Reserve under any provision of law except section 269(b) of this title, shall be required, while in the Ready Reserve, to

(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year;

(2) serve on active duty for training not more than 30 days during each year.'

These requirements are satisfied by meeting one weekend a month and a period of active duty each year of approximately two weeks. Since the taxpayer has been called to active duty for a three year period and since this three year period extends beyond the customary training period of one weekend a month and two weeks of active duty, the exclusion under § 12-7-570 is not applicable.

CONCLUSION:

*2 Compensation paid to a member of the Army Reserve is taxable when the compensation is derived from tours of active military duty extending beyond the customary training periods established for reserve units.

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