

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
[REDACTED])	HEARING OFFICER
TID # [REDACTED])	Case No. 201300149-I
_____)	

A hearing was held on July 30, 2013 in the matter of the protest of [REDACTED] (Taxpayers) to an assessment of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year [REDACTED].

This matter is ready for ruling.

FINDINGS OF FACT

1. Taxpayers timely filed a resident individual income tax return for tax year [REDACTED] and subtracted from income as active duty military pay compensation [REDACTED] (Taxpayer) received from the U. S. Public Health Service.
2. The Section reviewed Taxpayers' return and issued a proposed assessment dated January 24, 2013 disallowing Taxpayers' subtraction.
3. The proposed assessment included corresponding interest. No penalties were assessed.
4. Taxpayers timely protested the assessment stating that Commissioned Officers of the United States Public Health Service are considered active duty military.
5. Taxpayers testified that the members of the United States Public Health Service are not armed with weapons but are responsible for providing health care where necessary.

6. Taxpayers further testified that officers of the U. S. Public Health Service are included under the Servicemembers Civil Relief Act.
7. The Section contends that the subtraction is limited to members of the armed forces and officers of the U. S. Public Health Service are not members of the armed forces.

CONCLUSIONS OF LAW

1. Arizona Revised Statutes (A.R.S.) § 43-1022(19) allows a subtraction from Arizona gross income of compensation received for active service as a member of the reserves, the national guard or the armed forces of the United States.
2. The law will be given, whenever possible, such an effect that no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant. *State v. Superior Court for Maricopa County*, 113 Ariz. 248, 550 P.2d 626 (1976).
3. Tax statutes are construed strictly against a party who claims a deduction, subtraction, exemptions or credit. *Arizona Department of Revenue v. Raby*, 204 Ariz. 509, 511, 65 P.3d 458 (App. 2002); *Davis v. Arizona Department of Revenue*, 197 Ariz. 527, 4 P.3d 1070 (App. 2000).
4. The burden is on the taxpayer to show he is entitled to a deduction or exemption from tax. See *Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 99, 459 P.2d 719, 724 (1969).
5. The term “armed forces” means the Army, Navy, Marine Corps and Coast Guard. 10 U.S.C.A. § 101(a)(4).
6. The term “uniformed services” means:
 - 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. 10 U.S.C.A. § 101(a)(5).
7. The armed forces and the commissioned corps of the Public Health Service are different classes.
8. A “servicemember” for purposes of the Servicemembers Civil Relief Act means a member of the uniformed services defined in 10 U.S.C.A. § 101(a)(5). 50 App. U.S.C.A. § 511(1)
9. The state may tax all or some so long as all in the same class are afforded equality of rights. *Southwestern Oil Company v. State of Texas*, 217 U.S. 114, 30 S.Ct. 496 (1910); *Flagstaff Vending Co. v. City of Flagstaff*, 118 Ariz. 556, 578 P.2d 985 (App. 1978).
10. All members of the class of commissioned corps of the Public Health Service are afforded equality of rights.
11. A.R.S. § 42-1123(C) provides that if the tax “or any portion of the tax is not paid” when due “the department shall collect, as a part of the tax, interest on the unpaid amount” until the tax has been paid.
12. The Section’s proposed assessment dated January 24, 2013 was proper.

DISCUSSION

Taxpayers filed a resident Arizona individual income tax return and took a subtraction for the compensation Taxpayer [REDACTED] received from the U. S. Public Health Service. The Section disallowed the subtraction contending that only members of the armed forces were entitled to the subtraction.

Taxpayers protested arguing that active duty military includes the public health service. Commissioned officers of the U. S. Public Health Service are included under the Servicemembers Civil Relief Act.

The subtraction allowed by A.R.S. § 43-1022(19) is specifically limited to compensation received for active service "... as a member of the reserves, the national guard or the armed forces of the United States." For the reasons that follow, we hold that the commissioned corps of the Public Health Service is not included within the term "armed forces."

The term "armed forces" is defined in the United States Code to mean the Army, Navy, Marine Corps and Coast Guard. A broader term, "uniformed services," is specifically defined to include both the armed forces and the commissioned corps of the Public Health Service. This does not mean that the commissioned corps of the Public Health Service are thereby part of the armed forces, it simply means that both the armed forces and the commissioned corps of the Public Health Service (as well as the commissioned corps of the National Oceanic and Atmospheric Administration) are considered a part of the uniformed services.

The Servicemembers Civil Relief Act applies to the broader category of uniformed services. For purposes of the Servicemembers Civil Relief Act, a servicemember includes any member of the three subgroups (armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration and the commissioned corps of the Public Health Service.) While all three subgroups are considered servicemembers and are entitled to the benefits of the Servicemembers Civil Relief Act, the individual groups are not the same class.

Members of the armed forces are a separate classification from the commissioned corps of the Public Health Service. As Taxpayers testified at the hearing, each group has different duties and functions. The fact that Taxpayer is a member of the larger category of uniformed services, and is thus a servicemember entitled to the benefits of the Servicemembers Civil Relief Act, does not make Taxpayer a member of the subgroup armed forces. Taxpayer is therefore not eligible for the subtraction under A.R.S. § 43-1022(19).

A.R.S. § 42-1123(C) provides that if the tax "or any portion of the tax is not paid" when due "the department shall collect, as a part of the tax, interest on the unpaid amount" until the tax has been paid. Interest is not a penalty, but is simply compensation to the state for the lost time-value of money received after the due date. *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 959 P.2d 1256, (1998). (Non-punitive interest is, after all, nothing more than compensation for the use of money. The taxpayer had the benefit of using the funds before paying the tax claim and, in the legal sense, suffers no loss by reason of paying interest on the money it retained in its possession.)

Based on the foregoing, the Section's proposed assessment dated January 24, 2013 is affirmed.

DATED this 23rd day of August, 2013.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section