

PRIVATE TAXPAYER RULING LR01-008

December 27, 2001

The following private taxpayer ruling is in response to your letter dated November 9, 2001. You request that the department rule on whether you may claim a subtraction from Arizona gross income pursuant to Arizona Revised Statutes (A.R.S.) § 43-1022(2) for payments representing military retired pay that you receive from your former husband.

Statement of facts:

Pursuant to a decree of divorce entered on ..., 1999, taxpayer is to receive a portion of her former husband's military retirement salary until the death of either party or taxpayer's remarriage. Taxpayer indicates that this was a community division authorized pursuant to 10 United States Code (U.S.C.) § 1408. Taxpayer also indicates that she receives monthly payments of this obligation by personal check from her former husband. She does not receive these payments from the respective Uniformed Service.

Applicable law:

A.R.S. § 43-1022(2) provides a subtraction from Arizona gross income for benefits, annuities and pensions in an amount totalling not more than \$2,500 received from the United States government service retirement and disability fund, retired or retainer pay of the uniformed services of the United States, the United States foreign service retirement and disability system and any other retirement system or plan established by federal law.

10 U.S.C. § 1408, the "Uniformed Services Former Spouses' Protection Act" authorizes direct payments of military retired pay to a former spouse of a retired member of the Uniformed Services in response to court ordered alimony, child support, or division of property.

32 Code of Federal Regulations (CFR) §§ 63.1 through 63.6 specify the procedures required for a former spouse to receive direct payments of retired military pay from a Uniformed Service.

Discussion:

A.R.S. § 43-1022(2) provides, in relevant part, a subtraction from Arizona gross income for benefits, annuities and pensions in an amount totalling not more than \$2,500 received from retired or retainer pay of the uniformed services of the United States. 10 U.S.C. § 1408 authorizes direct payments of retired military pay from a Uniform Service to a former spouse pursuant to a court order. In order to receive the direct payments authorized by 10 U.S.C. § 1408, the procedures specified by 32 CFR §§ 63.1 through 63.6 must be followed.

Based on the information provided, the procedures necessary for taxpayer to receive direct payments of her former husband's military retired pay were not implemented. Instead, taxpayer receives monthly payments from her former husband to satisfy the court order. Therefore, the only recipient of the retired military pay is taxpayer's former husband. In order for the taxpayer to claim the subtraction provided by A.R.S. § 43-1022(2) for military retired pay, the taxpayer must receive such payments directly from the Uniformed Service.

Conclusion and ruling:

On the basis of the information provided, we rule that the taxpayer is not entitled to the subtraction authorized under A.R.S. § 43-1022(2) for military retired pay since the taxpayer is not a recipient of the military retired pay.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.

The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.