



Analysis of Amended Bill

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Sponsor:

Bill Number: SB 924

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Introduced: January 23, 2018 &
Amended: March 19, 2018

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Related Bills: See Legislative
History

Subject: Exclusion/National Guard Income

Summary

This bill would, under the Personal Income Tax Law, allow an exclusion from gross income for certain income received by a member of the state's active militia while on active duty pursuant to a call by the Governor.

Recommendation – No position.

Summary of Amendments

The March 19, 2018, amendments modified eligibility for the income exclusion this bill would create.

This is the department's first analysis of the bill.

Reason for the Bill

The reason for the bill is to allow members of the state's active militia to exclude from gross income the income received as a result of their position as a member while serving on active service in response to a call by the Governor for specified purposes.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2018.

Federal/State Law

Existing federal and state laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

Under Military and Veterans Code sections 143 and 146, the Governor can activate necessary National Guard, State Military Reserve and Naval Militia personnel to “Emergency State Active Duty” (ESAD) during a state emergency, typically to assist or augment first responders. Types of state emergencies include wildfires, floods, earthquakes, and providing personnel to secure public & private property during or after a disaster.

There is no income exclusion for pay received while on ESAD under current state or federal law.

This Bill

This bill would, for taxable years beginning on or after January 1, 2018, exclude from gross income any income received by a member of the active militia, as described, when that income is derived from the member’s active service pursuant to a call under Military and Veterans Code sections 143 or 146 by the Governor.

As described in Section 120 of the Military and Veterans Code, “active militia” means the National Guard, State Military Reserve and the Naval Militia.

Implementation Considerations

The department has identified the following implementation concern. Department staff is available to work with the author’s office to resolve this and other concerns that may be identified.

If this bill is enacted in late September or October of 2018, the department would have developed the forms and instructions for the 2018 taxable year. Thus, the department may incur additional costs to develop alternative forms and instructions in the short time frame necessary to ensure they are available for taxpayers to comply with the reporting requirement.

Legislative History

AB 2590 (Chen, 2017/2018) would exclude from gross income any basic pay received by a servicemember on active duty in the U.S. Armed Forces, in the reserve component of the U.S. Armed Forces, or in the National Guard, that is derived from their position as a servicemember while on military orders for 90 or more consecutive days. AB 2590 is pending before the Assembly Appropriations Committee.

AB 321 (Chávez, 2015/2016) would have excluded from gross income all of the income received by a servicemember in the U.S. Armed Forces, in the reserve component of the U.S. Armed Forces, or in the National Guard, received (1) while on active duty, (2) during the 12 calendar months since the date of honorable discharge separation, and (3) during the period of hospitalization within the state for an injury received while on active duty. AB 321 failed to pass out of the Assembly Revenue & Taxation Committee by the constitutional deadline.

AB 505 (Melendez, 2015/2016) would have excluded Concurrent Receipts of Disability Pay payments from gross income for active, reserve, or retired member of the U.S. military who served on active duty. AB 505 failed to pass out of the Assembly Revenue & Taxation Committee by the constitutional deadline.

AB 2329 (Melendez, 2013/2014) would have excluded from gross income specific retirement and disability payments to an active, reserve, or retired member of the U.S. military who served on active duty. AB 2329 failed to pass out of the Assembly Appropriations Committee by the constitutional deadline.

Other States' Information

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Illinois law excludes from gross income pay for duty for serving in the U.S. Armed Forces Reserves or a National Guard unit, including a National Guard unit of another state.

Massachusetts law excludes from gross income compensation earned by members of the armed forces for service in a combat zone to the extent the income is excluded under federal law. No exclusion similar to the exclusion this bill would provide was identified.

Michigan law excludes active-duty military pay from gross income.

Minnesota law allows members of the Minnesota National Guard to subtract federally taxable pay for the following types of service:

- State or federal active service for natural disaster emergency response, missing person searches, and airport security duty.
- National Guard and Reserves duties, annual training and drill weekends. (For National Guard members, this includes training and meetings, whether inside or outside of Minnesota.)

New York law allows members of the New York State organized militia (which includes the New York Army National Guard, the New York Air National Guard, the New York Naval Militia, and the New York Guard) to subtract federally taxable pay received while on state or federal active duty orders from New York adjusted gross income.

Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

This bill, as amended on March 19, 2018, would have a revenue loss, but the amount is unknown.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Cases where California's active militia are called to ESAD are relatively sporadic. To determine the magnitude of the impact to the General Fund, the frequency of calls to ESAD, the number of active militia called to ESAD, and the amount of service time on ESAD must be known. Since it is difficult to predict the frequency and values of future calls to ESAD, the revenue loss to the General Fund is unknown.

However, for every \$100 million in wages paid to members of the active militia who are called to ESAD, it is estimated that there would be a revenue loss of approximately \$2.8 million.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue that this bill's income exclusion would encourage additional Californians to serve in the state's active militia.

Opponents: Some may argue that the income exclusion is overly narrow and should be expanded to apply to all servicemembers that are called to respond to a natural or man-made disaster in the state.

Policy Concerns

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a tax benefit by the Legislature.

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

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