

## ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue adopts an order to: **create** Tax 3.04; **relating to** the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.

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### *Analysis by the Department of Revenue*

Statute interpreted: s. 71.05 (6) (b) 34, Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: s. 71.05 (6) (b) 34, Stats.

Plain language analysis: This rule order clarifies that the subtraction from income for military pay received by members of a reserve component of the armed forces is not available to persons who are serving on active or full-time duty in the active guard reserve (AGR) program under 32 USC 502 (f).

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2003 Wisconsin Act 183 was enacted April 7, 2004. This Act created s. 71.05 (6) (b) 34, Stats., which provides for a subtraction from income for military pay received by members of a reserve component of the armed forces. The language of s. 71.05 (6) (b) 34 provides, in part, that the subtraction is available to a person who is "called...into special state service authorized by the federal department of defense under 32 USC 502 (f)..." Included under 32 USC 502 (f) are persons who are serving on active duty or full-time duty in the active guard reserve (AGR) program. Discussion between the departments of revenue and military affairs and legislative personnel revealed that it was not intended that these persons benefit from the subtraction provided for in s. 71.05 (6) (b) 34, Stats. In light of this, a rule is being promulgated to clarify the subtraction from income provided for in s. 71.05 (6) (b) 34, Stats.

Analysis and supporting documents used to determine effect on small business: The department has prepared a fiscal estimate regarding this rule order. It was determined that there is not a significant fiscal effect on small business.

Anticipated costs incurred by private sector: This rule order does not have a significant fiscal effect on the private sector.

Effect on small business: This rule order does not have a significant fiscal effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us), if you have any questions regarding this rule order.

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SECTION 1. Tax 3.04 is created to read:

**Tax 3.04 Subtraction for military pay received by members of a reserve component of the armed forces. (1) PURPOSE.** This section limits the application of the phrase "called ... into special state service authorized by the federal department of defense under 32 USC 502 (f), that is paid to the person for a period of time during which the person is on active duty" as used in s. 71.05(6)(b)34, Stats., as created by 2003 Wis. Act 183.

**(2) LIMITATION ON SUBTRACTION.** A person who is a member of a reserve component of the U.S. armed forces, who is serving on active duty or full-time duty in the active guard reserve program under 32 USC 502 (f), does not qualify for the subtraction.

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The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

### **Final Regulatory Flexibility Analysis**

This rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michael L. Morgan  
Secretary of Revenue