

STATEMENT OF SCOPE

Department of Revenue

Rule No.: Chapter Tax 3

Relating to: Income Tax Provisions

Rule Type: Emergency and Permanent

This scope statement was approved by the Governor on September 16, 2021.

1. Detailed description of the objective of the proposed rule:

The objective of the rule is to establish a definition of active duty and provide guidance as to what type of military pay is nontaxable income in Wisconsin because it is eligible for the active duty military pay subtraction provided under sec. 71.05(6)(b)56., Wis. Stats.

2. Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

There is no current policy relating to the subtraction from income under [sec. 71.05\(6\)\(b\)56., Wis. Stats.](#), which is new for tax year 2021 as adopted in 2021 Wisconsin Act 58. Due to differing definitions in the US Code, military servicemembers need guidance as to whether certain pay is taxable or nontaxable to Wisconsin.

Policies that are being considered in the rule:

- Clarify who is eligible by defining active duty. Active duty is not defined in chapter 71 of the Wisconsin statutes. However, active duty is defined in several areas of federal law, including 10 USC chapters 1, 39, 721, and 921, 32 USC §101(12), and 37 USC §101(18). For example, these definitions differ as to whether National Guard duty is considered active duty.
- Clarify the type of pay that is nontaxable. The subtraction is allowed for certain military pay as defined in 37 USC chapters 3 and 5. Clarification should be provided as to whether certain types of pay are eligible for the subtraction such as part-time or full-time training pay, retired members' pay while on active duty, and inactive-duty training pay under 37 USC §206.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11 (2), Stats., provides statutory rule-making authority as follows:

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

"Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules ..."

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates it will take approximately 100 hours to develop the rule.

5. List with description of all entities that may be affected by the proposed rule:

Members of the U.S. Armed Forces receiving pay under 37 USC chapters 3 and 5 from the federal government.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule. However, the department may refer to federal regulations relating to military pay and definitions of active duty when determining the content of the rule.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

No economic impact on small business is anticipated, as this rule pertains to individual income tax.

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