

Office of the Secretary of Defense

§ 78.5

§ 78.1 Purpose.

Under 10 U.S.C. 1045, this part provides implementing guidance for voluntary State tax withholding from the retired pay of uniformed Service members.

§ 78.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Coast Guard (under agreement with the Department of Transportation), the Public Health Service (PHS) (under agreement with the Department of Health and Human Services and the National Oceanic and Atmospheric Administration (NOAA) (under agreement with the Department of Commerce). The term "Uniformed Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the PHS, and the Commissioned corps of the NOAA.

(b) It covers members retired from the regular and reserve components of the Uniformed Services who are receiving retired pay.

§ 78.3 Definitions.

(a) *Income tax.* Any form of tax under a State statute where the collection of that tax either imposes on employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the State, or grants employers generally the authority to withhold sums from the compensation of employees if any employee voluntarily elects to have such sum withheld. And, the duty to withhold generally is imposed, or the authority to withhold generally is granted, with respect to the compensation of employees who are residents of such State.

(b) *Member.* A person originally appointed or enlisted in, or conscripted into, a Uniformed Service who has retired from the regular or reserve component of the Uniformed Service concerned.

(c) *Retired pay.* Pay and benefits received by a member based on conditions of the retirement law, pay grade, years of service, date of retirement, transfer to the Fleet Reserve or Fleet Marine Corps Reserve, or disability. It also is known as retainer pay.

(d) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 78.4 Policy.

(a) It is the policy of the Uniformed Services to accept written requests from members for voluntary income tax withholding from retired pay when the Department of Defense has an agreement for such withholding with the State named in the request.

(b) The Department of Defense shall enter into an agreement for the voluntary withholding of State income taxes from retired pay with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Uniformed Services shall withhold State income tax from the monthly retired pay of any member who voluntarily requests such withholding in writing.

§ 78.5 Procedures.

(a) The Uniformed Services shall comply with the payment requirements of the state, city, or county tax laws. Therefore, the payment requirements (biweekly, monthly, or quarterly) of the state, city, or county tax laws currently in effect will be observed by the Uniformed Services. However, payment will not be made more frequently than required by the state, city, or county, or more frequently than the payroll is paid by the Uniformed Services. Payment procedures shall conform, to the extent practicable, to the usual fiscal practices of the Uniformed Services.

(b) A member may request that the State designated for withholding be changed and that the subsequent withholdings be remitted as amended. A member may revoke his or her request for withholding at any time. Any request for a change in the State designated or any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Uniformed Service concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Uniformed Service concerned.

(c) A member may have in effect at any time only one request for withholding under this part. A member may not have more than two such requests in effect during any one calendar year.

(d) The agreements with States may not impose more burdensome requirements on the United States than on employers generally or subject the United States, or any member, to a penalty or liability because of such agreements.

(e) The Uniformed Services shall perform the services under this part without accepting payment from States for such services.

(f) The Uniformed Services may honor a retiree's request for refund until a payment has been made to the State. After that, the retiree may seek a refund of any State tax overpayment by filing the appropriate State tax form with the State that received the voluntary withholding payments. The Uniformed Services may honor a retiree's request for refund until a payment has been made to the State. State refunds will be in accordance with State income tax policy and procedures.

(g) A member may request voluntary tax withholding by writing the retired pay office of his or her Uniformed Service. The request shall include: The member's full name, social security number, the fixed amount to be withheld monthly from retired pay, the State designated to receive the withholding, and the member's current residence address. The request shall be signed by the member, or in the case of incompetence, his or her guardian or trustee. The amount of the request for State tax withholding must be an even dollar amount, not less than \$10 or less than the State's minimum withholding amount, if higher. The Uniformed Services' retired pay office addresses are given as follows:

(1) Defense Finance and Accounting Service, Attn: DFAS/PRR/CL, 1240 East Ninth Street, Cleveland, OH 44199-2055.

(2) Coast Guard: Commanding Officer (RPB), U.S. Coast Guard Human Resources Service and Information Center, 444 S. E. Quincy Street, Topeka, KS 66683-3591.

(3) U.S. Public Health Service Compensation Branch, 5600 Fishers Lane, Room 4-50, Rockville, MD 20857.

(4) National Oceanic and Atmospheric Administration, Commanding Officer (RPB), U.S. Coast Guard Human Resources Service and Information Center, 444 S. E. Quincy Street, Topeka, KS 66683-3591.

(h) If a member's retired pay is not sufficient to satisfy a member's request for a voluntary State tax, then the withholding will cease. A member may initiate a new request when such member's retired pay is restored in an amount sufficient to satisfy the withholding request.

(i) A State requesting an agreement for the voluntary withholding of State tax from the retired pay of members of the Uniformed Services shall indicate, in writing, its agreement to be bound by the provisions of this part. If the State proposes an agreement that varies from the Standard Agreement, the State shall indicate which provisions of the Standard Agreement are not acceptable and propose substitute provisions. The letter shall be addressed to the Director, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, VA 22240. To be effective, the letter must be signed by a State official authorized to bind the State under an agreement for tax withholding. Copies of applicable State laws that authorize employers to withhold State income tax and authorize the official to bind the State under an agreement for tax withholding shall be enclosed with the letter. The letter also shall indicate the title and address of the official whom the Uniformed Services may contact to obtain information necessary for implementing withholding.

(j) Within 120 days of the receipt of a letter from a State, the Director, Defense Finance and Accounting Service, or designee, will notify the State, in writing, that DoD has either entered into the Standard Agreement or that an agreement cannot be entered into with the State and the reasons for that determination.

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