

DEPARTMENT OF TAXATION

2017 Fiscal Impact Statement

1. **Patron** Christopher E. Collins

3. **Committee** House Finance

4. **Title** Individual Income Tax; Subtraction for
National Guard Wages

2. **Bill Number** HB 1676

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would allow a Virginia resident to claim an individual income tax subtraction for wages or salary earned for active and inactive service in the National Guard of any state other than Virginia if such out-of-state service is due to the taxpayer's military occupational specialty requirements. Under current law, the subtraction is limited to members of the Virginia National Guard.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2018. Since the subtraction could only be claimed for out-of-state service due to the taxpayer's military occupational specialty ("MOS") requirements, the impact of this bill is expected to be minimal.

It is uncertain how many Virginia residents currently serve in the National Guard of another state. It is also uncertain whether this bill would allow a subtraction for Virginia residents who serve in any another state's National Guard or whether it is restricted to those who serve in another state's Army National Guard. National Guards consist of two components: an Army National Guard and an Air National Guard. The Army National Guard uses a system of military occupational specialty ("MOS") codes to identify specific

jobs. In contrast, the Air National Guard identifies specific jobs by use of a system of Air Force Specialty (“AFS”) codes. Since this bill would only apply to Virginia residents who serve in another state’s National Guard due to their MOS requirements, it is unclear whether the intent of this bill is to restrict the subtraction only to members of another state’s Army National Guard.

According to data from the Defense Manpower Data Center (“DMDC”), the Virginia National Guard and the National Guards of states bordering Virginia had the following number of members, as of September 30, 2016:

State	Army National Guard Members	Air National Guard Members	Total National Guard Members
District of Columbia National Guard	1,418	1,232	2,650
Kentucky National Guard	6,573	1,216	7,789
Maryland National Guard	4,725	1,742	6,467
North Carolina National Guard	10,059	1,538	11,597
Tennessee National Guard	9,533	3,243	12,776
Virginia National Guard	6,645	1,239	7,884

For Taxable Year 2014, the total amount claimed under the current subtraction for service in the Virginia National Guard was \$11.1 million, resulting in a negative revenue impact of approximately \$600,000. The subtraction was claimed by the 3,930 taxpayers during Taxable Year 2014. Of these taxpayers, 95 percent were Virginia residents; 2 percent were part-year residents; and 3 percent were nonresidents.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

Individual income tax subtractions are usually effective beginning with a particular taxable year, as this avoids a situation where the subtraction can only be claimed for income received during the second half of the taxable year and not the first half of the taxable year. If the intent is for this bill to be effective beginning in Taxable Year 2017, the following technical amendment is suggested:

Page 2, Line 68, after “or”

Insert: “, for taxable years beginning on or after January 1, 2017,”

11. Other comments:

Virginia's National Guard Subtraction

During the 1987 Session, the General Assembly enacted legislation that provides a subtraction for the amount of wages or salaries received for active and inactive service in the Virginia National Guard. The subtraction is limited to those members of the Virginia National Guard whose ranks corresponds to a pay grade at or below O-3. O-3 is a pay grade indicating that an officer has achieved the rank of captain. Therefore, captains and persons below that rank, including first lieutenants, second lieutenants, and enlisted personnel, are eligible for the subtraction. All other persons, including majors, colonels, and generals, are ineligible for the subtraction. The subtraction may not exceed the amount of income derived from 39 calendar days of service in the Virginia National Guard or \$3,000, whichever amount is less. Members of the National Guard typically are required to train 39 calendar days a year. During Taxable Year 2014, this subtraction was claimed by 3,930 taxpayers.

Other Virginia Military Tax Preferences

In computing Virginia taxable income, taxpayers may subtract the following military-related items from federal adjusted gross income:

- All military pay and allowances earned while serving in a combat zone or qualified hazardous duty area, to the extent they were included in federal adjusted gross income.
- \$15,000 of military basic pay for military personnel on extended active duty for periods in excess of ninety days. The subtraction amount is reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds \$15,000 and will be reduced to zero if such pay is equal to or exceeds \$30,000.
- Any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.
- The amount of military death gratuity payments received after September 11, 2001, by survivors of military personnel who are killed in the line of duty. This subtraction amount must be reduced dollar-for-dollar by the amount that is allowed as an exclusion from federal adjusted gross income to the survivor on his or her federal income tax return.

For taxable years beginning on or after January 1, 2011, Virginia exempts from taxation the real property, including the joint real property of a husband and wife, and the land, not exceeding one acre, upon which the real property is situated of any military veteran who has been rated by the U.S. Department of Veterans Affairs to have a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The surviving spouse of a veteran may also qualify for this exemption, so long as the following conditions are met: the veteran's death occurred

on or after January 1, 2011; the surviving spouse does not remarry; and the surviving spouse continues to occupy such real property as his or her principal place of residence.

Federal Military Tax Preferences

While federal tax law has no provision comparable to Virginia's National Guard subtraction, taxpayers may receive the following military-related tax preferences:

- An exclusion for compensation received by enlisted military personnel for active-duty service in a combat zone. For commissioned officers, the exclusion is capped at the highest enlisted pay amount, plus any hostile fire or imminent danger pay received.
- An exclusion for income received from a veterans' benefit paid under a law, regulation, or administrative practice administered by the Department of Veterans Affairs.
- An exclusion for income amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the Armed Forces of any country.
- A deduction for unreimbursed travel expenses if a member of a reserve component of the United States Armed Forces travels more than 100 miles away from home in connection with the performance of services as a member of the reserves.
- A deduction for the cost to buy and maintain military uniforms if the taxpayer is prohibited from wearing such uniforms when off duty.
- A waiver of penalties for making early withdrawals from retirement plans for certain distributions to qualified military reservists called to active duty.

National Guard Subtractions in Other States

Fourteen states (Arkansas, Hawaii, Illinois, Indiana, Kentucky, Minnesota, Mississippi, North Dakota, Oklahoma, South Carolina, Vermont, Virginia, West Virginia, and Wisconsin) allow subtractions for income received for National Guard service. Five of these states (Kentucky, Illinois, Mississippi, Oklahoma, and Virginia) have broad subtractions available for all or a large portion of the income received for National Guard service, subject to certain limitations. Other states have narrow subtractions available only in specific situations. For example, West Virginia's subtraction is limited to members of the National Guard or the United States Armed Forces who either are:

- Called to active duty pursuant to an Executive Order of the President for duty in Operation Enduring Freedom or for domestic security duty; or
- Separated from active military service during the year.

Service in the National Guard of Another State

Individuals may be permitted to join a National Guard unit in a state other than the state where they reside. Some restrictions may apply, such as limitations based on commuting distance. In addition, individuals may be permitted to transfer to a National Guard unit located in another state. This process is referred to as “Interstate Transfer” or “IST.” It allows eligible service members to transfer to a vacant position in the National Guard of another state before moving to that state. It also permits service members to transfer for the purpose of functioning in a position in which they are military occupational specialty (“MOS”) qualified.

Proposed Legislation

This bill would allow a Virginia resident to claim an individual income tax subtraction for wages or salary earned for active and inactive service in the National Guard of any state other than Virginia if such out-of-state service is due to the taxpayer's military occupational specialty requirements. Under current law, the subtraction is limited to members of the Virginia National Guard.

Military occupational specialty (“MOS”) codes are used to identify specific jobs in the Army National Guard. There is no such designation in the Air National Guard, which instead identifies specific jobs by use of a system of Air Force Specialty (“AFS”) codes. Since this bill would only apply to out-of-state service performed due to the taxpayer's MOS requirements, out-of-state service in the Air National Guard would not qualify for this subtraction.

Moreover, since this bill would only apply to out-of-state service performed due to the taxpayer's MOS requirements, out-of-state service for any other reason would not qualify. For example, members of a state's National Guard are typically required to train (also referred to as “drill”) one weekend per month plus a two-week period each year. If a Virginia resident chose to serve in the National Guard of another state solely because the location of his monthly training in another state would be closer to his home than such location in Virginia, he would not qualify for the subtraction.

The effective date of this bill is not specified.

Similar Bills

House Bill 1397 would increase the individual income tax subtraction for wages or salaries received for active and inactive service in the Virginia National Guard from a maximum of \$3,000 per taxable year to \$5,000 per taxable year.

House Bill 2175 would establish an individual income tax subtraction for the annual retirement compensation received for service as a member of the U.S. Armed Forces or the Virginia National Guard by a veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law with a 100 percent service-connected disability.

Senate Bill 1249 would provide a refundable individual income tax credit to certain disabled veterans and their surviving spouses, and to the surviving spouse of a member of the armed services killed in action.

cc : Secretary of Finance

Date: 1/17/2017 JJS
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