



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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PLR-105263-01



Dear [REDACTED]:

This responds to your letter dated January 8, 2001, requesting a private letter ruling on whether amounts equal to the allowances you would have received from the United States Navy if you were still on active duty are excludable from your gross income or reportable as a miscellaneous line item deduction from gross income.

Unfortunately, we are not able to provide a ruling on this issue. Revenue Procedure 2001-1, 2001-1 I.R.B. 1, section 7.01, provides that the Internal Revenue Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case. It is our view that a ruling is not warranted in your case because the tax treatment of the amounts described in your request is well established by statutes and case law such that there is not a sufficient issue upon which to rule.

As we understand the facts of this matter, you are a retired naval officer currently teaching for the Junior Reserve Officers' Training Corps (JROTC). You receive a salary from the local public school district. The W-2 wages you receive from the school district are calculated by subtracting your retired pay from your active duty pay plus allowances. You would be receiving the allowances used in the calculation if you were still on active duty. The Navy reimburses the school district in the amount of one-half of the wages paid to you by the school district. You have asked for a ruling that 100% of the basic allowances utilized by the Navy in computing its portion of your school salary are excludable from your gross income and/or reportable as a miscellaneous line item deduction from your gross income.

Gross income includes all income from whatever source derived. See I.R.C. § 61. Military pay received by members of the United States Armed Forces is generally includable in gross income. See § 1.61-2(a)(1), Income Tax Regs. Congress may specifically exempt certain items from inclusion in gross income. See Commissioner v.

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Glenshaw Glass Co., 348 U.S. 426 (1955). For example, military subsistence and uniform allowances and other amounts received as commutation of quarters are excluded from gross income. See § 1.61-2(b), Income Tax Regs. Similarly, I.R.C. § 134 excludes “qualified military benefits” from gross income. Qualified military benefits are defined as benefits received by a taxpayer by reason of that taxpayer’s status as a member or former member of the uniformed services and which were excludable from gross income on September 9, 1986. See I.R.C. § 134(b).

The Reserve Officers’ Training Corps Vitalization Act of 1964, Pub. L. 88-647, sec. 101, 78 Stat. 1063 (codified as amended at 10 U.S.C. section 2031 (1994)) provided for the establishment of JROTC units at public and private schools. Retired commissioned or noncommissioned officers may serve as instructors and administrators in JROTC units pursuant to 10 U.S.C. § 2031(d). Section 2031(d)(1) provides that retired officers are to receive their customary retired pay “and an additional amount of not more than the difference between their retired pay and the active duty pay and allowances which they would receive if ordered to active duty, and one-half of that additional amount shall be paid to the institution concerned by the Secretary of the military department concerned from funds appropriated for that purpose.”

The United States Tax Court has held that retired military personnel may not rely on 10 U.S.C. § 2031(d) to exclude income received as a JROTC instructor from gross income. See Lyle v. Commissioner, 76 T.C. 668 (1981), aff’d without published opinion 673 F.2d 1326 (5<sup>th</sup> Cir. 1982). Additionally, inasmuch as a taxpayer’s entitlement to income from the JROTC program is not received by reason of that taxpayer’s status as a member or former member of the uniformed services, but rather is received as compensation for services rendered, any income received from the JROTC program is not excludable as a “qualified military benefit” under section 134. See Tucker v. Commissioner, T.C. Memo. 1999-373.

The allowances a retired military officer would have received if he or she were on active duty are utilized as part of the formula for computing the amount of compensation such officers are entitled to receive as remuneration for services performed as JROTC instructors. However, retired military officers do not generally actually receive any such allowances. Instead, the income received as wages for work as a JROTC instructor is for services rendered and, thus, is neither excludable from gross income nor allowable as a deduction. See Tucker, supra.

In accordance with the above discussion, we are closing your case without ruling on the issue presented. The user fee will be refunded, pursuant to section 15.10 of Revenue Procedure 2001-1. The check will be sent under separate cover. Please allow four to six weeks for processing of the check.

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If you have any questions, please contact Lynne Camillo (Internal Revenue Service Identification Number 50-01066). She can be reached at (202) 622-6040.

Sincerely,

Jerry E. Holmes  
Chief, Employment Tax Branch 2  
Office of the Assistant Chief Counsel  
(Exempt Organizations/ Employment Tax/  
Government Entities)

cc:

