



**State Personal Income Tax Information
for USPHS Commissioned Corp Officers**

2018

Summary

The COA Legislative Affairs Committee's Work Group on State Tax Policy has prepared this document to help officers of the United States Public Health Service (USPHS) Commissioned Corps access information to better understand their state tax liability, state tax benefits, and dependent tax benefits.

USPHS officers should exercise caution in making assumptions about their tax status. COA has been approached many times by PHS officers who erroneously believed they were entitled to state income tax deductions offered to active duty or retired "military" or "armed services" personnel. These PHS officers claimed "military" tax exemptions and then faced stiff tax penalties, sometimes in the tens of thousands of dollars.

The language we prefer is "uniformed services." This language makes very clear that PHS and NOAA officers are included in the tax breaks.

This document does not provide tax advice. This document does NOT address taxes other than state income taxes. It excludes interest/dividend income, disability pay, military spouses' income, etc.

Your best resources are a tax professional from your state, or documentation from your state tax office explaining whether personnel in the U.S. Public Health Service meet the eligibility criteria for state income tax exemptions. A few states define PHS officers as "military" for the purposes of income tax breaks, but most states do not.

Officers should note that tax laws and regulations frequently change; just because you qualify for an exemption one year does not mean that you will qualify the next year. In some states, the dollar amounts change annually.

Introduction

The purpose of this document is to assist United States Public Health Service (USPHS) Commission Corp officers in gaining a better understanding on how to interpret the nuances of their State income taxes as uniformed service members.

Many USPHS officers maintain their domicile in a different State from where they are stationed. Therefore, officers may have questions on how their active duty status affects their tax responsibilities and any tax benefits assumed during their active duty and retired pay years. This document provides information for officers on where to look first when questions arise regarding personal income tax and retirement income tax. This document also provides general information to an officer who wishes to advocate change regarding how USPHS officers' income is taxed in their State.

As of 2017 there are nine States with no personal income taxes, including:

- Alaska
- Florida
- Nevada
- New Hampshire¹
- South Dakota
- Tennessee¹
- Texas
- Washington
- Wyoming

This list may change at any time, as one of these states may decide to impose an income tax, or another state may decide to repeal its tax. USPHS officers who are not domiciled in an income tax-free state can use this document to better understand their own current or future tax liability. They can also use it as a tool for advocating for parity with other services.

¹ New Hampshire and Tennessee tax interest and dividend incomes.

Factors Influencing Tax Liability

Tax Liability: Debt to a government incurred by a tax payer as accrued or assessed taxes.

Factors that influence tax liability include your state's exemptions (if any) for service personnel, your active/retired status, and how your state treats dependents of service personnel.

Exemptions

States define pay exemptions or deductions for "armed services," "military," or (in a very few cases) "uniformed services" personnel. USPHS may be implicitly or explicitly excluded from tax benefits. Therefore, *a tax exemption for "armed services" or "military" personnel does NOT necessarily mean a tax exemption for USPHS officers.*

For example, Illinois Publication 102 (2011), "*Illinois Filing Requirements for Military Personnel*"² states that duty in the armed forces makes Illinois residents eligible for deducting their active duty pay for tax purposes. Under the section "What military pay may I not subtract?" the form explicitly states, "Pay for duty as an officer in the Public Health Service."

You must confirm whether your state, in the context of state tax policy, considers USPHS as a part of the "armed services" or the "military." **Remember, if you are claiming an exemption, you need confirmation in writing from state tax professionals that the exemption or deduction applies to you. Even a written statement will not protect you from penalties if the advice turns out to have been wrong.**



A USPHS officer claimed the income tax exemption offered to members of the "armed forces" in a southwestern state. But the state ruled he was not eligible. He had to pay all back taxes, penalties, and interest.

It is essential to understand how your state defines the USPHS. Never claim a tax break for "military" or "armed services" personnel without reading the definitions in your state's tax code.

Active Duty vs. Retired Status

Active duty pay and retirement pay can be taxed differently (see Figure 1, below), so clarify what laws or statutes apply to your circumstance. Once you retire, you are no longer eligible for benefits under the Servicemembers Civil Relief Act (SCRA). For more information, see SCRA under Other Resources.

² <http://tax.illinois.gov/publications/Pubs/Pub-102.pdf>

Dependent(s) tax status

For members with dependents, it is important to determine the tax status of your dependents (children, spouse, common-law marriage or domestic partnership). **Do not assume your tax status applies to the rest of the family.** If married, SCRA applies for tax purposes only if the domicile of the spouse is the same as the active duty member.

Determining your tax liability

Although information is provided in this document, it cannot be emphasized enough that your best resource is a tax professional from your state or documentation from your state tax office confirming that personnel in the U.S. Public Health Service meet eligibility criteria for state tax exemptions. Here are some suggestions for enhancing your knowledge of tax policy:

1. Start familiarizing yourself with basic state income tax information in your State of domicile by utilizing resources that explain income tax in plain language. For example:³
 - a. Publicly available tax support websites or software like H&R Block, TurboTax, Intuit, etc.
 - b. Latest “State Tax Guide” from U.S. Navy Office of the Judge Advocate General.
http://www.jag.navy.mil/organization/code_16_tax_info.htm
 - c. The latest “Military state report card and tax guide” from MOAA.
<http://www.moaa.org/Content/State-Report-Card/MOAA-s-2017-Military-State-Report-Card-and-Tax-Guide.aspx>
 - d. Latest “State tax treatment” from National Active and Retired Federal Employees Association (NARFE).

Note: These plain-language resources provide basic and general information.

2. Go to your state’s department of revenue (or equivalent) website to find your state tax regulations before claiming a state tax exemption.

Note: Some states have very clear personal income tax exemptions that include or exclude PHS, while others are up for interpretation. COA cannot offer blanket advice about personal income taxes to officers stationed in different states.

3. Contact your state’s department of revenue (or equivalent) and ask for the personal income tax regulations regulation in writing. Also, it is best to determine at the same time the tax status of your spouse and or dependents, if applicable.

Example: In Illinois, the “*Military Spouse Residency Relief Act*”⁴, effective for tax years 2009 and after, allows the spouses of armed forces members to deduct their pay from Illinois

³ COA does not endorse any of these tax related websites or publications.

⁴ <http://tax.illinois.gov/publications/Pubs/Pub-102.pdf>

state tax if the active duty spouse is a non-resident of Illinois. Since PHS officers are specifically not considered “armed forces” or “military,” their spouses are not afforded this benefit.

4. Consult a tax accountant or lawyer in your state.

Note: In some states you are required to file a return even if you may not be required to pay any income tax. See your domicile state’s Department of Revenue website for clarification of tax rules for active duty service members.

Advocating for Change

USPHS officers have been successful in advocating for change in Oklahoma, where USPHS is eligible for the military retirement exclusion.⁵ There is strength in numbers. COA encourages officers in each state to address inequities in the tax code among the uniformed services through their COA Branches. Ideally, all COA branches within a state would consolidate their efforts to request reconsideration of the state tax code to give parity to all seven uniformed services. Lobbying state legislators can best be done by state residents, who are constituents and voters of that state. COA can help with a letter or explanation of what the Commissioned Corps is or does, but the fight must be carried by state residents if it is to succeed.



It is a violation of federal ethics rules to use government resources for lobby efforts. Therefore, COA reminds officers to use their personal time and personal recourses when undertaking these efforts.

If you wish to advocate for change regarding how USPHS officers’ income are taxed in your State, start by:

- Checking with your local COA branch to see if someone is already working toward changing your state tax laws as it relates to USPHS officers’ income. If so, combine your efforts.

⁵ <https://www.ok.gov/tax/documents/LR%2007-147.pdf>

- Researching whether another USPHS officer has already gone to court and if so, obtaining the court's ruling. Since there is a good chance that the state tax office is not familiar with the USPHS Commissioned Corps, be prepared to justify why you believe the USPHS should be included in the state's definition of military service.

If you plan to work to change your state's tax laws, start with a letter to your state senator and/or representative (also called delegate). At some point, you will need to connect with the relevant tax-writing committees and subcommittees of your state legislature. It is always best to work with your local branch and have everyone participate in the letter-writing campaign.

The letter to individual state legislators should emphasize what PHS officers are doing *in and for your state*. The letter should clearly explain that USPHS is a uniformed service. It is helpful to briefly discuss the USPHS and its wonderful history. See attachment for an example letter template.

Other Resources

RESOURCES FOR BRANCHES TO ADVOCATE THAT USPHS SHOULD BE AFFORDED THE SAME BENEFITS AS OTHER UNIFORMED SERVICES

- **IRS WEBSITES AND PUBLICATIONS FOR SERVICE MEMBERS.**
 - The Federal IRS website defines USPHS as eligible for the same military tax benefits as the armed forces. <https://www.irs.gov/individuals/military/eligibility-for-military-tax-benefits>
 - IRS website: Tax Information for Members of the Military. This website has multiple links to important tax regulations and documents related to Armed Forces personnel. <https://www.irs.gov/individuals/military>
 - IRS Publication 3 - Armed Forces Tax Guide
 - IRS Publication 4940 Tax information for Active Duty Military and Reserve personnel

- **THE SCRA: SERVICEMEMBERS CIVIL RELIEF ACT.** The SCRA specifically lists USPHS as eligible for all federal benefits afforded to Armed Service members.
 - Link to SCRA eligibility website: <https://scra.dmdc.osd.mil>
Select "Single Record Request"
Record shows eligibility for SCRA and active duty status
 - Some States require that a form be filled out if a spouse qualifies for SCRA. At least one State form wants members to provide a copy of their military ID. This is in violation of Title 18, US Code Part I, Chapter 33, section 701. The only time an ID card can be copied is for medical purposes for filing insurance claims. Use the single record request above that shows SCRA eligibility.
 - For SCRA to apply to a spouse (MSRRA), they must have the same domicile (i.e., State) as the active duty member. MSRRA amended the SCRA to provide that the spouse of a military member does not lose or acquire a residence/domicile for purposes of taxation (both income and personal property) due to being absent or present in a tax jurisdiction of the United States.
 - a) <http://www.military.com/benefits/military-legal-matters/scra/servicemembers-civil-relief-act-overview.html>
 - b) <http://legalassistance.law.af.mil/content/locator.php>
 - c) 50 USC Ch. 50, §4000 Income taxes, 4001 Residence for tax purposes
 - <https://www.law.cornell.edu/uscode/text/50/4001>

- **STATES WHERE USPHS OFFICERS HAVE SUCCESSFULLY ADVOCATED FOR TAX PARITY**
 - Maryland
 - Ohio
 - Kentucky
 - Oklahoma

- **FORMS**
 - i) PHS-6353: PHS Commissioned Officer State Tax Withholding Allowance Certificate
 - ii) PHS-6353-1: Request for Voluntary State Income Tax Withholding from Retired Pay
 - iii) DD2058: State of Legal of Legal Residence Certificate Leave and Earnings Statement: Shows current domicile

Sample Letter

Dear <State legislator>,

I am writing on behalf of our members of the Commissioned Officers Association. Our members are Officers in the United States Public Health Service (USPHS), which is one of the seven uniformed services. We have officers stationed in (State) and they want to know if the USPHS falls within (State) definition of (wording for military, e.g., military, uniformed service, DoD, etc.)

If you are unfamiliar with the USPHS, we have served in over 80 countries around the world and in numerous federal agencies across the country including, but not limited to, DoD, HHS, IHS, FDA, NIH, CDC, BOP, NIH, DHS, and the United State Coast Guard. We are an active duty deployable force that is best known for responding to natural disasters (Katrina, Sandy), humanitarian crises (Ebola outbreak in Liberia), and other emergencies (Ground Zero after 9/11, Newtown shooting, Flint water). The USPHS was the only uniformed service that provided direct patient care during the outbreak of Ebola in West Africa and was honored with a Presidential Unit Citation for its response to the Ebola epidemic.

The USPHS also served in Iraq and Afghanistan, and aboard the US Navy Hospital Ships *Mercy*, *Comfort*, *Boxer*, and *Bataan*. The Public Health Service is recognized by the IRS as military for tax purposes, and PHS officers are eligible for the same benefits as the armed forces (<https://www.irs.gov/individuals/military/eligibility-for-military-tax-benefits>). Also, per Title 42, PHS officers on Active Duty are deemed active military service with respect with laws administered by Secretary of Veterans Affairs; Servicemembers Civil Relief Act (SCRA); antidiscrimination laws. PHS Officer's documentation of Active Duty status can be obtained through the SCRA website.

The (Chapter name) branch of the Commissioned Officers Association would like to respectfully request that officers of the Public Health Service receive the same tax treatment afforded the (military or armed forces) in our State.

Please provide rulings on the following:

1. (List specific tax code or reference) Example: Information Bulletin #27, Subject: Adjusted Gross Income Tax Applicable to Military Personnel and Spouses
 - a. (Insert your Question) Example: Does the State of (?) consider the PHS to be included in the definition of Regular Members of the Armed Forces? If yes, can Information Bulletin #27 and any other appropriate tax codes be updated to indicate as such?
2. (List specific tax code or reference)
 - a. (Insert your Question)

Very Respectfully,
<Insert your PHS signatures>