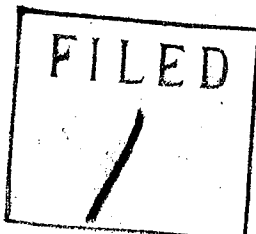


TAXATION: Members of the Commissioned Corps of the Public Health
INCOME: Service actively serving prior to July 3, 1952, entitled
to \$3,000. income tax exemption per Section 143.105;
but not after said date.



February 8, 1954

Mr. T. R. Allen
Supervisor, Income Tax Unit
Department of Revenue
Jefferson City, Missouri

Dear Mr. Allen:

Reference is made to your request for an opinion of this office which request reads in part as follows:

"This department desires a written opinion in connection with the administration of Section 143.105, captioned, Service Pay of Members of the Armed Forces Not Taxable, When, as to whether or not the additional \$3,000 military exemption is applicable to members of the Department of Health, Education and Welfare, United States Public Health Service."

* * * * *

"I believe your ruling should cover the matter herein involved up to a period of July 3, 1952 and whether or not in the event of your findings there would be a differentiation of the treatment of this additional exemption as compared before that date and after."

Section 143.105, V.A.M.S. enacted by the 66th General Assembly, to which you refer, provides as follows:

"The amount of service pay up to but not exceeding three thousand dollars received by a member of the armed forces of the United States on active duty in any one calendar year shall not be taxable and need not be

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included in his state income tax return for the year 1950 and every year thereafter. No person receiving a dishonorable discharge shall receive this exemption. The administrator, executor or next of kin of any deceased member of the armed forces may claim such exemption for such person."

Very briefly, your question is whether the \$3,000. exemption granted in the above provision may be claimed by the Commissioned Corps of the Public Health Service both prior to and after July 3, 1952.

Your attention is first directed to Executive Order No. 9575 (10 F.R. 7895) issued on June 21, 1945, and signed by the President of the United States which provides in part, as follows:

"By virtue of the authority vested in me by section 216 of the Public Health Service Act, approved July 1, 1944, 58 Stat. 691 (this section); Title I, of the First War Powers Act, approved December 1, 1941, 55 Stat. 838 (sections 601-605 of Appendix to Title 50); and as President of the United States and Commander in Chief, I hereby declare the commissioned corps of the Public Health Service to be a military service and a branch of the land and naval forces of the United States during the period of the present war. The commissioned corps of the Public Health Service during such period shall be subject to the Articles for the Government of the Navy to the extent prescribed in the following regulations:"

On June 9, 1952, Executive Order No. 10349, superseding Executive Order 9575 F.R. 3769) was issued declaring the Commissioned Corps of the Public Health Service to be a military service in substantially the same language noted in the Order above with the further language "From the date of this Order to and including June 1, 1952." Said Order reads, in part, as follows:

"By virtue of the authority vested in me by section 215 of the Public Health Service Act (58 Stat. 690), and the authority vested in me by section 216 of that Act (58 Stat. 690) as continued by the Emergency Powers Interim Continuation Act, approved April 14, 1952 (Public Law 313, 82nd Congress), and as President of

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the United States and Commander in Chief of the land and naval forces of the United States, I hereby declare the Commissioned Corps of the Public Health Service to be a military service and a branch of the land and naval forces of the United States from the date of this order to and including June 1, 1952. * * *

Thereafter, Executive Order No. 10349 was amended by Executive Order No. 10356 (17 F.R. 4967) by striking out June 1, 1952 and inserting in lieu thereof June 15, 1952. Said Order was further amended by Executive Orders 10362 (17 F.R. 5413) and 10367 (17 F.R. 5929) extending the dates to June 30, 1952, and July 3, 1952, respectively.

The latter noted Order provides as follows:

"By virtue of the authority vested in me by section 216 of the Public Health Service Act (58 Stat. 690), as continued by the Emergency Powers Interim Continuation Act (Public Law 313, 82nd Congress) as amended by joint resolutions approved May 28, 1952, June 14, 1952, and June 30, 1952, and as President of the United States and Commander in Chief of the land and naval forces of the United States, I hereby amend Executive Order No. 10349 of April 26, 1952, entitled 'Declaring the Commissioned Corps of the Public Health Service To Be a Military Service and Prescribing Regulations therefor', as amended by Executive Order No. 10356 of May 29, 1952, and Executive Order No. 10362 of June 14, 1952, by striking out 'June 30, 1952' appearing in the introductory paragraph of the order and inserting in lieu thereof 'July 3, 1952.'"

From and after the date of July 3, 1952, we find no further Executive Order declaring the Commissioned Corps of the Public Health Service to be a branch of the military and, therefore, we must conclude that such status ceased on that date.

It is our opinion that persons actively serving in the Public Health Service after the effective date of Section 143.010 and prior to July 3, 1952, were entitled to claim the \$3,000. exemption provided since they were serving in a military service

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so declared by the President of the United States under authority of law. However, after the expiration of Executive Order No. 10367 on July 3, 1952, such persons ceased to be in the military service and therefore could not claim the exemption after that date.

CONCLUSION

Therefore it is the opinion of this office that members of the Commissioned Corps of the Public Health Service actively serving after the effective date of Section 143.105 and prior to July 3, 1952, are entitled to claim the \$3,000. exemption provided in the above noted section.

We are further of the opinion that such persons ceased to be in the military service after the expiration of Executive Order No. 10367 on July 3, 1952, and therefore would not be entitled to claim the exemption allowed to members of the armed forces of the United States.

This opinion, which I hereby approve, was written by my assistant, Mr. D. D. Guffey.

Yours very truly,

JOHN M. DALTON
Attorney General

DDG:mw