

Is Per Diem Taxable?

The question has been asked: Is per diem paid to Reserve component members while mobilized subject to federal income tax? Two concerns have been expressed: a) per diem will become subject to income tax when a reservist enters a second year of mobilization, and b) reservists will be retroactively taxed, and perhaps subject to a penalty, for per diem paid during a portion of the first year of mobilization because the reservist remained on duty beyond the first year.

These concerns have been raised by reservists who have reviewed IRS Publication 463, *Travel, Entertainment, Gift, and Car Expenses*. This publication describes the circumstances (whether the assignment is temporary or indefinite) under which travel expenses must be included as income for tax purposes. A temporary assignment is described as a period of one year or less. An assignment extending past one year is considered indefinite. IRS Publication 463 describes the tax consequences of an indefinite assignment on page 4, column 1: "...you must include in your income any amounts you receive from your employer for living expenses, even if they are called travel allowances and you account to your employer for them." (IRS Publication 463)

To end any confusion about the tax consequences for military members assigned in a temporary duty (TDY) status, the Department asked the Department of Treasury to rule on this issue. In a November 20, 1996, letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) from the Acting Assistant Secretary of the Treasury for Tax Policy, the Department of Treasury stated that per diem allowances paid to service members are excludable from income under Internal Revenue Code section 134 (26 U.S.C. 134). In addition, Treasury noted that the amounts are not subject to income tax withholding, social security taxes, or reporting on Form W-2. (Treasury letter to USD(P&R)).

Since per diem allowances constitute a nontaxable military benefit (like BAH, BAS, legal assistance, space-A travel, et cetera), they do not become taxable even if the TDY exceeds one year. The letter from the Department of Treasury ended any doubt that reservists who are TDY for more than one year will not be required to pay taxes on per diem received while mobilized, regardless of the duration of the mobilization.