

107TH CONGRESS
2D SESSION

S. 2816

To amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2002

Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. MCCAIN, Mr. DEWINE, Ms. LANDRIEU, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HATCH, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. TORRICELLI, Mr. DURBIN, Mr. MURKOWSKI, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Foreign and Armed Services Tax Fairness Act of 2002”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for
 4 this Act is as follows:

Sec. 1. Short title; etc.

Sec. 2. Restoration of full exclusion from gross income of death gratuity pay-
 ment.

Sec. 3. Special rule for members of uniformed services and Foreign Service in
 determining exclusion of gain from sale of principal residence.

Sec. 4. Qualified military base realignment and closure fringe benefit.

Sec. 5. Extension of tax filing delay provisions to military personnel serving in
 contingency operations.

Sec. 6. Deduction of certain expenses of members of the reserve component.

Sec. 7. Modification of membership requirement for exemption from tax for vet-
 erans' organizations.

Sec. 8. Clarification of the treatment of dependent care assistance programs
 sponsored by the Department of Defense for members of the
 Armed Forces of the United States.

5 **SEC. 2. RESTORATION OF FULL EXCLUSION FROM GROSS**
 6 **INCOME OF DEATH GRATUITY PAYMENT.**

7 (a) IN GENERAL.—Subsection (b)(3) of section 134
 8 (relating to certain military benefits) is amended by add-
 9 ing at the end the following new subparagraph:

10 “(C) EXCEPTION FOR DEATH GRATUITY
 11 ADJUSTMENTS MADE BY LAW.—Subparagraph
 12 (A) shall not apply to any adjustment to the
 13 amount of death gratuity payable under chapter
 14 75 of title 10, United States Code, which is
 15 pursuant to a provision of law enacted after
 16 September 9, 1986.”.

17 (b) CONFORMING AMENDMENT.—Subparagraph (A)
 18 of section 134(b)(3) is amended by striking “subpara-
 19 graph (B)” and inserting “subparagraphs (B) and (C)”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to deaths occurring
 3 after September 10, 2001.

4 **SEC. 3. SPECIAL RULE FOR MEMBERS OF UNIFORMED**
 5 **SERVICES AND FOREIGN SERVICE IN DETER-**
 6 **MINING EXCLUSION OF GAIN FROM SALE OF**
 7 **PRINCIPAL RESIDENCE.**

8 (a) IN GENERAL.—Subsection (d) of section 121 (re-
 9 lating to exclusion of gain from sale of principal residence)
 10 is amended by adding at the end the following new para-
 11 graph:

12 “(9) MEMBERS OF UNIFORMED SERVICES AND
 13 FOREIGN SERVICE.—

14 “(A) IN GENERAL.—At the election of an
 15 individual with respect to a property, the run-
 16 ning of the 5-year period described in sub-
 17 section (a) with respect to such property shall
 18 be suspended during any period that such indi-
 19 vidual or such individual’s spouse is serving on
 20 qualified official extended duty as a member of
 21 the uniformed services or of the Foreign Serv-
 22 ice.

23 “(B) MAXIMUM PERIOD OF SUSPENSION.—
 24 The 5-year period described in subsection (a)

1 shall not be extended more than 5 years by rea-
2 son of subparagraph (A).

3 “(C) QUALIFIED OFFICIAL EXTENDED
4 DUTY.—For purposes of this paragraph—

5 “(i) IN GENERAL.—The term ‘quali-
6 fied official extended duty’ means any ex-
7 tended duty while serving at a duty station
8 which is at least 50 miles from such prop-
9 erty or while residing under Government
10 orders in Government quarters.

11 “(ii) UNIFORMED SERVICES.—The
12 term ‘uniformed services’ has the meaning
13 given such term by section 101(a)(5) of
14 title 10, United States Code, as in effect
15 on the date of the enactment of this para-
16 graph.

17 “(iii) FOREIGN SERVICE OF THE
18 UNITED STATES.—The term ‘member of
19 the Foreign Service’ has the meaning given
20 the term ‘member of the Service’ by para-
21 graph (1), (2), (3), (4), or (5) of section
22 103 of the Foreign Service Act of 1980.

23 “(iv) EXTENDED DUTY.—The term
24 ‘extended duty’ means any period of duty
25 pursuant to a call or order to such duty for

1 a period in excess of 90 days or for an in-
 2 definite period.

3 “(D) SPECIAL RULES RELATING TO ELEC-
 4 TION.—

5 “(i) ELECTION LIMITED TO 1 PROP-
 6 erty AT A TIME.—An election under sub-
 7 paragraph (A) with respect to any property
 8 may not be made if such an election is in
 9 effect with respect to any other property.

10 “(ii) REVOCATION OF ELECTION.—An
 11 election under subparagraph (A) may be
 12 revoked at any time.”.

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to elections made after the date
 15 of the enactment of this Act for suspended periods under
 16 section 121(d)(9) of the Internal Revenue Code of 1986
 17 (as added by this section) beginning after such date.

18 **SEC. 4. QUALIFIED MILITARY BASE REALIGNMENT AND**
 19 **CLOSURE FRINGE BENEFIT.**

20 (a) IN GENERAL.—Section 132(a) (relating to the ex-
 21 clusion from gross income of certain fringe benefits) is
 22 amended by striking “or” at the end of paragraph (6),
 23 by striking the period at the end of paragraph (7) and
 24 inserting “, or” and by adding at the end the following
 25 new paragraph:

1 “(8) qualified military base realignment and
2 closure fringe.”.

3 (b) QUALIFIED MILITARY BASE REALIGNMENT AND
4 CLOSURE FRINGE.—Section 132 is amended by redesign-
5 ating subsection (n) as subsection (o) and by inserting
6 after subsection (m) the following new subsection:

7 “(n) QUALIFIED MILITARY BASE REALIGNMENT AND
8 CLOSURE FRINGE.—For purposes of this section, the
9 term ‘qualified military base realignment and closure
10 fringe’ means 1 or more payments under the authority of
11 section 1013 of the Demonstration Cities and Metropoli-
12 tan Development Act of 1966 (42 U.S.C. 3374) to offset
13 the adverse effects on housing values as a result of a mili-
14 tary base realignment or closure.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to payments made after the date
17 of the enactment of this Act.

18 **SEC. 5. EXTENSION OF TAX FILING DELAY PROVISIONS TO**
19 **MILITARY PERSONNEL SERVING IN CONTIN-**
20 **GENCY OPERATIONS.**

21 (a) IN GENERAL.—Section 7508(a) (relating to time
22 for performing certain acts postponed by reason of service
23 in combat zone) is amended—

24 (1) by inserting “or when deployed outside the
25 United States away from the individual’s permanent

1 duty station while participating in an operation des-
 2 ignated by the Secretary of Defense as a contin-
 3 gency operation (as defined in section 101(a)(13) of
 4 title 10, United States Code) or which became such
 5 a contingency operation by operation of law” after
 6 “section 112”,

7 (2) by inserting in the first sentence “or at any
 8 time during the period of such contingency oper-
 9 ation” after “for purposes of such section”,

10 (3) by inserting “or operation” after “such an
 11 area”, and

12 (4) by inserting “or operation” after “such
 13 area”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 7508(d) is amended by inserting
 16 “or contingency operation” after “area”.

17 (2) The heading for section 7508 is amended by
 18 inserting “**OR CONTINGENCY OPERATION**” after
 19 “**COMBAT ZONE**”.

20 (3) The item relating to section 7508 in the
 21 table of sections for chapter 77 is amended by in-
 22 serting “or contingency operation” after “combat
 23 zone”.

24 (c) EFFECTIVE DATE.—The amendments made by
 25 this section shall apply to any period for performing an

1 act which has not expired before the date of the enactment
2 of this Act.

3 **SEC. 6. DEDUCTION OF CERTAIN EXPENSES OF MEMBERS**
4 **OF THE RESERVE COMPONENT.**

5 (a) DEDUCTION ALLOWED.—Section 162 (relating to
6 certain trade or business expenses) is amended by redesignig-
7 nating subsection (p) as subsection (q) and inserting after
8 subsection (o) the following new subsection:

9 “(p) TREATMENT OF EXPENSES OF MEMBERS OF
10 RESERVE COMPONENT OF ARMED FORCES OF THE
11 UNITED STATES.—For purposes of subsection (a), in the
12 case of an individual who performs services as a member
13 of a reserve component of the Armed Forces of the United
14 States at any time during the taxable year, such individual
15 shall be deemed to be away from home in the pursuit of
16 a trade or business during any period for which such indi-
17 vidual is away from home in connection with such serv-
18 ice.”.

19 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-
20 PAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating
21 to certain trade and business deductions of employees) is
22 amended by adding at the end the following new subpara-
23 graph:

24 “(E) CERTAIN EXPENSES OF MEMBERS OF
25 RESERVE COMPONENTS OF THE ARMED FORCES

1 OF THE UNITED STATES.—The deductions al-
 2 lowed by section 162 which consist of expenses,
 3 in amounts not in excess of the rates for travel
 4 expenses (including per diem in lieu of subsist-
 5 ence) authorized for employees of agencies
 6 under subchapter I of chapter 57 of title 5,
 7 United States Code, paid or incurred by the
 8 taxpayer in connection with the performance of
 9 services by such taxpayer as a member of a re-
 10 serve component of the Armed Forces of the
 11 United States.”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to amounts paid or incurred in tax-
 14 able years beginning after December 31, 2001.

15 **SEC. 7. MODIFICATION OF MEMBERSHIP REQUIREMENT**
 16 **FOR EXEMPTION FROM TAX FOR VETERANS’**
 17 **ORGANIZATIONS.**

18 (a) IN GENERAL.—Subparagraph (B) of section
 19 501(c)(19) (relating to list of exempt organizations) is
 20 amended by striking “or widowers” and inserting “, wid-
 21 owers, or ancestors or lineal descendants”.

22 (b) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to taxable years beginning after
 24 the date of the enactment of this Act.

1 **SEC. 8. CLARIFICATION OF THE TREATMENT OF DEPEND-**
2 **ENT CARE ASSISTANCE PROGRAMS SPON-**
3 **SORED BY THE DEPARTMENT OF DEFENSE**
4 **FOR MEMBERS OF THE ARMED FORCES OF**
5 **THE UNITED STATES.**

6 (a) IN GENERAL.—Section 134(b) (defining qualified
7 military benefit) is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(4) CLARIFICATION OF CERTAIN BENEFITS.—
10 For purposes of paragraph (1), such term includes
11 any dependent care assistance program sponsored by
12 the Department of Defense for members of the
13 Armed Forces of the United States.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 3121(a)(18) is amended by striking
16 “or 129” and inserting “, 129, or 134(b)(4)”.

17 (2) Section 3306(b)(13) is amended by striking
18 “or 129” and inserting “, 129, or 134(b)(4)”.

19 (3) Section 3401(a)(18) is amended by striking
20 “or 129” and inserting “, 129, or 134(b)(4)”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2001.

24 (d) NO INFERENCE.—No inference may be drawn
25 from the amendments made by this section with respect
26 to the tax treatment of any amounts under the program

1 described in section 134(b)(4) of the Internal Revenue
2 Code of 1986 (as added by this section) for any taxable
3 year beginning before January 1, 2002.

