

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.

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## 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

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## 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 nating 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.

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