

108TH CONGRESS  
1ST SESSION

# H. R. 1664

To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2003

Mr. THOMAS introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, 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; REFERENCES.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Armed Forces Tax Fairness Act of 2003”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-  
 2 wise expressly provided, whenever in this Act an amend-  
 3 ment or repeal is expressed in terms of an amendment  
 4 to, or repeal of, a section or other provision, the reference  
 5 shall be considered to be made to a section or other provi-  
 6 sion of the Internal Revenue Code of 1986.

7 **SEC. 2. SPECIAL RULE FOR MEMBERS OF UNIFORMED**  
 8 **SERVICES AND FOREIGN SERVICE IN DETER-**  
 9 **MINING EXCLUSION OF GAIN FROM SALE OF**  
 10 **PRINCIPAL RESIDENCE.**

11 (a) IN GENERAL.—Subsection (d) of section 121 of  
 12 the Internal Revenue Code of 1986 (relating to exclusion  
 13 of gain from sale of principal residence) is amended by  
 14 adding at the end the following new paragraph:

15 “(10) MEMBERS OF UNIFORMED SERVICES AND  
 16 FOREIGN SERVICE.—

17 “(A) IN GENERAL.—At the election of an  
 18 individual with respect to a property, the run-  
 19 ning of the 5-year period referred to in sub-  
 20 sections (a) and (c)(1)(B) and paragraph (7) of  
 21 this subsection with respect to such property  
 22 shall be suspended during any period that such  
 23 individual or such individual’s spouse is serving  
 24 on qualified official extended duty as a member

1 of the uniformed services or of the Foreign  
2 Service.

3 “(B) MAXIMUM PERIOD OF SUSPENSION.—  
4 Such 5-year period shall not be extended more  
5 than 5 years by reason of subparagraph (A).

6 “(C) QUALIFIED OFFICIAL EXTENDED  
7 DUTY.—For purposes of this paragraph—

8 “(i) IN GENERAL.—The term ‘quali-  
9 fied official extended duty’ means any ex-  
10 tended duty while serving at a duty station  
11 which is at least 150 miles from such prop-  
12 erty or while residing under Government  
13 orders in Government quarters.

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

20 “(iii) FOREIGN SERVICE.—The term  
21 ‘member of the Foreign Service’ has the  
22 meaning given the term ‘member of the  
23 Service’ by paragraph (1), (2), (3), (4), or  
24 (5) of section 103 of the Foreign Service

1 Act of 1980, as in effect on the date of the  
2 enactment of this paragraph.

3 “(iv) EXTENDED DUTY.—The term  
4 ‘extended duty’ means any period of active  
5 duty pursuant to a call or order to such  
6 duty for a period in excess of 180 days or  
7 for an indefinite period.

8 “(D) SPECIAL RULES RELATING TO ELEC-  
9 TION.—

10 “(i) ELECTION LIMITED TO 1 PROP-  
11 erty AT A TIME.—An election under sub-  
12 paragraph (A) with respect to any property  
13 may not be made if such an election is in  
14 effect with respect to any other property.

15 “(ii) REVOCATION OF ELECTION.—An  
16 election under subparagraph (A) may be  
17 revoked at any time.”.

18 (b) EFFECTIVE DATE; SPECIAL RULE.—

19 (1) EFFECTIVE DATE.—The amendment made  
20 by this section shall take effect as if included in the  
21 amendments made by section 312 of the Taxpayer  
22 Relief Act of 1997.

23 (2) WAIVER OF LIMITATIONS.—If refund or  
24 credit of any overpayment of tax resulting from the  
25 amendment made by this section is prevented at any

1 time before the close of the 1-year period beginning  
 2 on the date of the enactment of this Act by the oper-  
 3 ation of any law or rule of law (including res judi-  
 4 cata), such refund or credit may nevertheless be  
 5 made or allowed if claim therefor is filed before the  
 6 close of such period.

7 **SEC. 3. RESTORATION OF FULL EXCLUSION FROM GROSS**  
 8 **INCOME OF DEATH GRATUITY PAYMENT.**

9 (a) IN GENERAL.—Paragraph (3) of section 134(b)  
 10 (relating to qualified military benefit) is amended by add-  
 11 ing at the end the following new subparagraph:

12 “(C) EXCEPTION FOR DEATH GRATUITY  
 13 ADJUSTMENTS MADE BY LAW.—Subparagraph  
 14 (A) shall not apply to any adjustment to the  
 15 amount of death gratuity payable under chapter  
 16 75 of title 10, United States Code, which is  
 17 pursuant to a provision of law enacted before  
 18 December 31, 1991.”.

19 (b) CONFORMING AMENDMENT.—Section  
 20 134(b)(3)(A) is amended by striking “subparagraph (B)”  
 21 and inserting “subparagraphs (B) and (C)”.

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

1 **SEC. 4. EXCLUSION FOR AMOUNTS RECEIVED UNDER DE-**  
 2 **PARTMENT OF DEFENSE HOMEOWNERS AS-**  
 3 **SISTANCE PROGRAM.**

4 (a) IN GENERAL.—Subsection (a) of section 132 (re-  
 5 lating to certain fringe benefits) is amended by striking  
 6 “or” at the end of paragraph (6), by striking the period  
 7 at the end of paragraph (7) and inserting “, or” and by  
 8 adding at the end the following new paragraph:

9 “(8) qualified military base realignment and  
 10 closure fringe.”.

11 (b) QUALIFIED MILITARY BASE REALIGNMENT AND  
 12 CLOSURE FRINGE.—Section 132 is amended by redesign-  
 13 nating subsection (n) as subsection (o) and by inserting  
 14 after subsection (m) the following new subsection:

15 “(n) QUALIFIED MILITARY BASE REALIGNMENT AND  
 16 CLOSURE FRINGE.—

17 “(1) IN GENERAL.—For purposes of this sec-  
 18 tion, the term ‘qualified military base realignment  
 19 and closure fringe’ means 1 or more payments under  
 20 the authority of section 1013 of the Demonstration  
 21 Cities and Metropolitan Development Act of 1966  
 22 (42 U.S.C. 3374) (as in effect on the date of the en-  
 23 actment of this subsection).

24 “(2) LIMITATION.—With respect to any prop-  
 25 erty, such term shall not include any payment re-  
 26 ferred to in paragraph (1) to the extent that the

1       sum of all such payments related to such property  
 2       exceeds the amount described in clause (1) of sub-  
 3       section (c) of such section (as in effect on such  
 4       date).”.

5       (c) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to payments made after the date  
 7 of the enactment of this Act.

8       **SEC. 5. EXPANSION OF COMBAT ZONE FILING RULES TO**  
 9                               **CONTINGENCY OPERATIONS.**

10       (a) IN GENERAL.—Subsection (a) of section 7508  
 11 (relating to time for performing certain acts postponed by  
 12 reason of service in combat zone) is amended—

13               (1) by inserting “or when deployed outside the  
 14       United States away from the individual’s permanent  
 15       duty station while participating in an operation des-  
 16       ignated by the Secretary of Defense as a contin-  
 17       gency operation (as defined in section 101(a)(13) of  
 18       title 10, United States Code) or which became such  
 19       a contingency operation by operation of law” after  
 20       “section 112”,

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

24               (3) by inserting “or operation” after “such an  
 25       area”, and

1           (4) by inserting “or operation” after “such  
2    area”.

3           (b) CONFORMING AMENDMENTS.—

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

6           (2) The heading for section 7508 is amended by  
7    inserting “**OR CONTINGENCY OPERATION**” after  
8    “**COMBAT ZONE**”.

9           (3) The item relating to section 7508 in the  
10   table of sections for chapter 77 is amended by in-  
11   serting “or contingency operation” after “combat  
12   zone”.

13          (c) EFFECTIVE DATE.—The amendments made by  
14   this section shall apply to any period for performing an  
15   act which has not expired before the date of the enactment  
16   of this Act.

17   **SEC. 6. MODIFICATION OF MEMBERSHIP REQUIREMENT**  
18                           **FOR EXEMPTION FROM TAX FOR CERTAIN**  
19                           **VETERANS’ ORGANIZATIONS.**

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



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

4 **SEC. 7. CLARIFICATION OF THE TREATMENT OF CERTAIN**  
5 **DEPENDENT CARE ASSISTANCE PROGRAMS.**

6 (a) IN GENERAL.—Subsection (b) of section 134 (de-  
7 fining qualified military benefit) is amended by adding at  
8 the end the following new paragraph:

9 “(4) CLARIFICATION OF CERTAIN BENEFITS.—  
10 For purposes of paragraph (1), such term includes  
11 any dependent care assistance program (as in effect  
12 on the date of the enactment of this paragraph) for  
13 any individual described in paragraph (1)(A).”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 134(b)(3)(A) (as amended by sec-  
16 tion 102) is further amended by inserting “and  
17 paragraph (4)” after “subparagraphs (B) and (C)”.

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

20 (3) Section 3306(b)(13) is amended by striking  
21 “or 129” and inserting “, 129, or 134(b)(4)”.

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

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2002.

4 **SEC. 8. CLARIFICATION RELATING TO EXCEPTION FROM**  
5 **ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PRO-**  
6 **GRAMS, ETC., ON ACCOUNT OF ATTENDANCE**  
7 **AT MILITARY ACADEMY.**

9 (a) IN GENERAL.—Subparagraph (B) of section  
10 530(d)(4) (relating to exceptions from additional tax for  
11 distributions not used for educational purposes) is amend-  
12 ed by striking “or” at the end of clause (iii), by redesign-  
13 ating clause (iv) as clause (v), and by inserting after  
14 clause (iii) the following new clause:

15 “(iv) made on account of the attend-  
16 ance of the designated beneficiary at the  
17 United States Military Academy, the  
18 United States Naval Academy, the United  
19 States Air Force Academy, the United  
20 States Coast Guard Academy, or the  
21 United States Merchant Marine Academy,  
22 to the extent that the amount of the pay-  
23 ment or distribution does not exceed the  
24 costs of advanced education (as defined by  
25 section 2005(e)(3) of title 10, United

1 States Code, as in effect on the date of the  
2 enactment of this section) attributable to  
3 such attendance, or”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall take effect for taxable years beginning  
6 after December 31, 2002.

7 **SEC. 9. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT**  
8 **TRAVEL EXPENSES OF NATIONAL GUARD**  
9 **AND RESERVE MEMBERS.**

10 (a) DEDUCTION ALLOWED.—Section 162 (relating to  
11 certain trade or business expenses) is amended by redesign-  
12 ating subsection (p) as subsection (q) and inserting after  
13 subsection (o) the following new subsection:

14 “(p) TREATMENT OF EXPENSES OF MEMBERS OF  
15 RESERVE COMPONENT OF ARMED FORCES OF THE  
16 UNITED STATES.—For purposes of subsection (a)(2), in  
17 the case of an individual who performs services as a mem-  
18 ber of a reserve component of the Armed Forces of the  
19 United States at any time during the taxable year, such  
20 individual shall be deemed to be away from home in the  
21 pursuit of a trade or business for any period during which  
22 such individual is away from home in connection with such  
23 services.”.

24 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-  
25 PAYER ELECTS TO ITEMIZE.—Paragraph (2) of section

1 62(a) (relating to certain trade and business deductions  
2 of employees) is amended by adding at the end the fol-  
3 lowing new subparagraph:

4                   “(E) CERTAIN EXPENSES OF MEMBERS OF  
5                   RESERVE COMPONENTS OF THE ARMED FORCES  
6                   OF THE UNITED STATES.—The deductions al-  
7                   lowed by section 162 which consist of expenses,  
8                   determined at a rate not in excess of the rates  
9                   for travel expenses (including per diem in lieu  
10                  of subsistence) authorized for employees of  
11                  agencies under subchapter I of chapter 57 of  
12                  title 5, United States Code, and not in excess  
13                  of \$1,500, paid or incurred by the taxpayer in  
14                  connection with the performance of services by  
15                  such taxpayer as a member of a reserve compo-  
16                  nent of the Armed Forces of the United States  
17                  for any period during which such individual is  
18                  more than 100 miles away from home in con-  
19                  nection with such services.”.

20           (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to amounts paid or incurred in tax-  
22 able years beginning after December 31, 2002.

1 **SEC. 10. TAX RELIEF AND ASSISTANCE FOR FAMILIES OF**  
2 **ASTRONAUTS WHO LOSE THEIR LIVES ON A**  
3 **SPACE MISSION.**

4 (a) INCOME TAX RELIEF.—

5 (1) IN GENERAL.—Subsection (d) of section  
6 692 (relating to income taxes of members of Armed  
7 Forces and victims of certain terrorist attacks on  
8 death) is amended by adding at the end the fol-  
9 lowing new paragraph:

10 “(5) RELIEF WITH RESPECT TO ASTRO-  
11 NAUTS.—The provisions of this subsection shall  
12 apply to any astronaut whose death occurs while on  
13 a space mission, except that paragraph (3)(B) shall  
14 be applied by using the date of the death of the as-  
15 tronaut rather than September 11, 2001.”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 5(b)(1) is amended by insert-  
18 ing “, astronauts,” after “Forces”.

19 (B) Section 6013(f)(2)(B) is amended by  
20 inserting “, astronauts,” after “Forces”.

21 (3) CLERICAL AMENDMENTS.—

22 (A) The heading of section 692 is amended  
23 by inserting “, **ASTRONAUTS,**” after  
24 “**FORCES**”.

25 (B) The item relating to section 692 in the  
26 table of sections for part II of subchapter J of

1 chapter 1 is amended by inserting “, astro-  
2 nauts,” after “Forces”.

3 (4) EFFECTIVE DATE.—The amendments made  
4 by this subsection shall apply with respect to any as-  
5 tronaut whose death occurs after December 31,  
6 2002.

7 (b) DEATH BENEFIT RELIEF.—

8 (1) IN GENERAL.—Subsection (i) of section 101  
9 (relating to certain death benefits) is amended by  
10 adding at the end the following new paragraph:

11 “(4) RELIEF WITH RESPECT TO ASTRO-  
12 NAUTS.—The provisions of this subsection shall  
13 apply to any astronaut whose death occurs while on  
14 a space mission.”.

15 (2) CLERICAL AMENDMENT.—The heading for  
16 subsection (i) of section 101 is amended by inserting  
17 “OR ASTRONAUTS” after “VICTIMS”.

18 (3) EFFECTIVE DATE.—The amendments made  
19 by this subsection shall apply to amounts paid after  
20 December 31, 2002, with respect to deaths occurring  
21 after such date.

22 (c) ESTATE TAX RELIEF.—

23 (1) IN GENERAL.—Subsection (b) of section  
24 2201 (defining qualified decedent) is amended by  
25 striking “and” at the end of paragraph (1)(B), by

1 striking the period at the end of paragraph (2) and  
 2 inserting “, and”, and by adding at the end the fol-  
 3 lowing new paragraph:

4 “(3) any astronaut whose death occurs while on  
 5 a space mission.”.

6 (2) CLERICAL AMENDMENTS.—

7 (A) The heading of section 2201 is amend-  
 8 ed by inserting “, **DEATHS OF ASTRO-**  
 9 **NAUTS,”** after “**FORCES**”.

10 (B) The item relating to section 2201 in  
 11 the table of sections for subchapter C of chap-  
 12 ter 11 is amended by inserting “, deaths of as-  
 13 tronauts,” after “Forces”.

14 (3) EFFECTIVE DATE.—The amendments made  
 15 by this subsection shall apply to estates of decedents  
 16 dying after December 31, 2002.

17 **SEC. 11. PROTECTION OF SOCIAL SECURITY.**

18 The amounts transferred to any trust fund under  
 19 title II of the Social Security Act shall be determined as  
 20 if this Act (other than this section) had not been enacted.

