

108TH CONGRESS  
1ST SESSION

# H. R. 878

To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service 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

FEBRUARY 25, 2003

Mr. THOMAS (for himself, Mr. HOUGHTON, Mr. CAMP, Mr. LEWIS of Kentucky, Mr. HAYWORTH, Mr. SAM JOHNSON of Texas, Mr. HERGER, Mr. RAMSTAD, Mr. CANTOR, Mr. ENGLISH, and Mr. CRANE) 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 and Foreign Service 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Armed Forces Tax  
3 Fairness Act of 2003”.

4 **SEC. 2. 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 of  
9 the Internal Revenue Code of 1986 (relating to exclusion  
10 of gain from sale of principal residence) is amended by  
11 adding at the end the following new paragraph:

12 “(10) 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 referred to 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 Such 5-year period shall not be extended more  
25 than 5 years by reason of subparagraph (A).

1           “(C) QUALIFIED OFFICIAL EXTENDED  
2 DUTY.—For purposes of this paragraph—

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

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

15           “(iii) FOREIGN SERVICE.—The term  
16 ‘member of the Foreign Service’ has the  
17 meaning given the term ‘member of the  
18 Service’ by paragraph (1), (2), (3), (4), or  
19 (5) of section 103 of the Foreign Service  
20 Act of 1980, as in effect on the date of the  
21 enactment of this paragraph.

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

1 duty for a period in excess of 180 days or  
2 for an indefinite 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; SPECIAL RULE.—

14 (1) EFFECTIVE DATE.—The amendment made  
15 by this section shall take effect as if included in the  
16 amendments made by section 312 of the Taxpayer  
17 Relief Act of 1997.

18 (2) WAIVER OF LIMITATIONS.—If refund or  
19 credit of any overpayment of tax resulting from the  
20 amendment made by this section is prevented at any  
21 time before the close of the 1-year period beginning  
22 on the date of the enactment of this Act by the oper-  
23 ation of any law or rule of law (including res judi-  
24 cata), such refund or credit may nevertheless be

1 made or allowed if claim therefor is filed before the  
2 close of such period.

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

5 (a) IN GENERAL.—Subsection (b)(3) of section 134  
6 of the Internal Revenue Code of 1986 (relating to certain  
7 military benefits) is amended by adding at the end the  
8 following new subparagraph:

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

16 (b) CONFORMING AMENDMENT.—Subparagraph (A)  
17 of section 134(b)(3) of such Code is amended by striking  
18 “subparagraph (B)” and inserting “subparagraphs (B)  
19 and (C)”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply with respect to deaths occurring  
22 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.—Section 132(a) of the Internal  
5 Revenue Code of 1986 (relating to the exclusion from  
6 gross income of certain fringe benefits) is amended by  
7 striking “or” at the end of paragraph (6), by striking the  
8 period at the end of paragraph (7) and inserting “, or”  
9 and by adding at the end the following new paragraph:

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

12 (b) QUALIFIED MILITARY BASE REALIGNMENT AND  
13 CLOSURE FRINGE.—Section 132 of such Code is amended  
14 by redesignating subsection (n) as subsection (o) and by  
15 inserting after subsection (m) the following new sub-  
16 section:

17 “(n) QUALIFIED MILITARY BASE REALIGNMENT AND  
18 CLOSURE FRINGE.—

19 “(1) IN GENERAL.—For purposes of this sec-  
20 tion, the term ‘qualified military base realignment  
21 and closure fringe’ means 1 or more payments under  
22 the authority of section 1013 of the Demonstration  
23 Cities and Metropolitan Development Act of 1966  
24 (42 U.S.C. 3374) (as in effect on the date of the en-  
25 actment of this subsection).

1           “(2) LIMITATION.—With respect to any prop-  
2           erty, such term shall not include any payment re-  
3           ferred to in paragraph (1) to the extent that the  
4           sum of all such payments related to such property  
5           exceeds the amount described in subsection (c)(1) of  
6           such section (as in effect on such date).”.

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

10 **SEC. 5. EXPANSION OF COMBAT ZONE FILING RULES TO**  
11 **CONTINGENCY OPERATIONS.**

12           (a) IN GENERAL.—Section 7508(a) of the Internal  
13           Revenue Code of 1986 (relating to time for performing  
14           certain acts postponed by reason of service in combat  
15           zone) is amended—

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

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

4           (3) by inserting “or operation” after “such an  
5           area”, and

6           (4) by inserting “or operation” after “such  
7           area”.

8           (b) CONFORMING AMENDMENTS.—

9           (1) Section 7508(d) of such Code is amended  
10          by inserting “or contingency operation” after  
11          “area”.

12          (2) The heading for section 7508 of such Code  
13          is amended by inserting “**OR CONTINGENCY OP-**  
14          **ERATION**” after “**COMBAT ZONE**”.

15          (3) The item relating to section 7508 of such  
16          Code in the table of sections for chapter 77 is  
17          amended by inserting “or contingency operation”  
18          after “combat zone”.

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

1 **SEC. 6. MODIFICATION OF MEMBERSHIP REQUIREMENT**  
2 **FOR EXEMPTION FROM TAX FOR CERTAIN**  
3 **VETERANS' ORGANIZATIONS.**

4 (a) IN GENERAL.—Subparagraph (B) of section  
5 501(c)(19) of the Internal Revenue Code of 1986 (relating  
6 to list of exempt organizations) is amended by striking “or  
7 widowers” and inserting “, widowers, ancestors, or lineal  
8 descendants”.

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

12 **SEC. 7. CLARIFICATION OF THE TREATMENT OF CERTAIN**  
13 **DEPENDENT CARE ASSISTANCE PROGRAMS.**

14 (a) IN GENERAL.—Section 134(b) of the Internal  
15 Revenue Code of 1986 (defining qualified military benefit)  
16 is amended by adding at the end the following new para-  
17 graph:

18 “(4) CLARIFICATION OF CERTAIN BENEFITS.—  
19 For purposes of paragraph (1), such term includes  
20 any dependent care assistance program (as in effect  
21 on the date of the enactment of this paragraph) for  
22 any individual described in paragraph (1)(A).”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) Section 134(b)(3)(A) of such Code (as  
25 amended by section 3) is further amended by insert-

1 ing “and paragraph (4)” after “subparagraphs (B)  
2 and (C)”.

3 (2) Section 3121(a)(18) of such Code is amend-  
4 ed by striking “or 129” and inserting “, 129, or  
5 134(b)(4)”.

6 (3) Section 3306(b)(13) of such Code is amend-  
7 ed by striking “or 129” and inserting “, 129, or  
8 134(b)(4)”.

9 (4) Section 3401(a)(18) of such Code is amend-  
10 ed by striking “or 129” and inserting “, 129, or  
11 134(b)(4)”.

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

15 **SEC. 8. CLARIFICATION RELATING TO EXCEPTION FROM**  
16 **ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PRO-**  
17 **GRAMS, ETC., ON ACCOUNT OF ATTENDANCE**  
18 **AT MILITARY ACADEMY.**  
19

20 (a) IN GENERAL.—Subparagraph (B) of section  
21 530(d)(4) of the Internal Revenue Code of 1986 (relating  
22 to exceptions from additional tax for distributions not  
23 used for educational purposes) is amended by striking  
24 “or” at the end of clause (iii), by redesignating clause (iv)

1 as clause (v), and by inserting after clause (iii) the fol-  
2 lowing new clause:

3                   “(iv) made on account of the attend-  
4                   ance of the account holder at the United  
5                   States Military Academy, the United  
6                   States Naval Academy, the United States  
7                   Air Force Academy, the United States  
8                   Coast Guard Academy, or the United  
9                   States Merchant Marine Academy, to the  
10                  extent that the amount of the payment or  
11                  distribution does not exceed the costs of  
12                  advanced education (as defined by section  
13                  2005(e)(3) of title 10, United States Code,  
14                  as in effect on the date of the enactment  
15                  of this section) attributable to such attend-  
16                  ance, or”.

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

20 **SEC. 9. SUSPENSION OF TAX-EXEMPT STATUS OF TER-**  
21 **RORIST ORGANIZATIONS.**

22           (a) IN GENERAL.—Section 501 of the Internal Rev-  
23 enue Code of 1986 (relating to exemption from tax on cor-  
24 porations, certain trusts, etc.) is amended by redesignig-

1 nating subsection (p) as subsection (q) and by inserting  
2 after subsection (o) the following new subsection:

3 “(p) SUSPENSION OF TAX-EXEMPT STATUS OF TER-  
4 RORIST ORGANIZATIONS.—

5 “(1) IN GENERAL.—The exemption from tax  
6 under subsection (a) with respect to any organiza-  
7 tion described in paragraph (2), and the eligibility of  
8 any organization described in paragraph (2) to apply  
9 for recognition of exemption under subsection (a),  
10 shall be suspended during the period described in  
11 paragraph (3).

12 “(2) TERRORIST ORGANIZATIONS.—An organi-  
13 zation is described in this paragraph if such organi-  
14 zation is designated or otherwise individually identi-  
15 fied—

16 “(A) under section 212(a)(3)(B)(vi)(II) or  
17 219 of the Immigration and Nationality Act as  
18 a terrorist organization or foreign terrorist or-  
19 ganization,

20 “(B) in or pursuant to an Executive order  
21 which is related to terrorism and issued under  
22 the authority of the International Emergency  
23 Economic Powers Act or section 5 of the  
24 United Nations Participation Act of 1945 for

1 the purpose of imposing on such organization  
2 an economic or other sanction, or

3 “(C) in or pursuant to an Executive order  
4 issued under the authority of any Federal law  
5 if—

6 “(i) the organization is designated or  
7 otherwise individually identified in or pur-  
8 suant to such Executive order as sup-  
9 porting or engaging in terrorist activity (as  
10 defined in section 212(a)(3)(B) of the Im-  
11 migration and Nationality Act) or sup-  
12 porting terrorism (as defined in section  
13 140(d)(2) of the Foreign Relations Author-  
14 ization Act, Fiscal Years 1988 and 1989);  
15 and

16 “(ii) such Executive order refers to  
17 this subsection.

18 “(3) PERIOD OF SUSPENSION.—With respect to  
19 any organization described in paragraph (2), the pe-  
20 riod of suspension—

21 “(A) begins on the later of—

22 “(i) the date of the first publication of  
23 a designation or identification described in  
24 paragraph (2) with respect to such organi-  
25 zation, or

1                   “(ii) the date of the enactment of this  
2                   subsection, and

3                   “(B) ends on the first date that all des-  
4                   ignations and identifications described in para-  
5                   graph (2) with respect to such organization are  
6                   rescinded pursuant to the law or Executive  
7                   order under which such designation or identi-  
8                   fication was made.

9                   “(4) DENIAL OF DEDUCTION.—No deduction  
10                  shall be allowed under section 170, 545(b)(2),  
11                  556(b)(2), 642(e), 2055, 2106(a)(2), or 2522 for  
12                  any contribution to an organization described in  
13                  paragraph (2) during the period described in para-  
14                  graph (3).

15                  “(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL  
16                  CHALLENGE OF SUSPENSION OR DENIAL OF DEDUC-  
17                  TION.—Notwithstanding section 7428 or any other  
18                  provision of law, no organization or other person  
19                  may challenge a suspension under paragraph (1), a  
20                  designation or identification described in paragraph  
21                  (2), the period of suspension described in paragraph  
22                  (3), or a denial of a deduction under paragraph (4)  
23                  in any administrative or judicial proceeding relating  
24                  to the Federal tax liability of such organization or  
25                  other person.

1           “(6) ERRONEOUS DESIGNATION.—

2                   “(A) IN GENERAL.—If—

3                           “(i) the tax exemption of any organi-  
4                           zation described in paragraph (2) is sus-  
5                           pended under paragraph (1),

6                           “(ii) each designation and identifica-  
7                           tion described in paragraph (2) which has  
8                           been made with respect to such organiza-  
9                           tion is determined to be erroneous pursu-  
10                          ant to the law or Executive order under  
11                          which such designation or identification  
12                          was made, and

13                          “(iii) the erroneous designations and  
14                          identifications result in an overpayment of  
15                          income tax for any taxable year by such  
16                          organization,

17                          credit or refund (with interest) with respect to  
18                          such overpayment shall be made.

19                          “(B) WAIVER OF LIMITATIONS.—If the  
20                          credit or refund of any overpayment of tax de-  
21                          scribed in subparagraph (A)(iii) is prevented at  
22                          any time by the operation of any law or rule of  
23                          law (including res judicata), such credit or re-  
24                          fund may nevertheless be allowed or made if the  
25                          claim therefor is filed before the close of the 1-

1 year period beginning on the date of the last  
2 determination described in subparagraph  
3 (A)(ii).

4 “(7) NOTICE OF SUSPENSIONS.—If the tax ex-  
5 emption of any organization is suspended under this  
6 subsection, the Internal Revenue Service shall up-  
7 date the listings of tax-exempt organizations and  
8 shall publish appropriate notice to taxpayers of such  
9 suspension and of the fact that contributions to such  
10 organization are not deductible during the period of  
11 such suspension.”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to designations made before, on,  
14 or after the date of the enactment of this Act.

15 **SEC. 10. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT**  
16 **TRAVEL EXPENSES OF NATIONAL GUARD**  
17 **AND RESERVE MEMBERS.**

18 (a) DEDUCTION ALLOWED.—Section 162 of the In-  
19 ternal Revenue Code of 1986 (relating to certain trade or  
20 business expenses) is amended by redesignating subsection  
21 (p) as subsection (q) and inserting after subsection (o) the  
22 following new subsection:

23 “(p) TREATMENT OF EXPENSES OF MEMBERS OF  
24 RESERVE COMPONENT OF ARMED FORCES OF THE  
25 UNITED STATES.—For purposes of subsection (a)(2), in

1 the case of an individual who performs services as a mem-  
2 ber of a reserve component of the Armed Forces of the  
3 United States at any time during the taxable year, such  
4 individual shall be deemed to be away from home in the  
5 pursuit of a trade or business for any period during which  
6 such individual is away from home in connection with such  
7 services.”.

8 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-  
9 PAYER ELECTS TO ITEMIZE.—Section 62(a)(2) of such  
10 Code (relating to certain trade and business deductions  
11 of employees) is amended by adding at the end the fol-  
12 lowing new subparagraph:

13 (E) CERTAIN EXPENSES OF MEMBERS OF  
14 RESERVE COMPONENTS OF THE ARMED FORCES  
15 OF THE UNITED STATES.—The deductions al-  
16 lowed by section 162 which consist of expenses,  
17 not in excess of \$500, paid or incurred by the  
18 taxpayer in connection with the performance of  
19 services by such taxpayer as a member of a re-  
20 serve component of the Armed Forces of the  
21 United States for any period during which such  
22 individual is more than 100 miles away from  
23 home in connection with such services.”.

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

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

5       The amounts transferred to any trust fund under  
6 title II of the Social Security Act shall be determined as  
7 if this Act had not been enacted.

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