

Part III - Administrative, Procedural, and Miscellaneous

Tax Relief for Those Involved in Operation Enduring Freedom

Notice 2002-17

PURPOSE

This notice provides guidance in a question and answer format on the tax relief provided under Executive Order No. 13239, 66 Fed. Reg. 241 (December 14, 2001), for U.S. military and support personnel involved in the military operations in Afghanistan.

BACKGROUND

The Executive Order, effective September 19, 2001, designates Afghanistan (including the airspace above) as a combat zone for purposes of section 112 of the Internal Revenue Code.

The provisions of the Code affected by the declaration of a combat zone include the following:

(1) Section 2(a)(3) (relating to the special rule where a deceased spouse was in missing status);

(2) Section 112 (relating to the exclusion from gross income of certain combat pay received by members of the U.S. Armed Forces);

(3) Section 692 (relating to income taxes of members of the U.S. Armed Forces on death);

(4) Section 2201 (relating to members of the U.S. Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds, etc.);

(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the U.S. Armed Forces);

(6) Section 4253(d) (relating to taxation of phone service originating from members of the U.S. Armed Forces in a combat zone);

(7) Section 6013(f)(1) (relating to a joint return where an individual is in missing status); and

(8) Section 7508 (relating to the time for performing certain acts (including filing, paying, assessing, collecting, claiming a refund, and litigating) postponed by reason of service in a combat zone).

Under the Executive Order, the deadline extension provisions under § 7508 apply to members of the U.S. Armed Forces (and those serving in support of the U.S. Armed Forces) in the combat zone.

QUESTIONS AND ANSWERS

The following questions and answers generally apply to members of the U.S. Armed Forces on active duty and are patterned after the questions and answers in Notice 99-30, 1999-1 C.B. 1135 (Tax Relief for Those Affected by Operation Allied Force) and Notice 96-34, 1996-1 C.B. 379 (Tax Relief for Those Affected by Operation Joint Endeavor). Taxpayers covered by the relief provisions discussed in this Notice should write "Enduring Freedom" in red at the top of their returns. Covered taxpayers who receive a notice from the IRS regarding a collection or examination matter should return the notice to the IRS with the words "Enduring Freedom" at the top of the notice and on the envelope so the IRS can suspend the action. For additional information on the tax treatment of members of the U.S. Armed Forces, including reservists, decedents, or persons missing in action, consult Publication 3, Armed Forces Tax Guide.

PART 1 -- MILITARY PAY EXCLUSION

Q-1: What geographic area is included in the combat zone covered by this notice?

A-1: The geographic area included in the combat zone is Afghanistan (including the airspace above).

Q-2: I am a member of the U.S. Armed Forces performing services in Afghanistan. Is any part of my 2001 military pay for serving in this area excluded from gross income?

A-2: Yes. Afghanistan comprises the combat zone. If you serve in the combat zone as an enlisted person or as a warrant officer (including commissioned warrant officers) for any part of a month, all your military pay received for military service that month is excluded from gross income. For commissioned officers, the monthly exclusion is capped at the highest enlisted pay, plus any hostile fire or imminent danger pay received. Therefore, for 2001, the most an officer can earn tax-free each month is \$5,043 (\$4,893, the highest monthly enlisted pay, plus \$150 hostile fire or imminent danger pay). Although the Defense Authorization Bill had not been signed when this publication was written, we expect the officer exclusion to increase to \$5,532.90 in 2002 (\$5,382.90, the highest monthly enlisted pay, plus \$150 hostile fire or imminent danger pay). Amounts excluded from gross income are not subject to federal income tax.

Q-3: My husband and I are both enlisted personnel serving in the U.S. Armed Forces in the combat zone. Are we both entitled to the income tax exclusion for military pay?

A-3: Yes. Each of you qualifies for the income tax exclusion for your military pay.

Q-4: I am a member of the U.S. Armed Forces stationed on a ship in the Indian Ocean. I fly missions over Afghanistan as part of the military operations in the combat zone. Is any part of my military pay excluded from gross income?

A-4: Yes. The combat zone includes the airspace over Afghanistan, so you are serving in the combat zone. See Q & A 2 for a discussion of the amount of your military pay that is excluded.

Q-5: If I am injured and hospitalized while serving in the U.S. Armed Forces in the combat zone, is any of my military pay excluded from gross income?

A-5: Yes. Military pay received by enlisted personnel who are hospitalized as a result of injuries sustained while serving in the combat zone is excluded from gross income for the period of hospitalization, subject to the 2-year limitation provided below. Commissioned officers have a similar exclusion, but it is limited to the maximum enlisted amount per month. See Q & A 2. These exclusions from gross income for hospitalized enlisted personnel and commissioned officers end 2 years after the date of termination of the combat zone.

Q-6: My wife is currently serving in the U.S. Armed Forces in the combat zone and will be eligible for discharge when she returns home. If she is discharged upon her return, will the payment for the annual leave that she accrued during her service in the combat zone be excluded from gross income?

A-6: Yes. Annual leave payments to enlisted members of the U.S. Armed Forces upon discharge from the service are excluded from gross income to the extent the leave was accrued during any month in any part of which the member served in the combat zone. If your wife is a commissioned officer, a portion of the annual leave payment she receives for leave accrued during any month in any part of which she served in the combat zone may be excluded. The leave payment cannot be excluded to the extent it exceeds the maximum enlisted amount (see Q & A 2) for the month of service to which it relates less the amount of military pay already excluded for that month.

Q-7: I am an enlisted person serving in a combat zone. If I reenlist early while I am in the combat zone and receive my reenlistment bonus several months later when I am stationed outside the combat zone, is any part of my reenlistment bonus excluded from gross income?

A-7: Yes. The reenlistment bonus is excluded from gross income although received in a month that you were outside the combat zone, because you completed the necessary action for entitlement to the reenlistment bonus in a month during which you served in the combat zone.

Q-8: My brother, who is a civilian in the merchant marine, is on a ship that transports military supplies between the United States and the combat zone. Is he entitled to the combat zone military pay exclusion?

A-8: No. Those serving in the merchant marine are not members of the U.S. Armed Forces. The combat zone military pay exclusion applies only to members of the U.S. Armed Forces. The U.S. Armed Forces include all regular and reserve components of the uniformed services that are under the control of the Secretaries of Defense, Army, Navy, and Air Force, and the Secretary of Transportation with respect to the Coast Guard.

Q-9: My husband is a member of the U.S. Armed Forces performing services as part of Operation Enduring Freedom in Turkmenistan. He is not receiving hostile fire/imminent danger pay. Is he entitled to the military pay exclusion?

A-9: No. U.S. Armed Forces personnel serving outside the combat zone are not entitled to the military pay exclusion, unless they are serving in direct support of military operations in the combat zone for which they receive hostile fire/imminent danger pay. On December 14, 2001, the following countries were certified by the Department of Defense for combat zone tax benefits due to their direct support of military operations in the Afghanistan combat zone: Pakistan, Tajikistan, Jordan, Uzbekistan, and Kyrgyzstan. For a more detailed discussion of the tax treatment of military personnel, see Publication 3.

Q-10: How do I certify my entitlement to the military pay exclusion?

A-10: Your service branch must certify your entitlement on the Form W-2 it provides you. If you believe you are entitled to the exclusion, but it is not reflected on your Form W-2, ask your service branch to issue a corrected Form W-2.

PART 2 - EXTENSION OF DEADLINES

Q-11: I have been serving in Afghanistan since November 10, 2001. I understand that the deadline for performing certain actions required by the internal revenue laws is extended as a result of my service. On what date did these deadline extensions begin?

A-11: The deadline extension provisions apply to most tax actions required to be performed on or after September 19, 2001, or the date you began serving in the combat zone, whichever is later. In your case, the date that the deadline extensions began is November 10, 2001.

Q-12: My son is a member of the U.S. Armed Forces who is now serving in the combat zone. Is he entitled to an extension of time for filing and paying his federal income

taxes? Are any assessment or collection deadlines extended?

A-12: For both questions, the answer is yes. In general, the deadlines for performing certain actions applicable to his federal taxes are extended for the period of his service in the combat zone on or after September 19, 2001, plus 180 days thereafter. During this extension period, assessment and collection deadlines will be extended, and interest and penalties attributable to the extension period will not be charged.

Q-13: Assuming the same facts as in question 12, does the extension for filing and paying his federal individual income taxes apply to unearned income from my son's investments?

A-13: Yes. The extensions apply without regard to the source of your son's income.

Q-14: Assuming the same facts as in question 12, will the deadline extension provisions continue to apply if my son is hospitalized as a result of an injury sustained in the combat zone?

A-14: Yes. The deadline extension provisions will apply for the period that your son is continuously hospitalized outside of the United States as a result of injuries sustained while serving in the combat zone, including 180 days thereafter. For hospitalization inside the United States, the extension period cannot be more than 5 years.

Q-15: Do the deadline extension provisions apply only to members of the U.S. Armed Forces serving in the combat zone?

A-15: No. The deadline extension provisions also apply to individuals serving in the combat zone in support of the U.S. Armed Forces, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the U.S. Armed Forces in support of those forces. In addition, members of the U.S. Armed Forces who perform military service in an area outside the combat zone qualify for the suspension of time provisions if their service is in direct support of military operations in the combat zone, and they receive special pay for duty subject to hostile fire or imminent danger as certified by the Department of Defense. See Q & A 9 for countries certified as of the date of this publication.

Q-16: My son is a civilian explosive specialist who is in the combat zone training U.S. Armed Forces personnel serving in the combat zone. Do the deadline extension provisions apply to my son?

A-16: Yes. The deadline extension provisions apply to your son because he is serving in the combat zone in support of the U.S. Armed Forces.

Q-17: My husband is a private businessman working in Afghanistan on nonmilitary projects. Do the deadline extension provisions apply to my husband?

A-17: No. Other than military personnel, the only individuals working in the combat zone that are entitled to the deadline extension provisions are those serving in support of the U.S. Armed Forces.

Q-18: I am a member of the U.S. Armed Forces serving in the combat zone. Do the deadline extension provisions apply to my husband who is in the United States?

A-18: Yes. The deadline extension provisions apply not only to members serving in the U.S. Armed Forces (or individuals serving in support thereof) in the combat zone, but to their spouses as well, with two exceptions. First, if you are hospitalized in the United States as a result of injuries received while serving in the combat zone, the deadline extension provisions would not apply to your husband. Second, the deadline extension provisions for your husband do not apply for any tax year beginning more than 2 years after the date of the termination of the combat zone designation.

Q-19: Assuming the same facts as in question 18, will my husband have to file a joint tax return in order to benefit from the deadline extension provisions?

A-19: No. The deadline extension provisions apply to both spouses whether joint or separate returns are filed. If your husband chooses to file a separate return, he will have the same extension of time to file and pay his taxes that you have.

Q-20: My husband is serving in the U.S. Armed Forces in the combat zone. In 2001, our son, who is 12 years old, received \$700 of interest income. Our daughter, who is 17 years old, received \$2,000 of earned income from part-time work and \$900 of interest income. We claim both children as dependents on our federal individual income tax return. Are federal individual income tax returns required to be filed for our children while my husband is in the combat zone?

A-20: No. Federal individual income tax returns for your dependent children are not required to be filed while your husband is in the combat zone. Instead, these returns will be considered timely if filed on or before the deadline for filing your federal individual income tax return under the deadline extension provisions. When your children's 2001 federal income tax returns are filed, you should write "Enduring Freedom" at the top of those returns. Because your older child may be entitled to a refund of tax, she may want to file her federal individual income tax return and obtain her refund.

Q-21: I am a member of the U.S. Armed Forces serving in the combat zone. My spouse and our three children live in our home in the United States. During 2001, a child care provider took care of our children in our home. We are required to file a Schedule H, Household Employment Taxes, as an attachment to our federal individual income tax return to report the federal employment taxes on wages we paid to our child care provider. Do the deadline extension provisions apply to the filing of Schedule H as an attachment to our federal individual income tax return?

A-21: Yes. The deadline extension provisions apply to all schedules and forms that are filed as attachments to the federal individual income tax return.

Q-22: I am a member of the U.S. Armed Forces who served in the combat zone beginning on September 28, 2001. If I serve in the combat zone until May 23, 2002, when will I be required to file my federal individual income tax return for 2001?

A-22: You must file your 2001 federal individual income tax return on or before March 4, 2003, 285 days after you left the combat zone. The deadline extension period consists of the sum of the following:

- (1) 180 days from the date you left the area 180
 - (2) The number of days remaining (as of the date you entered the area) to perform the required act (in your case, filing your 2001 federal individual income tax return, January 1, 2002 to April 15, 2002) 105
- Total 285

See Publication 3, Armed Forces' Tax Guide, for additional extension examples.

Q-23: My wife is a member of the U.S. Armed Forces serving in the combat zone. Can she make a timely qualified retirement contribution for 2001 to her individual retirement account (IRA) after April 15, 2002, and on or before the due date of her 2001 federal individual income tax return after applying the deadline extension provisions?

A-23: Yes. Your wife can make a timely qualified retirement contribution for 2001 to her IRA on or before the extended deadline for filing her 2001 income tax return under the deadline extension provisions.

Q-24: My brother, who began serving in the U.S. Armed Forces in the combat zone on November 18, 2001, did not make his fourth estimated tax payment for 2001 which was due January 15, 2002. Will my brother be liable for estimated tax penalties?

A-24: No. Your brother is covered by the deadline extension provisions and will not be liable for any penalties if he files and pays any tax due by his extended filing due date. When your brother files his 2001 federal income tax return, he should write "Enduring

Freedom” at the top of that return.

Q-25: My son, who is a member of the U.S. Armed Forces, was on an installment payment plan with the IRS for back income taxes before he was assigned to the combat zone. What should be done now that he is in the combat zone?

A-25: The IRS office where your son was making payments should be contacted. Because your son is serving in the combat zone, he will not have to make payments on his past due taxes for his period of service in the combat zone plus 180 days. No additional penalties or interest will be charged during the deadline extension period.

Q-26: My son, who is a member of the U.S. Armed Forces serving in the combat zone, will file his federal individual income tax return for 2001 after April 15, 2002, but on or before the end of the deadline extension for filing that return. He expects to receive a refund. Will the IRS pay interest on the refund?

A-26: Yes. The IRS will pay interest from April 15, 2002, on a refund issued to your son if he files his 2001 federal individual income tax return on or before the due date of that return after applying the deadline extension provisions. When your son files his 2001 federal income tax return, he should write “Enduring Freedom” at the top of that return. If his 2001 return is not timely filed on or before the due date after applying the deadline extension provisions, no interest will be paid on the refund except as provided under the normal refund rules. Even though the deadline is extended, your son may file a return earlier to receive any refund due.

Q-27: Do the deadline extension provisions apply to federal tax returns other than the federal individual income tax return?

A-27: Yes. The deadline extension provisions also apply to federal estate and gift tax returns. However, the deadline extension provisions do not apply to other federal tax and information returns, such as those for corporate income tax or employment taxes.

Q-28: My husband and I are civilian employees of defense contractors. I work in the United States and my husband temporarily works in Germany. Our jobs involve the production of equipment used by the U.S. Armed Forces for Operation Enduring Freedom. Do the deadline extension provisions apply to either of us?

A-28: No. The deadline extension provisions do not apply to civilian employees of defense contractors unless they are serving in the combat zone in support of the U.S. Armed Forces.

PART 3 -- MISCELLANEOUS PROVISIONS

Q-29: My daughter is a member of the U.S. Armed Forces serving in the combat zone. She makes calls to me here in the United States. Are these calls exempt from the federal excise tax on toll telephone service?

A-29: Yes. Telephone calls that originate within the combat zone and that are made by members of the U.S. Armed Forces serving there are exempt from the federal excise tax on toll telephone service, provided a properly executed certificate of exemption is furnished to the telephone service provider receiving payment for the call. The exemption certificate should be in substantially the following form:

EXEMPTION CERTIFICATE
(Overseas Telephone Calls)

(Date).....20...

I certify that the toll charges of \$..... are for telephone or radio telephone messages originating at.....(Point of origin) within a combat zone from.....(Name) a member of the Armed Forces of the United States performing service in such combat zone; that the transmission facilities were furnished by(Name of carrier); and that the charges are exempt from tax under section 4253(d) of the Internal Revenue Code.

.....
(Signature of Subscriber)

.....
(Address)

Note: Penalty for fraudulent use: fine or imprisonment or both.

Q-30: If the federal excise tax has already been paid on the toll telephone service in Q & A 29, can a refund be obtained?

A-30: Yes. If the federal excise tax has already been paid on that toll telephone service, a refund may be obtained either from the telephone service provider that collected the tax, or from the IRS by filing Form 8849, Claim for Refund of Excise Taxes.

Q-31: How will my military pay for active service in the U.S. Armed Forces in the combat zone be reported on my 2001 Form W-2, Wage and Tax Statement?

A-31: Military pay attributable to your active service in the combat zone that is excluded from gross income will not be reported on your 2001 Form W-2 in the box marked "Wages, tips, other compensation." However, military pay for such service is subject to social security and medicare taxes and will be reported on your 2001 Form W-2 in the

boxes marked "Social security wages" and "Medicare wages and tips." If you believe you are entitled to the exclusion, but it is not reflected on your W-2, ask your service to issue a corrected Form W-2.

Q-32: I'm an officer who served in the Desert Storm combat zone from December 2000 to September 2001 and Enduring Freedom combat zone from October 2001 to January 2002. I have made monthly contributions to an individual retirement account (IRA) for 2001. In view of the military pay exclusion for my service in the combat zone, I may have little or no taxable compensation for 2001 and may not be eligible to make an IRA contribution for 2001. If my taxable compensation is less than \$2000, should I withdraw the portion of my contributions that exceeds my taxable compensation?

A-32: Yes. In general, any amount contributed to your IRA that is more than the smaller of (1) your taxable compensation; or (2) \$2000, is an excess contribution and must be withdrawn to avoid a 6 percent excise tax. If you are married and file a joint return, you may still be eligible to make an IRA contribution, see Publication 590 for more information on spousal contribution limits. Once you are sure that your taxable compensation will be less than \$2000, you should withdraw the portion of your contributions that exceeds your taxable compensation. You will not be taxed on the distributed amount if you receive the distribution on or before the deadline for filing your 2001 federal individual income tax return after applying the deadline extension provisions. You may not take a deduction with respect to these distributed contributions. You must also withdraw the amount of net income attributable to the distributed contributions while they were assets of the IRA. That portion of the net income is includible in your gross income for 2001. For further information, see Publication 590, Individual Retirement Arrangements (IRAs).

Q-33: Assuming the same facts as question 32, how will the financial institution that distributes my 2001 IRA contributions to me report this distribution?

A-33: The financial institution will report the entire amount of the distribution (2001 distributed contributions and attributable net income) on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. However, it should report only the amount of any net income attributable to the distributed contributions as the "Taxable amount" on Form 1099-R.

PART 4 -- INQUIRIES

Taxpayers within the United States may seek assistance by calling the IRS at 1-800-829-1040. Taxpayers outside the United States may call the IRS in Philadelphia, PA, at (215) 516-2000 or via fax at (215) 516-2555 (these are not toll-free numbers).

The IRS offices in Italy, Germany, France, England, Singapore, and Japan can also assist you with your federal income tax questions. You may contact the Rome office by calling [39] (06) 4674-2560, or via fax at [39] (06) 4674-2223; the Berlin office at [49]

(30) 8305-1140, or via fax at [49] (30) 8305-1145; the Paris office at [33] (1) 4312-2555, or via fax at [33] (1) 4312-4758; the London office at [44] (207) 408-8077, or via fax at [44] (207) 495-4224; the Singapore office at [65] 476-9413, or via fax at [65] 476-9030; and the Tokyo office at [81] (3) 3224-5466, or via fax at [81] (3) 3224-5274.