



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON

November 20, 1996

The Honorable Edwin Dorn
Under Secretary of Defense (Personnel and Readiness)
4000 Defense Pentagon
Washington, D.C. 20301-4000

Dear Mr. Dorn:

This is in response to your letter dated September 20, 1996, regarding service members who will be deployed in support of Operation Joint Endeavor for over one year. It is our understanding that your concern relates to the federal income tax treatment of per diem allowances paid to these individuals, typically limited to \$3.50 per day to cover incidental expenses (a comparatively small number of individuals also receive per diem allowances covering lodging and/or meals). We have coordinated our consideration of this issue with the Internal Revenue Service's Office of Chief Counsel.

Based on information provided by your staff and our analysis of the relevant provisions of the Internal Revenue Code of 1986, as amended, we believe the per diem allowances at issue are excludable from the income of a service member pursuant to section 134 of the Code. Section 134 was enacted in 1986 to consolidate under one statutory provision the tax treatment of military benefits. It generally excludes from income those allowances and benefits that were authorized on September 9, 1986, and which were excludable from income on that date. The legislative history of section 134 contains a list of the military benefits Congress identified as satisfying these two criteria and authorizes the Secretary of Treasury to treat as excludable any benefit not listed that also satisfies the two criteria.


Among the benefits listed in the legislative history are subsistence allowances authorized under 37 U.S.C. §§ 209 and 402, housing allowances authorized under 37 U.S.C. §§ 403, 403a, or 405, overseas cost-of-living allowances authorized under 37 U.S.C. § 405, and certain travel allowances authorized under 37 U.S.C. §§ 406, 406b, 411, 411b, and 411f. The per diem allowances in issue are authorized under 37 U.S.C. §§ 404 and 405.

These per diem allowances were authorized on September 9, 1986, and were excludable from income on that date. Pursuant to the authority of the Secretary of the Treasury to expand the list of benefits covered by section 134 to include any military benefit

which was unintentionally omitted from the list in the legislative history, we believe that the per diem amounts are excludable presently under section 134. In addition, these amounts are not subject to income tax withholding, social security taxes, or reporting on Forms W-2.

If you or your staff have any questions, do not hesitate to call P. Val Strehlow of my office at (202) 622-0869.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald C. Lubick". The signature is written in a cursive style with a large, looping initial "D".

Donald C. Lubick
Acting Assistant Secretary
(Tax Policy)