110TH CONGRESS *1st Session* } HOUSE OF REPRESENTATIVES { REPORT 110–426

HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2007

NOVEMBER 5, 2007.—Ordered to be printed

Mr. RANGEL, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 3997]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3997) to amend the Internal Revenue Code of 1986 to provide tax relief for members of the military and volunteer firefighters, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

I. AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Heroes Earnings Assistance and Relief Tax Act of 2007".

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—BENEFITS FOR MILITARY AND VOLUNTEER FIREFIGHTERS

SEC. 101. ELECTION TO INCLUDE COMBAT PAY AS EARNED INCOME FOR PURPOSES OF EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Clause (vi) of section 32(c)(2)(B) (defining earned income) is amended to read as follows:

"(vi) a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.".

(b) SUNSET NOT APPLICABLE.—Section 105 of the Working Families Tax Relief Act of 2004 (relating to application of EGTRRA sunset to this title) shall not apply to section 104(b) of such Act.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 2007.

SEC. 102. MODIFICATION OF MORTGAGE REVENUE BONDS FOR VETERANS.

(a) QUALIFIED MORTGAGE BONDS USED TO FINANCE RESIDENCES FOR VETERANS WITHOUT REGARD TO FIRST-TIME HOMEBUYER REQUIREMENT.—Subparagraph (D) of section 143(d)(2) (relating to exceptions) is amended by striking "and before January 1, 2008".

(b) INCREASE IN BOND LIMITATION FOR ALASKA, OREGON, AND WISCONSIN.—Clause (ii) of section 143(l)(3)(B) (relating to State veterans limit) is amended by striking "$25,000,000" each place it appears and inserting "$100,000,000".

(c) DEFINITION OF QUALIFIED VETERAN.—Paragraph (4) of section 143(l) (defining qualified veteran) is amended to read as follows:

"(4) QUALIFIED VETERAN.—For purposes of this subsection, the term 'qualified veteran' means any veteran who—

"(A) served on active duty, and

"(B) applied for the financing before the date 25 years after the last date on which such veteran left active service.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 2007.

SEC. 103. SURVIVOR AND DISABILITY PAYMENTS WITH RESPECT TO QUALIFIED MILITARY SERVICE.

(a) PLAN QUALIFICATION REQUIREMENT FOR DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (36) the following new paragraph:

"(37) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.".

(b) TREATMENT IN THE CASE OF DEATH OR DISABILITY RESULTING FROM ACTIVE MILITARY SERVICE FOR BENEFIT ACCRUAL PURPOSES.—Subsection (u) of section 414 (relating to special rules relating to veterans' reemployment rights under USERRA) is amended by redesignating paragraphs (9) and (10) as paragraphs (10) and (11), respectively, and by inserting after paragraph (8) the following new paragraph:

"(9) TREATMENT IN THE CASE OF DEATH OR DISABILITY RESULTING FROM ACTIVE MILITARY SERVICE.—

"(A) IN GENERAL.—For benefit accrual purposes, an employer sponsoring a retirement plan may treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

"(B) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to

the employer maintaining the plan (as determined under subsections (b), (c), (m), and (o)) who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

"(C) DETERMINATION OF BENEFITS.—The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of—

"(i) the 12-month period of service with the employer immediately prior to qualified military service, or

"(ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.".

(c) CONFORMING AMENDMENTS.—

(1) Section 404(a)(2) is amended by striking "and (31)" and inserting "(31), and (37)".

(2) Section 403(b) is amended by adding at the end the following new paragraph:

"(14) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).".

(3) Section 457(g) is amended by adding at the end the following new paragraph:

"(4) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A plan described in paragraph (1) shall not be treated as an eligible deferred compensation plan unless such plan meets the requirements of section 401(a)(37).".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to deaths and disabilities occurring on or after January 1, 2007.

(2) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(A) IN GENERAL.—If this subparagraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(iii).

(B) AMENDMENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—

(i) IN GENERAL.—Subparagraph (A) shall apply to any amendment to any plan or annuity contract which is made—

(I) pursuant to the amendments made by subsection (a) or pursuant to any regulation issued by the Secretary of the Treasury under subsection (a), and

(II) on or before the last day of the first plan year beginning on or after January 1, 2009.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this clause shall be applied by substituting "2011" for "2009" in subclause (II).

(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless—

(I) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in clause (iii), and

(II) such plan or contract amendment applies retroactively for such period.

(iii) PERIOD DESCRIBED.—The period described in this clause is the period—

(I) beginning on the effective date specified by the plan, and

(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted).

SEC. 104. TREATMENT OF DIFFERENTIAL MILITARY PAY AS WAGES.

(a) INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.—

(1) IN GENERAL.—Section 3401 (relating to definitions) is amended by adding at the end the following new subsection:

"(h) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—

"(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

"(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term 'differential wage payment' means any payment which—

"(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and

"(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to remuneration paid after December 31, 2007.

(b) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.—

(1) PENSION PLANS.—

(A) IN GENERAL.—Section 414(u) (relating to special rules relating to veterans' reemployment rights under USERRA), as amended by section 103(b), is amended by adding at the end the following new paragraph:

"(12) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

"(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

"(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

"(ii) the differential wage payment shall be treated as compensation, and

"(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

"(B) SPECIAL RULE FOR DISTRIBUTIONS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

"(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

"(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (o)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

"(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term 'differential wage payment' has the meaning given such term by section 3401(h)(2).".

(B) CONFORMING AMENDMENT.—The heading for section 414(u) is amended by inserting "AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY" after "USERRA".

(2) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—Section 219(f)(1) (defining compensation) is amended by adding at the end the following new sentence: "The term compensation includes any differential wage payment (as defined in section 3401(h)(2)).".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 2007.

(c) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i).

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by subsection (b)(1), and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2009.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this subparagraph shall be applied by substituting "2011" for "2009" in clause (ii).

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and

(ii) such plan or contract amendment applies retroactively for such period.

SEC. 105. EXCLUSION FROM INCOME FOR BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting after section 139A the following new section:

"SEC. 139B. BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.

"(a) IN GENERAL.—In the case of any member of a qualified volunteer emergency response organization, gross income shall not include—

"(1) any qualified State and local tax benefit, and

"(2) any qualified payment.

"(b) DENIAL OF DOUBLE BENEFITS.—In the case of any member of a qualified volunteer emergency response organization—

"(1) the deduction under 164 shall be determined with regard to any qualified State and local tax benefit, and

"(2) expenses paid or incurred by the taxpayer in connection with the performance of services as such a member shall be taken into account under section 170 only to the extent such expenses exceed the amount of any qualified payment excluded from gross income under subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED STATE AND LOCAL TAX BENEFIT.—The term 'qualified state and local tax benefit' means any reduction or rebate of a tax described in paragraph (1), (2), or (3) of section 164(a) provided by a State or political division thereof on account of services performed as a member of a qualified volunteer emergency response organization.

"(2) QUALIFIED PAYMENT.—

"(A) IN GENERAL.—The term 'qualified payment' means any payment (whether reimbursement or otherwise) provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization.

"(B) APPLICABLE DOLLAR LIMITATION.—The amount determined under subparagraph (A) for any taxable year shall not exceed $30 multiplied by the number of months during such year that the taxpayer performs such services.

"(3) QUALIFIED VOLUNTEER EMERGENCY RESPONSE ORGANIZATION.—The term 'qualified volunteer emergency response organization' means any volunteer organization—

"(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

"(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by inserting after the item relating to section 139A the following new item:

"Sec. 139B. Benefits provided to volunteer firefighters and emergency medical responders.".

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

SEC. 106. SPECIAL PERIOD OF LIMITATION WHEN UNIFORMED SERVICES RETIRED PAY IS REDUCED AS A RESULT OF AWARD OF DISABILITY COMPENSATION.

(a) IN GENERAL.—Subsection (d) of section 6511 (relating to special rules applicable to income taxes) is amended by adding at the end the following new paragraph:

"(8) SPECIAL RULES WHEN UNIFORMED SERVICES RETIRED PAY IS REDUCED AS A RESULT OF AWARD OF DISABILITY COMPENSATION.—

"(A) PERIOD OF LIMITATION ON FILING CLAIM.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

"(i) the reduction of uniformed services retired pay computed under section 1406 or 1407 of title 10, United States Code, or

"(ii) the waiver of such pay under section 5305 of title 38 of such Code,

as a result of an award of compensation under title 38 of such Code pursuant to a determination by the Secretary of Veterans Affairs, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund based upon the amount of such reduction or waiver, until the end of the 1-year period beginning on the date of such determination.

"(B) LIMITATION TO 5 TAXABLE YEARS.—Subparagraph (A) shall not apply with respect to any taxable year which began more than 5 years before the date of such determination.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to claims for credit or refund filed after the date of the enactment of this Act.

(c) TRANSITION RULES.—In the case of a determination described in paragraph (8) of section 6511(d) of the Internal Revenue Code of 1986 (as added by this section) which is made by the Secretary of Veterans Affairs after December 31, 2000, and before the date of the enactment of this Act, such paragraph—

(1) shall not apply with respect to any taxable year which began before January 1, 2001, and

(2) shall be applied by substituting for "the date of such determination" in subparagraph (A) thereof.

SEC. 107. DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.

(a) IN GENERAL.—Clause (iv) of section 72(t)(2)(G) is amended by striking ", and before December 31, 2007".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals ordered or called to active duty on or after December 31, 2007.

SEC. 108. DISCLOSURE OF RETURN INFORMATION RELATING TO VETERANS PROGRAMS MADE PERMANENT.

(a) IN GENERAL.—Subparagraph (D) of section 6103(l)(7) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act, the Food Stamp Act of 1977, or title 38, United States Code or certain housing assistance programs) is amended by striking the last sentence.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after September 30, 2008.

SEC. 109. CONTRIBUTIONS OF MILITARY DEATH GRATUITIES TO ROTH IRAS AND EDUCATION SAVINGS ACCOUNTS.

(a) PROVISION IN EFFECT BEFORE PENSION PROTECTION ACT.—Subsection (e) of section 408A (relating to qualified rollover contribution), as in effect before the amendments made by section 824 of the Pension Protection Act of 2006, is amended to read as follows:

"(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

"(2) MILITARY DEATH GRATUITY.—

"(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

"(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

"(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

"(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by subparagraph (A).

"(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.".

(b) PROVISION IN EFFECT AFTER PENSION PROTECTION ACT.—Subsection (e) of section 408A, as in effect after the amendments made by section 824 of the Pension Protection Act of 2006, is amended to read as follows:

"(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution—

"(A) to a Roth IRA from another such account,

"(B) from an eligible retirement plan, but only if—

"(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

"(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

"(2) MILITARY DEATH GRATUITY.—

"(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

"(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

"(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

"(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the subparagraph (A).

"(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.".

(c) EDUCATION SAVINGS ACCOUNTS.—Subsection (d) of section 530 is amended by adding at the end the following new paragraph:

"(9) MILITARY DEATH GRATUITY.—

"(A) IN GENERAL.—For purposes of this section, the term 'rollover contribution' includes a contribution to a Coverdell education savings account made before the end of the 1-year period beginning on the date on which the contributor receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

"(i) the sum of the amounts received during such period by such contributor under such sections with respect to such person, reduced by

"(ii) the amounts so received which were contributed to a Roth IRA under section 408A(e)(2) or to another Coverdell education savings account.

"(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—The last sentence of paragraph (5) shall not apply with respect to amounts treated as a rollover by the subparagraph (A).

"(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is includible in gross income under paragraph (1), the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraphs (2) and (3), the amendments made by this section shall apply with respect to deaths from injuries occurring on or after the date of the enactment of this Act.

(2) APPLICATION OF AMENDMENTS TO DEATHS FROM INJURIES OCCURRING ON OR AFTER OCTOBER 7, 2001, AND BEFORE ENACTMENT.—The amendments made by

this section shall apply to any contribution made pursuant to section 408A(e)(2) or 530(d)(5) of the Internal Revenue Code of 1986, as amended by this Act, with respect to amounts received under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, for deaths from injuries occurring on or after October 7, 2001, and before the date of the enactment of this Act if such contribution is made not later than 1 year after the date of the enactment of this Act.

(3) PENSION PROTECTION ACT CHANGES.—Section 408A(e)(1) of the Internal Revenue Code of 1986 (as in effect after the amendments made by subsection (b)) shall apply to taxable years beginning after December 31, 2007.

SEC. 110. SUSPENSION OF 5-YEAR PERIOD DURING SERVICE WITH THE PEACE CORPS.

(a) IN GENERAL.—Subsection (d) of section 121 (relating to special rules) is amended by adding at the end the following new paragraph:

"(12) PEACE CORPS.—

"(A) IN GENERAL.—At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving outside the United States—

"(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

"(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

"(B) APPLICABLE RULES.—For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D) shall apply.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2007.

TITLE II—IMPROVEMENTS IN SUPPLEMENTAL SECURITY INCOME

SEC. 201. TREATMENT OF UNIFORMED SERVICE CASH REMUNERATION AS EARNED INCOME.

(a) IN GENERAL.—Section 1612(a)(1)(A) of the Social Security Act (42 U.S.C. 1382a(a)(1)(A)) is amended by inserting "(and, in the case of cash remuneration paid for service as a member of a uniformed service (other than payments described in paragraph (2)(H) of this subsection or subsection (b)(20)), without regard to the limitations contained in section 209(d))" before the semicolon.

(b) CERTAIN HOUSING PAYMENTS TREATED AS IN-KIND SUPPORT AND MAINTENANCE.—Section 1612(a)(2) of such Act (42 U.S.C. 1382a(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period at the end of subparagraph (G) and inserting "; and"; and

(3) by adding at the end the following:

"(H) payments to or on behalf of a member of a uniformed service for housing of the member (and his or her dependents, if any) on a facility of a uniformed service, including payments provided under section 403 of title 37, United States Code, for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10 of such Code, or any related provision of law, and any such payments shall be treated as support and maintenance in kind subject to subparagraph (A) of this paragraph.".

SEC. 202. STATE ANNUITIES FOR BLIND VETERANS TO BE DISREGARDED IN DETERMINING SUPPLEMENTAL SECURITY INCOME BENEFITS.

(a) INCOME DISREGARD.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting "; and"; and

(3) by adding at the end the following:

"(24) any annuity paid by a State to the individual (or such spouse) on the basis of the individual's being a veteran (as defined in section 101 of title 38, United States Code) and blind.".

(b) RESOURCE DISREGARD.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(1) by striking "and" at the end of paragraph (14);

(2) by striking the period at the end of paragraph (15) and inserting "; and"; and

(3) by inserting after paragraph (15) the following:

"(16) for the month of receipt and every month thereafter, any annuity paid by a State to the individual (or such spouse) on the basis of the individual's being a veteran (as defined in section 101 of title 38, United States Code) and blind.".

SEC. 203. EXCLUSION OF AMERICORPS BENEFITS FOR PURPOSES OF DETERMINING SUPPLEMENTAL SECURITY INCOME ELIGIBILITY AND BENEFIT AMOUNTS.

Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)), as amended by section 202(a) of this Act, is amended—

(1) in paragraph (23), by striking "and" at the end;

(2) in paragraph (24), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(25) any benefit (whether cash or in-kind) conferred upon (or paid on behalf of) a participant in an AmeriCorps position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).".

SEC. 204. EFFECTIVE DATE.

The amendments made by this title shall be effective with respect to benefits payable for months beginning after 60 days after the date of the enactment of this Act.

TITLE III—REVENUE PROVISIONS

SEC. 301. MODIFICATION OF PENALTY FOR FAILURE TO FILE PARTNERSHIP RETURNS.

(a) EXTENSION OF TIME LIMITATION.—Subsection (a) of section 6698 (relating to general rule) is amended by striking "5 months" and inserting "12 months".

(b) INCREASE IN PENALTY AMOUNT.—Paragraph (1) of section 6698(b) is amended by striking "$50" and inserting "$100".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns required to be filed after the date of the enactment of this Act.

SEC. 302. PENALTY FOR FAILURE TO FILE S CORPORATION RETURNS.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

"SEC. 6699. FAILURE TO FILE S CORPORATION RETURN.

"(a) GENERAL RULE.—In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax), if any S corporation required to file a return under section 6037 for any taxable year—

"(1) fails to file such return at the time prescribed therefor (determined with regard to any extension of time for filing), or

"(2) files a return which fails to show the information required under section 6037,

such S corporation shall be liable for a penalty determined under subsection (b) for each month (or fraction thereof) during which such failure continues (but not to exceed 12 months), unless it is shown that such failure is due to reasonable cause.

"(b) AMOUNT PER MONTH.—For purposes of subsection (a), the amount determined under this subsection for any month is the product of—

"(1) $100, multiplied by

"(2) the number of persons who were shareholders in the S corporation during any part of the taxable year.

"(c) ASSESSMENT OF PENALTY.—The penalty imposed by subsection (a) shall be assessed against the S corporation.

"(d) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).".

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end the following new item:

"Sec. 6699. Failure to file S corporation return.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns required to be filed after the date of the enactment of this Act.

SEC. 303. INCREASE IN INFORMATION RETURN PENALTIES.

(a) FAILURE TO FILE CORRECT INFORMATION RETURNS.—

(1) IN GENERAL.—Subsections (a)(1), (b)(1)(A), and (b)(2)(A) of section 6721 are each amended by striking "$50" and inserting "$100".

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (a)(1), (d)(1)(A), and (e)(3)(A) of section 6721 are each amended by striking "$250,000" and inserting "$600,000".

(b) REDUCTION WHERE CORRECTION WITHIN 30 DAYS.—

(1) IN GENERAL.—Subparagraph (A) of section 6721(b)(1) is amended by striking "$15" and inserting "$25".

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (b)(1)(B) and (d)(1)(B) of section 6721 are each amended by striking "$75,000" and inserting "$200,000".

(c) REDUCTION WHERE CORRECTION ON OR BEFORE AUGUST 1.—

(1) IN GENERAL.—Subparagraph (A) of section 6721(b)(2) is amended by striking "$30" and inserting "$60".

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (b)(2)(B) and (d)(1)(C) of section 6721 are each amended by striking "$150,000" and inserting "$400,000".

(d) AGGREGATE ANNUAL LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—Paragraph (1) of section 6721(d) is amended—

(1) by striking "$100,000" in subparagraph (A) and inserting "$250,000",

(2) by striking "$25,000" in subparagraph (B) and inserting "$75,000", and

(3) by striking "$50,000" in subparagraph (C) and inserting "$150,000".

(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—Paragraph (2) of section 6721(e) is amended by striking "$100" and inserting "$250".

(f) FAILURE TO FURNISH CORRECT PAYEE STATEMENTS.—

(1) IN GENERAL.—Subsection (a) of section 6722 is amended by striking "$50" and inserting "$100".

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (a) and (c)(2)(A) of section 6722 are each amended by striking "$100,000" and inserting "$600,000".

(3) PENALTY IN CASE OF INTENTIONAL DISREGARD.—Paragraph (1) of section 6722(c) is amended by striking "$100" and inserting "$250".

(g) FAILURE TO COMPLY WITH OTHER INFORMATION REPORTING REQUIREMENTS.—Section 6723 is amended—

(1) by striking "$50" and inserting "$100", and

(2) by striking "$100,000" and inserting "$600,000".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to information returns required to be filed on or after January 1, 2008.

SEC. 304. INCREASE IN MINIMUM PENALTY ON FAILURE TO FILE A RETURN OF TAX.

(a) IN GENERAL.—Subsection (a) of section 6651 is amended by striking "$100" in the last sentence and inserting "$225".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns the due date for the filing of which (including extensions) is after December 31, 2007.

II. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The bill, H.R. 3997, as amended, includes provisions for providing tax relief and other benefits to military personnel, volunteer firefighters, Peace Corps volunteers, and AmeriCorps volunteers.

SUMMARY

The bill permanently extends the availability of the election to treat combat pay that is otherwise excluded from gross income under section 112 as earned income for purposes of the earned income credit.[1] The bill permanently extends the limited exception from the first-time homebuyer requirement for veterans under the qualified mortgage bond program. The bill also changes eligibility requirements and volume limits for qualified veterans' mortgage bonds. For tax-qualified plans, the bill provides that, in the case of a participant who dies while performing qualified military service, the survivors of the participant must be entitled to any additional

[1] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended ("Code").

benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under the plan had the participant resumed employment with the employer maintaining the plan and then terminated employment on account of death.

The bill makes several changes to the treatment of military differential pay. First, the bill amends the definition of wages for purposes of the Federal income tax withholding rules by including in such definition differential wage payments to an employee. Second, the bill provides rules relating to differential wage payments (as defined for purposes of wage withholding) for purposes of a retirement plan that is subject to section 414(u). Third, for purposes of the limitation on contributions to an individual retirement account ("IRA"), the bill amends the term "compensation" to include differential wage payments. In general, the bill permits a plan or annuity contract to be retroactively amended to comply with the bill provided that the amendment is made no later than the last day of the first plan year beginning on or after January 1, 2009.

The bill provides an exclusion from gross income to members of qualified volunteer emergency response organizations for: (1) any qualified State or local tax benefit; and (2) any qualified reimbursement payment. The bill extends the time period for filing claims for credits or refunds for retired military personnel who receive disability determinations from the Department of Veterans Affairs (e.g., determinations after the tax return is filed). The bill extends the rules applicable to qualified reservist distributions to individuals ordered or called to active duty on or after December 31, 2007. The bill makes the disclosure authority to the Department of Veteran's Affairs permanent. In the case of an individual who receives a military death gratuity or a Servicemembers' Group Life Insurance ("SGLI") payment, the bill permits the individual to contribute an amount no greater than the sum of the gratuity and SGLI payments received by the individual to a Roth IRA or to one or more Coverdell education savings accounts, notwithstanding the contributions limits that otherwise apply to contributions to Roth IRAs and Coverdell education savings accounts. The bill creates a new rule with respect to the exclusion of gain from the sale of a principal residence for Peace Corps volunteers similar to the rules applicable to the uniformed services and Foreign Service and the intelligence community.

The bill expands the definition of earned income under the Supplemental Security Income ("SSI") program to include all cash remuneration paid to members of the uniformed services and not otherwise excluded by law. The bill specifies that any money paid by a state to a blind veteran is excluded from the SSI income calculation. The bill also specifies that the value of any money paid by a state to a blind veteran in a given month shall not be counted as a resource by the SSI program in that month. The bill specifies that any cash or in-kind benefit paid to a participant in the AmeriCorps program is excluded from the SSI income calculation.

The bill extends the period for calculating the monthly failure to file penalty for partnership returns from five months to 12 months, increases the penalty amount to $100 per partner, and creates a similar penalty for any failure to timely file an S corporation return. The bill increases the penalties for failing to file correct information returns and correct payee statements. Finally, the bill in-

creases the minimum penalty for a failure to file a tax return within 60 days of the due date to the lesser of $225 or 100 percent of the amount of tax required to be shown on the return.

B. Background and Need for Legislation

In meeting the needs of their country and fellow citizens, members of the military and volunteer firefighters may make certain financial and other sacrifices. The bill provides tax relief for members of the military and volunteer firefighters to offset some of these financial sacrifices.

C. Legislative History

BACKGROUND

On October 17, 2007, the Subcommittee on Select Revenue Measures and the Subcommittee on Income Security and Family Support held a joint hearing to focus on legislative proposals designed to help members of our armed forces and their families, as well as others volunteering in service to America.

H.R. 3997 was introduced in the House of Representatives on October 30, 2007, and was referred to the Committee on Ways and Means.

COMMITTEE ACTION

The Committee on Ways and Means marked up the bill on November 1, 2007, and ordered the bill, as amended, favorably reported.

III. EXPLANATION OF THE BILL

TITLE I—BENEFITS FOR MILITARY AND VOLUNTEER FIREFIGHTERS

A. Make Permanent the Election To Treat Combat Pay as Earned Income for Purposes of the Earned Income Credit (Sec. 101 of the Bill and Secs. 32 and 112 of the Code)

PRESENT LAW

In general

Subject to certain limitations, military compensation earned by members of the Armed Forces while serving in a combat zone may be excluded from gross income. In addition, for up to two years following service in a combat zone, military personnel may also exclude compensation earned while hospitalized from wounds, disease, or injuries incurred while serving in the combat zone.

Child credit

Combat pay that is otherwise excluded from gross income under section 112 is treated as earned income which is taken into account in computing taxable income for purposes of calculating the refundable portion of the child credit.

Earned income credit

Any taxpayer may elect to treat combat pay that is otherwise excluded from gross income under section 112 as earned income for purposes of the earned income credit. This election is available with respect to any taxable year ending after the date of enactment and before January 1, 2008.

REASONS FOR CHANGE

The Committee believes that members of the armed forces serving in combat should have full availability of the earned income credit, notwithstanding the exclusion of combat pay from gross income for purposes of determining federal tax liability. The Committee believes a permanent extension of the election to treat combat pay as earnings for purposes of the earned income credit is necessary to achieve this result.

EXPLANATION OF PROPOSAL

The provision permanently extends the availability of the election to treat combat pay that is otherwise excluded from gross income under section 112 as earned income for purposes of the earned income credit.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

B. MODIFICATION OF QUALIFIED MORTGAGE BOND PROGRAM RULES FOR VETERANS (SEC. 102 OF THE BILL AND SEC. 143 OF THE CODE)

PRESENT LAW

In general

Private activity bonds are bonds that are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such private person. The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds"). The definition of a qualified private activity bond includes both qualified mortgage bonds and qualified veterans' mortgage bonds.

Qualified mortgage bonds

Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including income limitations for homebuyers and purchase price limitations for the home financed with bond proceeds. In addition, qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage (the "first-time homebuyer" requirement).

Under a special rule, qualified mortgage bonds may be issued to finance mortgages for veterans who served in the active military without regard to the first-time homebuyer requirement. Present-

law income and purchase price limitations apply to loans to veterans financed with the proceeds of qualified mortgage bonds. Veterans are eligible for the exception from the first-time homebuyer requirement without regard to the date they last served on active duty or the date they applied for a loan after leaving active duty. However, veterans may only use the exception one time and the exception only applies to financing provided from bonds issued before January 1, 2008.

Qualified veterans mortgage bonds

Qualified veterans' mortgage bonds are private activity bonds the proceeds of which are used to make mortgage loans to certain veterans. Authority to issue qualified veterans' mortgage bonds is limited to States that had issued such bonds before June 22, 1984. Qualified veterans' mortgage bonds are not subject to the State volume limitations generally applicable to private activity bonds. Instead, annual issuance in each State is subject to a separate State volume limitation. The five States eligible to issue these bonds are Alaska, California, Oregon, Texas, and Wisconsin.

In the case of qualified veterans' mortgage bonds issued by California or Texas, mortgage loans only can be made to veterans who served on active duty before 1977 and who applied for the financing before the date 30 years after the last date on which such veteran left active service. In the case of qualified veterans' mortgage bonds issued by the States of Alaska, Oregon, and Wisconsin, mortgage loans can be made to veterans who apply for financing before the date 25 years after the last date on which such veteran left active service, without regard to the calendar year the veteran served on active duty.

The annual volume of qualified veterans' mortgage bonds that can be issued in California or Texas is based on the average amount of bonds issued in the respective State between 1979 and 1984. In Alaska, Oregon, and Wisconsin, the annual limit on qualified veterans' mortgage bonds that can be issued in years after 2009 is $25 million. This $25 million per-State limit is phased in from 2006 through 2009 by allowing the applicable percentage of the $25 million limit. The following table provides those percentages.

Calendar year	Applicable percentage is
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent

Unused allocation cannot be carried forward to subsequent years.

REASONS FOR CHANGE

The Committee believes that the eligibility requirements for qualified veterans' mortgage bonds should be consistent. Thus, the Committee believes the programs in California and Texas should be expanded to permit financing for veterans without regard to the date they served on active duty, as is the case for financing provided in Alaska, Oregon, and Wisconsin under present law. The Committee also believes that the volume limits for qualified vet-

erans' mortgage bonds should be modified so that more veterans are able to benefit from the program. Similarly, the Committee believes that the present-law exception to the first-time homebuyer rule for qualified mortgage bonds should be made permanent. The Committee believes this will allow a broader class of veterans to achieve homeownership under the program.

EXPLANATION OF PROVISION

Qualified mortgage bonds

The provision permanently extends the limited exception from the first-time homebuyer rule for veterans under the qualified mortgage bond program.

Qualified veterans' mortgage bonds

The provision increases the annual limit on qualified veterans' mortgage bonds that can be issued in Alaska, Oregon, and Wisconsin in years after 2009 to $100 million. For 2008 and 2009, the $100 million limit is phased in by applying the present-law applicable percentages for those years (i.e., 60 percent in 2008 and 80 percent in 2009).

With respect to qualified veterans' mortgage bonds issued in California or Texas, the provision repeals the requirement that veterans receiving loans financed with qualified veterans' mortgage bonds must have served before 1977 and reduces the eligibility period to 25 years (rather than 30 years) following release from the military service.

EFFECTIVE DATE

The provision applies to bonds issued after December 31, 2007.

C. SURVIVOR AND DISABILITY PAYMENTS WITH RESPECT TO QUALIFIED MILITARY SERVICE (SEC. 103 OF THE BILL AND SECS. 401(a), 414(u), 403(b), AND 457(g) OF THE CODE)

PRESENT LAW

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"),[2] which revised and restated the Federal law protecting veterans' reemployment rights, an employee who leaves a civilian job for qualified military service generally is entitled to be reemployed by the civilian employer if the individual returns to employment within a specified time period. In addition to reemployment rights, a returning veteran also is entitled to the restoration of certain pension, profit sharing and similar benefits that would have accrued, but for the employee's absence due to the qualified military service. The protections provided under USERRA do not apply if the veteran is not reemployed by the veteran's civilian employer.

USERRA generally provides that for a reemployed veteran, service in the uniformed services is considered service with the employer for retirement plan vesting and benefit accrual purposes. The employer that reemploys the returning veteran is liable for funding any resulting obligation. USERRA also provides that the

[2] Pub. L. No. 103–353.

reemployed veteran is entitled to any accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the reemployed veteran makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the reemployed veteran would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of uniformed service. Under USERRA, any such payment to the plan must be made during the period beginning with the date of reemployment and whose duration is three times the reemployed veteran's period of uniform service, not to exceed five years.

The Small Business Job Protection Act of 1996[3] added section 414(u) to the Code to provide rules regarding the interaction of the USERRA protections with generally applicable rules that govern tax qualified retirement plans. For example, section 414(u) provides that if any make-up contribution is made by an employer or employee with respect to a reemployed veteran, then such contribution is not subject to the otherwise applicable plan contribution and deduction limits for the year in which the contribution is made (such as the section 402(g) annual limit on elective deferrals, which is generally $15,500 in 2007). Such limits are instead applied for the year to which the contribution relates had the individual continued to be employed by the employer during the period of uniformed service.

Under section 414(u), a plan to which a make-up contribution is made on account of a reemployed veteran is not treated as failing to meet the qualified plan nondiscrimination, coverage, minimum participation, and top heavy rules[4] by reason of the making of such contribution. Consequently, for purposes of applying the requirements and tests associated with these rules, make-up contributions are not taken into account either for the year in which they are made or for the year to which they relate.

In addition, section 414(u) provides for a special rule in the case of make-up contributions of salary reduction, employer matching, and after-tax employee amounts. A plan that provides for elective deferrals or employee contributions is treated as meeting the requirements of USERRA if the employer permits reemployed veterans to make additional elective deferrals or employee contributions under the plan during the period which begins on the date of reemployment and has the same length as the lesser of (1) the period of the individual's absence due to uniformed service multiplied by three or (2) five years. The employer is required to match any additional elective deferrals or employee contributions at the same rate that would have been required had the deferrals or contributions actually been made during the period of uniformed service. Additional elective deferrals, employer matching contributions, and employee contributions are treated as make-up contributions for purposes of the rule exempting such contributions from qualified plan nondiscrimination, coverage, minimum participation, and top heavy rules described above.

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[3] Pub. L. No. 104–188.

[4] These include Code sections 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b), and 416.

REASONS FOR CHANGE

Current law provides certain retirement plan protections for reservists who are called to active duty and who are able to return to their civilian employers after serving our country. The Committee is concerned that there is a gap in this protection for those who are called to serve our country, but who are unable to return to their civilian employers because they have given their lives in service, or have suffered a disability that makes reemployment impossible. The Committee believes that certain retirement plan protections should be extended to the survivors of reservists who have sacrificed their lives, and that other protections should be permitted to be made available under employer-sponsored qualified pension plans in the case of reservists who do not survive, or who are disabled while serving our country.

EXPLANATION OF PROVISION

The provision adds a new tax qualification requirement for retirement plans that are qualified under section 401(a) of the Code (a "tax-qualified plan"). Under the new requirement, a tax-qualified plan must provide that, in the case of a participant who dies while performing qualified military service, the survivors of the participant must be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under the plan had the participant resumed employment with the employer maintaining the plan and then terminated employment on account of death. Thus, if a plan provides for accelerated vesting, ancillary life insurance benefits, or other survivor benefits that are contingent upon a participant's termination of employment on account of death, the plan must provide such benefits to the beneficiary of a participant who dies during qualified military service.

Under the provision, conforming amendments apply the new tax qualification requirement to section 403(b) tax-deferred annuities and eligible deferred compensation plans (described in section 457(b)) maintained by State and local governments. The provision also conditions the deduction timing rule of section 404(a)(2) (permitting contributions for the purchase of employee retirement annuities that meet certain requirements applicable to tax-qualified retirement plans to be deducted in the year of payment) on satisfaction of the new qualification requirement.

In addition, for benefit accrual purposes, the provision permits a retirement plan to treat an individual who leaves service with the plan's sponsoring employer for qualified military service, and who cannot be reemployed on account of death or disability, as if the individual had been rehired as of the day before death or disability (a "deemed rehired employee") and then had terminated employment on the date of death or disability. In the case of a deemed rehired employee, the plan is permitted to comply fully or partially with the benefit accrual restoration provisions that would be required under section 414(u) had the individual actually been rehired.

Subject to several conditions, if a plan complies fully or partially with the benefit accrual requirements of section 414(u), the special section 414(u) rules regarding the interaction of USERRA with the

otherwise applicable benefit limitation and nondiscrimination rules apply. The first condition is that all employees performing qualified military service of the employer maintaining the plan who die or become disabled must be credited with benefits on a reasonably equivalent basis. Thus, differences in credited benefits on account of different compensation levels are permissible, but complying fully with the section 414(u) benefit accrual requirements with respect to highly compensated employees and complying partially with respect to nonhighly compensated employees is not permissible. The second condition is that if the plan credits deemed rehired employees with benefits that are contingent on employee contributions or elective contributions, the plan must determine the rate of employee contributions or elective deferrals on the basis of the actual average contributions or deferrals made by the employee during the 12-month period prior to military service (or if less, the average for the actual period of service).

The provision provides rules regarding the date by which a plan must be amended to comply with the provision. In general, a plan must be amended on or before the last day of the plan year beginning on or after January 1, 2009.

EFFECTIVE DATE

The provision applies in the case of deaths and disabilities occurring on or after January 1, 2007.

D. TREATMENT OF DIFFERENTIAL MILITARY PAY AS WAGES (SEC. 104 OF THE BILL AND SECS. 3401 AND 414(u) OF THE CODE)

PRESENT LAW

In general

In the case of an employee who is called to active duty with the United States uniformed services, some employers voluntarily agree to continue paying the level of compensation that the service member would otherwise have received from the employer during the service member's period of active duty. Such compensation is commonly referred to as "differential pay."

Wage withholding

Differential pay is not treated as wages for purposes of the Federal income tax withholding rules that apply to an employer's payment of wages. This is because the service member is treated as terminating the employment relationship with the employer that pays the differential pay upon being called for active duty.[5]

Retirement plans

Section 415 imposes limitations on the benefits that may be provided under a retirement plan that is qualified under Code section 401(a) (a "qualified plan"). For a defined contribution plan, section 415 limits the annual additions to a participant's account under the plan to the lesser of a dollar amount ($45,000 in 2007) or 100 percent of the participant's compensation. In the case of a defined benefit plan, section 415 generally limits the annual benefit payable under the plan to the lesser of a dollar amount ($180,000 in 2007)

[5] See Rev. Rul. 69–136, 1969–1 C.B. 252.

or 100 percent of the participant's average compensation for the participant's high three years.

Final regulations issued in 2007 generally permit a plan to treat differential pay as compensation for purposes of section 415.[6] The section 415 limitations also apply to tax deferred annuities[7] and simplified employee pensions[8] ("SEPs"). The definition of compensation in section 415 is used in limiting the amount that may be deferred under an eligible deferred compensation plan (described in section 457(b)).

Limitation on in-service distributions

Under present law, certain types of contributions to a retirement plan are subject to restrictions that generally limit distributions to a participant prior to the participant severing employment with the employer that sponsors the plan. This limitation on in-service distributions applies to: (1) elective deferrals under a qualified cash or deferred compensation arrangement (a "section 401(k) plan"); (2) amounts attributable to a salary reduction agreement under a section 403(b) tax-sheltered annuity; (3) amounts contributed to a custodial account described in Code section 403(b)(7); and (4) amounts deferred under an eligible deferred compensation plan (described in Code section 457(b)).

USERRA

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), which revised and restated the Federal law protecting veterans' reemployment rights, an employee who leaves a civilian job for qualified military service generally is entitled to be reemployed by the civilian employer if the individual returns to employment within a specified time period. In addition to reemployment rights, a returning veteran also is entitled to the restoration of certain pension, profit sharing and similar benefits that would have accrued, but for the employee's absence due to the qualified military service. Section 414(u) provides special rules that permit defined benefit plans and individual account plans to satisfy the requirements of USERRA. An individual account plan for this purpose is any defined contribution plan (such as a section 401(k) plan), and includes a section 403(b) tax sheltered annuity, a SEP, a qualified salary reduction arrangement under section 408(p) ("SIMPLE"), and an eligible deferred compensation plan (described in Code section 457(b)). Section 414(u) does not apply to a plan to which Chapter 43 of Title 38 of the United States Code does not apply.

IRA contributions

There are two general types of individual retirement arrangements ("IRAs"): traditional IRAs and Roth IRAs.[9] Under Code section 219, the total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount ($4,000 for 2007); or (2) the amount of the individual's compensation that is includible in gross income for the year.

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[6] Treas. Reg. sec. 1.415(c)–2(e)(4), 72 Fed. Reg. 16,878 (Apr. 5, 2007).
[7] Sec. 403(b).
[8] Sec. 408(k).
[9] Secs. 408 and 408A.

In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses that is includible in gross income is at least equal to the contributed amount. For purposes of the IRA contribution limitations, compensation includes an individual's net earnings from self employment.

REASONS FOR CHANGE

The Committee is concerned that the current law treatment of differential pay for purposes of the Federal wage withholding rules creates a possible trap for unwary reservists who are called to active duty. This is because differential pay is paid by the reservist's former civilian employer and thus reservists may assume that such payments are subject to the wage withholding rules as other compensation paid when not on qualified military service. Thus, the reservist would not anticipate that there is an estimated tax payment obligation with respect to such payments. The Committee also believes that differential pay should be treated as employer-paid compensation for purposes of tax-favored retirement savings programs.

The Committee believes that a reservist called to active duty is properly treated as having terminated employment for purposes of rules that limit an individual's ability to access certain contributions to tax-favored retirement savings plans. This rule allows reservists access to amounts in their retirement savings plans. However, the Committee believes that such contributions should not be accessed if reservists have other means of satisfying their financial obligations. Thus, if such contributions are accessed by a reservist, no additional contributions may be made to the plan by the reservist for the six-month period following the distribution.

EXPLANATION OF PROVISION

Wage withholding

The provision amends the definition of wages for purposes of the Federal income tax withholding rules applicable to an employer's payment of wages. The provision includes as wages the employer's payment of any differential wage payment to the employee. Differential wage payment is defined as any payment which: (1) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days; and (2) represents all or a portion of the wages that the individual would have received from the employer if the individual were performing services for the employer.

Retirement plans

The provision also provides rules relating to differential wage payments (as defined for purposes of wage withholding) for purposes of a retirement plan that is subject to section 414(u). Specifically, an individual receiving a differential wage payment is required to be treated as an employee of the employer making the payment, and the differential wage payment is required to be treated as compensation. In addition, a retirement plan that is subject to section 414(u) is not treated as failing to meet certain requirements relating to minimum participation and nondiscrimination

standards [10] by reason of any contribution or benefit that is based on the differential wage payment if all of the sponsoring employer's employees: (1) are entitled to differential wage payments on reasonably equivalent terms; and (2) if all employees eligible to participate in a retirement plan maintained by the employer are entitled to make contributions based on such differential payments on reasonably equivalent terms.

Under the provision, an individual is treated as having been severed from employment during any period the individual is performing service in the uniformed services while on active duty for a period of more than 30 days for purposes of the limitation on in-service distributions with respect to: (1) elective deferrals under a section 401(k) plan; (2) amounts attributable to a salary reduction agreement under a section 403(b) tax-sheltered annuity; (3) amounts contributed to a custodial account described in Code section 403(b)(7); and (4) amounts deferred under an eligible deferred compensation plan (described in Code section 457(b)). Thus, such individuals are not prohibited from receiving distributions on account of not severing employment. However, if any amounts are distributed on account of the foregoing rule, the individual is not permitted to make elective deferrals or employee contributions to the plan during the six-month period beginning on the date of distribution.

IRAs

For purposes of the limitation on contributions to an IRA, the provision amends the term "compensation" to include differential wage payments (as defined for purposes of wage withholding).

Plan amendment timing

In general, the provision permits a plan or annuity contract to be retroactively amended to comply with the provision provided that the amendment is made no later than the last day of the first plan year beginning on or after January 1, 2009. Subject to certain conditions, a plan or annuity contract is treated as being operated in accordance with its terms during the period prior to amendment and, except as provided by the Secretary of the Treasury, the plan or annuity contract does not fail to meet the requirements of the Code or the Employee Retirement Income Security Act of 1974 by reason of the amendment.

EFFECTIVE DATE

For purposes of the wage withholding rules, the provision is effective with respect to remuneration paid after December 31, 2007. Otherwise, the provision is effective with respect to years beginning after December 31, 2007.

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[10] These standards include the following: section 401(a)(4) (prohibiting discrimination in contributions or benefits provided under qualified plans); section 401(a)(26) (providing minimum participation rules for qualified defined benefit plans); section 401(10(3), (11), and (12) (providing nondiscrimination rules for elective deferrals under qualified cash or deferred arrangements); section 401(m) (providing non-discrimination rules for employee contributions and employer matching contributions to qualified plans); 403(b)(12) (providing non-discrimination rules for section 403(b) tax sheltered annuities); section 408(k)(3), (k)(6), and (p) (providing non-discrimination rules for SEPs and SIMPLEs); section 410(b) (providing minimum coverage rules for qualified plans); and section 416 (requiring minimum benefits in the case of top heavy qualified plans).

E. Tax Treatment Related to Certain Benefits Provided to Volunteer Firefighters and Emergency Medical Responders (Sec. 105 of the Bill and new Sec. 139B of the Code)

Certain tax reductions or tax rebates provided by a State or local government

The Internal Revenue Service has provided guidance[11] that reductions or rebates of taxes by State or local governments on account of services performed by members of qualified volunteer emergency response organizations are taxable income to the taxpayers receiving these reductions or rebates of taxes.

Deduction for certain State or local taxes

For purposes of determining regular tax liability, an itemized deduction is permitted for certain State and local taxes paid, including individual income taxes, real property taxes, and personal property taxes. The itemized deduction is not permitted for purposes of determining a taxpayer's alternative minimum taxable income. For taxable years beginning before January 1, 2008, at the election of the taxpayer, an itemized deduction may be taken for State and local general sales taxes in lieu of the itemized deduction provided under present law for State and local income taxes.

The otherwise allowable itemized deduction for these State or local taxes is not reduced by the amount of any reduction or rebate on account of services performed as a member of a qualified volunteer emergency response organization.

Charitable deduction for certain expenses

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3), to a Federal, State, or local governmental entity, or to certain other organizations.[12] The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer. Within certain limitations, donors also are entitled to deduct their contributions to section 501(c)(3) organizations for Federal estate and gift tax purposes.

REASONS FOR CHANGE

The Committee recognizes the numerous sacrifices that volunteer firefighters and emergency medical responders make, and believes that assistance provided to them in the form of certain State and local tax benefits, or other similar reimbursements for expenses incurred in connection with the performance of services as a member of a qualified volunteer emergency response organization, should not be included in gross income for purposes of Federal income taxes.

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[11] Chief Couns. Adv. 200302045 (Jan. 10, 2002).
[12] Sec. 170(a), (c), and (e).

EXPLANATION OF PROVISION

Certain tax reductions or tax rebates provided by a State or local government

The bill provides an exclusion from gross income to members of qualified volunteer emergency response organizations for: (1) any qualified State or local tax benefit; and (2) any qualified reimbursement payment. A qualified State or local tax benefit is any reduction or rebate of certain taxes provided by State or local governments on account of services performed by individuals as members of a qualified volunteer emergency response organization. These taxes are limited to State or local income taxes, State or local real property taxes, and State or local personal property taxes. A qualified reimbursement payment is a payment provided by a State or political subdivision thereof on account of reimbursement for expenses incurred in connection with the performance of services as a member of a qualified volunteer emergency response organization. The amount of such qualified reimbursement payments is limited to $30 for each month during which the taxpayer performs such services.

A qualified volunteer emergency response organization is any volunteer organization: (1) which is organized and operated to provide firefighting or emergency medical services for persons in the State or its political subdivision; and (2) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.

Denial of double benefits

The bill provides that the amount of State or local taxes taken into account in determining the deduction for taxes is reduced by the amount of any qualified State or local tax benefit.

Also, the bill provides that expenses paid or incurred by the taxpayer in connection with the performance of services as a member of a qualified volunteer emergency response organization is taken into account for purposes of the charitable deduction only to the extent such expenses exceed the amount of any qualified reimbursement payment excluded from income under the bill.

EFFECTIVE DATE

The provision is effective for taxable years beginning after the date of enactment.

F. EXTENSION OF THE STATUTE OF LIMITATIONS TO FILE CLAIMS FOR REFUNDS RELATING TO DISABILITY DETERMINATIONS BY THE DEPARTMENT OF VETERANS AFFAIRS (SEC. 106 OF THE BILL AND SEC. 6511(d) OF THE CODE)

PRESENT LAW

In general, a taxpayer must file a claim for credit or refund within three years of the filing of the tax return or within two years of the payment of the tax, whichever expires later (if no tax return is filed, the two-year limit applies). A claim for credit or refund that is not filed within these time periods is rejected as untimely.

Generally, military retirement benefits based on length of service are included in income, whereas veterans' benefits based on a service-connected disability are excluded from income. If an individual receives includible retirement benefits and is later retroactively determined to be eligible for service-connected disability benefits, the portion of the retirement benefits attributable to the disability is retroactively excluded from income. In that case, the individual may claim a refund of the tax paid on the retroactively excluded benefits, subject to the statute of limitations on filing a refund claim.

REASONS FOR CHANGE

Because of the lapse of time between retirement and the determination of, or the onset and determination of, a service connected disability, the Committee believes it is appropriate to extend the statute of limitations to permit retired military personnel to file claims for refunds when a determination of a service-connected disability is made.

EXPLANATION OF PROVISION

The provision extends the time period for filing claims for credits or refunds for retired military personnel who receive disability determinations from the Department of Veterans Affairs (e.g., determinations after the tax return is filed). Specifically, in the case of a determination after the date of enactment, the provision extends the period for filing such a refund claim until one year after the date of the disability determination (if later than the time periods allowed under present law). The provision applies to any taxable year which begins five years before the date of the determination or thereafter. In the case of a determination after December 31, 2000, and on or before the date of enactment, the period for filing a claim for credit or refund is extended until one year after the date of enactment (if later than the time periods allowed under present law).

EFFECTIVE DATE

The provision is effective for claims for credits or refunds filed after the date of enactment.

G. TREATMENT OF DISTRIBUTIONS TO INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 180 DAYS (SEC. 107 OF THE BILL AND SEC. 72(t) OF THE CODE)

PRESENT LAW

Under present law, a taxpayer who receives a distribution from a qualified retirement plan prior to age 59½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception to the tax applies. Among other exceptions, the early distribution tax does not apply to distributions made to an employee who separates from service after age 55, or to distributions that are part of a series of substantially equal periodic payments made for the life (or life expectancy) of the employee or the joint lives (or life expectancies) of the employee and his or her beneficiary.

Certain amounts held in a qualified cash or deferred arrangement (a "section 401(k) plan") or in a tax-sheltered annuity (a "section 403(b) annuity") may not be distributed before severance from employment, age 59½, death, disability, or financial hardship of the employee.

Pursuant to amendments to section 72(t) made by the Pension Protection Act of 2006,[13] the 10-percent early withdrawal tax does not apply to a qualified reservist distribution. A qualified reservist distribution is a distribution (1) from an IRA or attributable to elective deferrals under a section 401(k) plan, section 403(b) annuity, or certain similar arrangements, (2) made to an individual who (by reason of being a member of a reserve component as defined in section 101 of title 37 of the United States Code) was ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and (3) that is made during the period beginning on the date of such order or call to duty and ending at the close of the active duty period. A section 401(k) plan or section 403(b) annuity does not violate the distribution restrictions applicable to such plans by reason of making a qualified reservist distribution.

An individual who receives a qualified reservist distribution may, at any time during the two-year period beginning on the day after the end of the active duty period, make one or more contributions to an IRA of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to IRAs do not apply to any contribution made pursuant to this special repayment rule. No deduction is allowed for any contribution made under the special repayment rule.

The special rules applicable to a qualified reservist distribution apply to individuals ordered or called to active duty after September 11, 2001, and before December 31, 2007.

REASONS FOR CHANGE

The Committee believes that the exception to the 10-percent early withdrawal tax is an important tax relief provision for reservists called to active duty. Reservists called to active duty may need access to amounts that they have contributed to tax-favored retirement savings programs in order to meet their personal financial obligations while serving our country. Given the continuing need for activation of reservists, the Committee believes that this tax relief provision should be made permanent so that it applies to reservists called to active duty on or after December 31, 2007.

EXPLANATION OF PROVISION

The provision makes permanent the rules applicable to qualified reservist distributions to individuals ordered or called to active duty on or after December 31, 2007.

EFFECTIVE DATE

The provision is effective upon enactment.

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[13] Pub. L. No. 109–280.

H. Permanent Extension of Disclosure Authority to the Department of Veterans Affairs (Sec. 108 of the Bill and Sec. 6103(1)(7)(D) of the Code)

PRESENT LAW

The Code prohibits disclosure of returns and return information, except to the extent specifically authorized by the Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service ("IRS") to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Among the disclosures permitted under the Code is disclosure of certain tax information to the Department of Veterans Affairs. Disclosure is permitted to assist the Department of Veterans Affairs in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension, health care, and other programs (sec. 6103(1)(7)(D)(viii)). The Department of Veterans Affairs disclosure provision is scheduled to expire after September 30, 2008.

REASONS FOR CHANGE

The temporary provision permitting the disclosure of otherwise confidential return information to the Department of Veterans Affairs to ensure the correctness of government benefit payments has been in existence since 1990. The Committee believes it is appropriate to make permanent this long-standing temporary provision.

EXPLANATION OF PROVISION

The provision makes the disclosure authority to the Department of Veterans Affairs permanent.

EFFECTIVE DATE

The provision is effective on the date of enactment.

I. Contributions of Military Death Gratuities to Certain Tax-Favored Accounts (Sec. 109 of the Bill and Secs. 408A and 530 of the Code)

PRESENT LAW

Military death gratuities and SGLI

Section 1477 of Title 10 of the United States Code provides for the payment of a military death gratuity to an eligible survivor of a servicemember. Under Code section 134, as amended by the Military Family Tax Relief Act of 2003, the full amount of the military death gratuity is excludable from gross income. Pursuant to section 1967 of Title 38 of the United States Code, certain members of the uniformed services are automatically insured against death under the Servicemembers' Group Life Insurance ("SGLI") program. In general, life insurance proceeds are excludable from gross income under Code section 101.

Roth IRAs

There are two general types of individual retirement arrangements ("IRAs"): traditional IRAs and Roth IRAs.[14] In general, contributions (other than a rollover contribution) to a traditional IRA may be deductible, and distributions from a traditional IRA are includible in gross income to the extent not attributable to a return of nondeductible contributions. Contributions to a Roth IRA are not deductible, and qualified distributions from a Roth IRA are excludable from gross income. Distributions from a Roth IRA that are not qualified distributions are includible in gross income to the extent attributable to earnings. In general, a qualified distribution is a distribution that is made on or after the individual attains age 59½, death, or disability or which is a qualified special purpose distribution. A distribution is not a qualified distribution if it is made within the five-taxable year period beginning with the taxable year for which an individual first made a contribution to a Roth IRA.

The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount ($4,000 for 2007); or (2) the amount of the individual's compensation that is includible in gross income for the year. IRA contributions in excess of the applicable limit are generally subject to an excise tax of six percent per year until withdrawn. The contribution limit is reduced to the extent an individual makes contributions to any other IRA for the same taxable year.

As under the rules relating to traditional IRAs, a contribution of up to the dollar limit for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount. The maximum annual contribution that can be made to a Roth IRA is phased out for taxpayers with adjusted gross income for the taxable year over certain indexed levels. The adjusted gross income phase-out ranges for 2007 are: (1) for single taxpayers, $99,000 to $114,000; (2) for married taxpayers filing joint returns, $156,000 to $166,000; and (3) for married taxpayers filing separate returns, $0 to $10,000.

The foregoing contribution limitations generally do not apply in the case of a rollover contribution to an IRA. If certain requirements are satisfied, a participant in a tax-qualified retirement plan, a tax-sheltered annuity,[15] or a governmental section 457 plan may roll over distributions from the plan or annuity into a traditional IRA. For distributions after December 31, 2007, certain taxpayers are permitted to make qualified rollover contributions from such plans or annuities into a Roth IRA (subject to inclusion in gross income of any amount that would be includible were it not part of the qualified rollover contribution).

Coverdell Education Savings Accounts

Annual contributions to a Coverdell education savings account[16] may not exceed $2,000 (except in cases involving certain tax-free rollovers) and may not be made after the designated beneficiary reaches age 18. The maximum annual contribution that can be

[14] Traditional IRAs are described in Code section 408, and Roth IRAs in Code section 408A.
[15] Sec. 403(b).
[16] Coverdell education savings accounts are described in sec. 530.

made to a Coverdell education savings account is phased out for taxpayers with adjusted gross income for the taxable year over certain indexed levels. Contributions to a Coverdell education savings account are not deductible. In general, a rollover is permitted between Coverdell education savings accounts for the benefit of the same beneficiary or member of such beneficiary's family.

In general, a distribution from a Coverdell education savings account is includible in the gross income of the distributee. However, distributions from an account are excludable from the distributee's gross income to the extent that the total distribution does not exceed the qualified education expenses incurred by the beneficiary during the year the distribution is made. Contributions to a Coverdell education savings account are treated as nontaxable investment in the contract. Thus, earnings on contributions are subject to tax if amounts withdrawn from the account exceed qualified education expenses. The portion of a distribution from a Coverdell education savings account that is includible in income (i.e., the portion allocable to earnings on contributions when a distribution exceeds qualified education expenses) is generally subject to an additional 10-percent tax.

REASONS FOR CHANGE

The survivor of a servicemember who dies while serving our country is eligible to receive certain death benefits. In some cases, these benefit proceeds may not be needed by the survivor for immediate living expenses. Instead, the benefit proceeds may be needed for future expenses, such as retirement or education expenses. Under present law, contributions to tax-favored accounts for retirement and education savings are subject to annual limits. As a result, immediate contribution of death benefit proceeds to such accounts is prohibited. The Committee believes survivors of servicemembers should be able to contribute death benefit proceeds to such accounts to save for future retirement and education needs.

EXPLANATION OF PROVISION

In the case of an individual who receives a military death gratuity or SGLI payment, the provision permits the individual to contribute an amount no greater than the sum of the gratuity and SGLI payments received by the individual to a Roth IRA, notwithstanding the contributions limits that otherwise apply to contributions to Roth IRAs (e.g., the annual contribution limit and the income phase-out of the contribution dollar limit). The provision also permits such an individual to contribute the gratuity and SGLI payments that the individual receives to one or more Coverdell education savings accounts, notwithstanding the $2,000 annual contribution limit and the income phase-out of the limit that would otherwise apply. The maximum amount that can be contributed to a Roth IRA or one or more Coverdell education savings accounts in the aggregate under the provision is limited to the sum of the gratuity and SGLI payments that the individual receives.

The contribution of a military death gratuity or SGLI payment to a Roth IRA is treated as a qualified rollover contribution to the Roth IRA. Similarly, the contribution of a military death gratuity or SGLI payment to a Coverdell education savings account is treated as a permissible rollover to such an account. The contribution

of a military death gratuity or SGLI payment to a Roth IRA or Coverdell education savings account cannot be made later than one year after the date on which the gratuity or SGLI payment is received by the individual.

In the event of a subsequent distribution from a Roth IRA that is not a qualified distribution or a distribution from a Coverdell education savings account that is not a qualified education distribution, the amount of the distribution attributable to the contribution of the military death gratuity or SGLI payment is treated as nontaxable investment in the contract.

EFFECTIVE DATE

The provision is generally effective with respect to payments made on account of deaths from injuries occurring on or after the date of enactment. In addition, the provision permits the contribution to a Roth IRA or a Coverdell education savings account of a military death gratuity or SGLI payment received by an individual with respect to a death from injury occurring on or after October 7, 2001, and before the date of enactment of the provision if the individual makes the contribution to the account no later than one year after the date of enactment of the provision.

J. EXCLUSION OF GAIN ON SALE OF A PRINCIPAL RESIDENCE BY CERTAIN PEACE CORPS VOLUNTEERS (SEC. 110 OF THE BILL AND SEC. 121(d) OF THE CODE)

PRESENT LAW

In general

Under present law, an individual taxpayer may exclude up to $250,000 ($500,000 if married filing a joint return) of gain realized on the sale or exchange of a principal residence. To be eligible for the exclusion, the taxpayer must have owned and used the residence as a principal residence for at least two of the five years ending on the sale or exchange. A taxpayer who fails to meet these requirements by reason of a change of place of employment, health, or, to the extent provided under regulations, unforeseen circumstances is able to exclude an amount equal to the fraction of the $250,000 ($500,000 if married filing a joint return) that is equal to the fraction of the two years that the ownership and use requirements are met.

Uniformed services and Foreign Service

Present law also contains special rules relating to members of the uniformed services or the Foreign Service of the United States. An individual may elect to suspend for a maximum of 10 years the five-year test period for ownership and use during certain absences due to service in the uniformed services or the Foreign Service of the United States. The uniformed services include: (1) the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service. If the election is made, the five-year period ending on the date of the sale or exchange of a principal residence does not include any period up to 10 years during which the tax-

payer or the taxpayer's spouse is on qualified official extended duty as a member of the uniformed services or in the Foreign Service of the United States. For these purposes, qualified official extended duty is any period of extended duty while serving at a place of duty at least 50 miles away from the taxpayer's principal residence or under orders compelling residence in government furnished quarters. Extended duty is defined as any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period. The election may be made with respect to only one property for a suspension period.

Intelligence community

Specified employees of the intelligence community may elect to suspend the running of the five-year test period during any period in which they are serving on extended duty. The term "employee of the intelligence community" means an employee of the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Reconnaissance Office. The term also includes employment with: (1) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; (2) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, and the Coast Guard; (3) the Bureau of Intelligence and Research of the Department of State; and (4) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information. To qualify, a specified employee must move from one duty station to another and the new duty station must be located outside of the United States. The five-year period may not be extended more than 10 years.

The provision relating to employees of the intelligence community is effective for sales and exchanges before January 1, 2011.

REASONS FOR CHANGE

For purposes of determining the excludability of gain on the sale of a principal residence, the Committee believes it is appropriate to treat Peace Corps volunteers in a manner similar to members of the uniformed services, the Foreign Service, and the intelligence community. Specifically, the Committee recognizes that Peace Corps volunteers face the same requirements to serve abroad, and thus should receive treatment similar to that provided members of the uniformed services, the Foreign Service and the intelligence community with respect to determining whether the necessary residency tests have been met to qualify for exclusion of gain.

EXPLANATION OF PROVISION

The bill creates a new rule for Peace Corps volunteers similar to the rules applicable to the uniformed services and Foreign Service and the intelligence community. Under this new rule, an individual may elect to suspend for a maximum of 10 years the five-year test period for ownership and use during certain absences due to volunteer service in the Peace Corps. If the election is made, the five-year period ending on the date of the sale or exchange of a prin-

cipal residence does not include any period up to 10 years during which the taxpayer or the taxpayer's spouse is serving as a Peace Corps volunteer.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

TITLE II—IMPROVMENTS IN SUPPLEMENTAL SECURITY INCOME ("SSI")

A. ENSURE EQUITABLE TREATMENT OF MILITARY FAMILIES UNDER SSI (SEC. 201 OF THE BILL)

PRESENT LAW

Section 1612(a)(2) of the Social Security Act specifies that any income not defined as earned income by Section 1612(a)(1) of the act is considered unearned income, which reduces SSI benefits more quickly than earned income.

Section SI 00830.540 of the Social Security Administration ("SSA") Programs Operations Manual System ("POMS") specifies the following regarding military compensation:

- Only military basic pay is considered earned income;
- Hostile fire pay and imminent danger pay are excluded from income;
- In deeming situations only, any other type of pay received for serving in a combat zone is excluded from income; and
- All other types of military pay are considered unearned income.

Section 1612(a)(2) of the Social Security Act specifies that in-kind support and maintenance ("ISM") is considered unearned income by the SSI program. Section 1612(a)(2)(A) of the Social Security Act states that if a person is receiving ISM then his or her SSI benefit is reduced by one-third of the SSI federal benefit rate.

Section SI 00830.540 of the POMS specifies that payments made to or for a member of the uniformed services for housing at a military facility or for privatized military housing are considered ISM by the SSI program.

REASONS FOR CHANGE

The SSA testified that this provision would ensure that most cash military compensation is treated in the same manner as civilian wages for SSI purposes, thus eliminating the present unfair treatment of military compensation other than basic pay.

In addition, SSA testified that the bill's treatment of housing benefits was needed because such benefits are generally deducted from the service member's pay and paid directly to the landlord of the privatized housing. Such treatment is consistent with the SSI program's determination of ISM. This provision will codify current administrative practice.

EXPLANATION OF PROVISION

The bill expands the definition of earned income for the SSI program to include all cash remuneration paid to members of the uniformed services and not otherwise excluded by law. Hostile fire pay

and imminent danger would continue to be excluded from the SSI income calculation under the provision of Section 1612(b)(20) of the Social Security Act.

The bill also specifies that any payments made to or for a member of the uniformed services for housing at a military facility or for privatized military housing shall be considered as ISM by the SSI program and subject to the One-Third Reduction rule.

EFFECTIVE DATE

The provision is effective with respect to benefits payable for months beginning after 60 days after the date of the enactment.

B. Remove Penalties for Blind Veterans Under SSI (Sec. 202 of the Bill)

PRESENT LAW

Section 1612(b) of the Social Security Act provides a list of income exclusions and contains no reference to State annuities for blind veterans. 20 C.F.R. sec. 416.1121 specifies that annuities for veterans are considered unearned income by the SSI program unless excluded by law. This means such annuities generally count dollar-for-dollar against SSI benefits.

Section 1613(a) of the Social Security Act provides a list of resource exclusions and contains no reference to State annuities for blind veterans. 20 C.F.R. sec. 416.1201 specifies that any cash or liquid asset or any real or personal property that a person owns and could convert into cash is considered a resource by the SSI program unless excluded by law.

REASONS FOR CHANGE

The Committee does not believe that special payments States choose to make to blind veterans should count against such individuals' SSI benefits.

EXPLANATION OF PROVISION

The bill specifies that any money paid by a State to a blind veteran is excluded from the SSI income calculation. The bill also specifies that the value of any money paid by a State to a blind veteran in a given month shall not be counted as a resource by the SSI program in that month.

EFFECTIVE DATE

The provision is effective with respect to benefits payable for months beginning after 60 days after the date of the enactment.

C. Exclusion of Benefits for AmeriCorps Volunteers Under SSI (Sec. 203 of the Bill)

PRESENT LAW

Section 1612(b) of the Social Security Act provides a list of income exclusions and contains no reference to the AmeriCorps program. 42 U.S.C. sec. 5044(f) specifies that payments made to volunteers in programs authorized under Chapter 66 of Title 42 of the United States Code are excluded from the SSI income calculation.

The AmeriCorps*VISTA program, but not the AmeriCorps program, falls under this exclusion (AmeriCorps*VISTA and AmeriCorps are different programs).

REASONS FOR CHANGE

The provision would ensure uniform treatment of all AmeriCorps programs under the SSI program, thus providing equity for beneficiaries, administrative simplification, and fewer barriers for participating in AmeriCorps.

EXPLANATION OF PROVISION

The bill specifies that any cash or in-kind benefit paid to a participant in the AmeriCorps program is excluded from the SSI income calculation.

EFFECTIVE DATE

The provision is effective with respect to benefits payable for months beginning after 60 days after the date of the enactment.

TITLE III—REVENUE PROVISIONS

A. Increase in Penalty for Failure To File Partnership Returns (Sec. 301 of the Bill and New Sec. 6698 of the Code)

PRESENT LAW

A partnership generally is treated as a pass-through entity. Income earned by a partnership, whether distributed or not, is taxed to the partners. Distributions from the partnership generally are tax-free. The items of income, gain, loss, deduction or credit of a partnership generally are taken into account by a partner as allocated under the terms of the partnership agreement. If the agreement does not provide for an allocation, or the agreed allocation does not have substantial economic effect, then the items are to be allocated in accordance with the partners' interests in the partnership. To prevent double taxation of these items, a partner's basis in its interest is increased by its share of partnership income (including tax-exempt income), and is decreased by its share of any losses (including nondeductible losses).

Under present law, a partnership is required to file a tax return for each taxable year. The partnership's tax return is required to include the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual. In addition to applicable criminal penalties, present law imposes a civil penalty for the failure to timely file a partnership return. The penalty is $50 per partner for each month (or fraction of a month) that the failure continues, up to a maximum of five months.

REASONS FOR CHANGE

A recent report by the Treasury Inspector General for Tax Compliance ("TIGTA") indicated that the incidence of late-filed returns, measured as a percentage of total returns filed, is nearly 2 to 4 times higher among partnerships and S corporations, respectively,

than it is among individual taxpayers.[17] The TIGTA report indicated that the present-law penalty for partnerships fails to address the most egregious late filers.

The Committee is concerned that the level of filing noncompliance by partnerships adversely affects the compliance of the individual partners. The Committee believes that the present law penalty should be increased to a level that effectively discourages noncompliance. The Committee believes this will improve overall tax administration.

EXPLANATION OF PROVISION

Under the provision, the period for calculating the monthly failure to file penalty for partnership returns is extended from five months to 12 months and the penalty amount is increased to $100 per partner.

EFFECTIVE DATE

The provision applies to returns required to be filed after the date of enactment.

B. Penalty for Failure To File S Corporation Returns (Sec. 302 of the Bill and New Sec. 6699 of the Code)

PRESENT LAW

In general, an S corporation is not subject to corporate-level income tax on its items of income and loss. Instead, an S corporation passes through its items of income and loss to its shareholders. The shareholders take into account separately their shares of these items on their individual income tax returns.

Under present law, S corporations are required to file a tax return for each taxable year. The S corporation's tax return is required to include the following: the names and addresses of all persons owning stock in the corporation at any time during the taxable year; the number of shares of stock owned by each shareholder at all times during the taxable year; the amount of money and other property distributed by the corporation during the taxable year to each shareholder and the date of such distribution; each shareholder's pro rata share of each item of the corporation for the taxable year; and such other information as the Secretary may require.

REASONS FOR CHANGE

A recent report by the Treasury Inspector General for Tax Compliance ("TIGTA") indicated that the incidence of late-filed returns, measured as a percentage of total returns filed, is nearly 2 to 4 times higher among partnerships and S corporations, respectively, than it is among individual taxpayers.[18] The TIGTA report attributed the high rate of late-filed S corporation returns to the lack of an effective penalty regime.

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[17] Treasury Inspector General for Tax Administration, Stronger Sanctions Are Needed to Encourage Timely Filing of Pass-Through Returns and Ensure Fairness in the Tax System, 2005–30–048 (March 2005).

[18] Treasury Inspector General for Tax Administration, Stronger Sanctions Are Needed to Encourage Timely Filing of Pass-Through Returns and Ensure Fairness in the Tax System, 2005–30–048 (March 2005).

The Committee believes the level of filing noncompliance by S corporations is unacceptably high. Late-filed S corporation returns can have an adverse effect on the filing and reporting compliance of the individual shareholders. Thus, the Committee believes that establishing an effective penalty for failing to timely file an S corporation return will improve overall tax administration.

EXPLANATION OF PROVISION

The provision imposes a monthly penalty for any failure to timely file an S corporation return or any failure to provide the information required to be shown on such a return. The penalty is $100 times the number of shareholders in the S corporation during any part of the taxable year for which the return was required, for each month (or a fraction of a month) during which the failure continues, up to a maximum of 12 months.

EFFECTIVE DATE

The provision applies to returns required to be filed after the date of enactment.

C. Increase in Information Return Penalties (Sec. 303 of the Bill and Secs. 6721, 6722, and 6723 of the Code)

PRESENT LAW

Present law imposes information reporting requirements on participants in certain transactions. Under section 6721 of the Code, any person required to file a correct information return who fails to do so on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the correct information return is filed. If a person files a correct information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date, the amount of the penalty is $15 per return (the "first-tier penalty"), with a maximum penalty of $75,000 per calendar year. If a person files a correct information return more than 30 days after the prescribed filing date but on or before August 1, the amount of the penalty is $30 per return (the "second-tier penalty"), with a maximum penalty of $150,000 per calendar year. If a correct information return is not filed on or before August 1, of any year, the amount of the penalty is $50 per return (the "third-tier penalty"), with a maximum penalty of $250,000 per calendar year.

Special lower maximum levels for this penalty apply to small businesses. Small businesses are defined as firms having average annual gross receipts for the most recent three taxable years that do not exceed $5 million. The maximum penalties for small businesses are: $25,000 (instead of $75,000) if the failures are corrected on or before 30 days after the prescribed filing date; $50,000 (instead of $150,000) if the failures are corrected on or before August 1; and $100,000 (instead of $250,000) if the failures are not corrected on or before August 1.

Section 6722 of the Code also imposes penalties for failing to furnish correct payee statements to taxpayers. In addition, section 6723 imposes a penalty for failing to comply with other information reporting requirements. Under both section 6722 and section 6723,

the penalty amount is $50 for each failure, up to a maximum of $100,000.

REASONS FOR CHANGE

The Committee notes that the penalties for failing to file accurate information returns have not been increased in many years. The Committee believes the present law penalties are too low to discourage noncompliance. The Committee believes that increasing the information return penalties will encourage the filing of timely and accurate information returns which, in turn, will improve overall tax administration.

EXPLANATION OF PROVISION

The provision increases the penalties for failing to file correct information returns, for failing to furnish correct payee statements, and for failing to comply with other information reporting requirements. Specifically, the provision increases the penalties for failing to file correct information returns as follows: the first-tier penalty would be increased from $15 to $25, with a maximum penalty of $200,000 per calendar year; the second-tier penalty would be increased from $30 to $60, with a maximum penalty of $400,000 per calendar year; and the third-tier penalty would be increased from $50 to $100, with a maximum penalty of $600,000 per calendar year. The maximum penalties for small businesses would be: $75,000 if the failures are corrected on or before 30 days after the prescribed filing date; $150,000 if the failures are corrected on or before August 1; and $250,000 if the failures are not corrected on or before August 1.

The provision increases both the penalty for failing to furnish correct payee statements to taxpayers and the penalty for failing to comply with other information reporting requirements penalties to $100 for each such failure, up to a maximum of $600,000 in a calendar year.

EFFECTIVE DATE

The provision is effective with respect to information returns required to be filed on or after January 1, 2008.

D. Minimum Failure To File Penalty (Sec. 304 of the Bill and Sec. 6651 of the Code)

PRESENT LAW

Under present law, a taxpayer who fails to file a tax return on a timely basis is subject to a penalty equal to five percent of the net amount of tax due for each month that the return is not filed, up to a maximum of five months or 25 percent.[19] An exception from the penalty applies if the failure is due to reasonable cause. The net amount of tax due is the excess of the amount of the tax required to be shown on the return over the amount of any tax paid on or before the due date prescribed for the payment of tax.[20]

In the case of a failure to file a tax return within 60 days of the due date, present law imposes a minimum penalty equal to the

[19] Sec. 6651(a)(1).
[20] Sec. 6651(b)(1).

lesser of $100 or 100 percent of the amount of tax required to be shown on the return.

REASONS FOR CHANGE

The minimum penalty for an extended failure to file (i.e., a return not filed within 60 days of the due date) has not been modified since 1982. The Committee believes that inflation has eroded the deterrent effect of the present law penalty. Thus, the Committee believes that the minimum penalty for an extended failure to file should be increased to a level that effectively discourages noncompliance.

EXPLANATION OF PROVISION

The provision increases the minimum penalty for a failure to file a tax return within 60 days of the due date to the lesser of $225 or 100 percent of the amount of tax required to be shown on the return.

EFFECTIVE DATE

The provision is effective for tax returns required to be filed on or after January 1, 2008.

IV. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of the bill, HR. 3997, the "Heroes Earnings Assistance and Relief Tax Act of 2007": On November 1, 2007, the Chairman's Amendment in the Nature of a Substitute to H.R. 3997 was ordered favorably reported, by a voice vote with a quorum being present.

V. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of HR. 3997, as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2008–2017:

ESTIMATED BUDGET EFFECTS OF H.R. 3997,
THE "HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2007,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2008 - 2017

[Millions of Dollars]

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008-12	2008-17
I. Benefits for Military and Volunteer Firefighters													
1. Permanently extend the election to include combat pay as earned income	tyba 12/31/07	---	-19	-11	-9	-7	-8	-7	-8	-6	-6	-47	-83
2. Permanently extend the benefit to permit the use of qualified mortgage bonds to finance residences for veterans without regard to the first-time homebuyer requirements	bia 12/31/07	-3	-15	-32	-51	-70	-89	-110	-130	-152	-174	-171	-826
3. Increase the veterans mortgage bond volume limitation for certain states and modify the definition of a qualified veteran	bia 12/31/07	-1	-6	-14	-21	-27	-33	-40	-46	-52	-58	-69	-297
4. Survivor and disability payments with respect to qualified military service	dodoo/a 1/1/07	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	-1	-2
5. Treatment of differential military pay as wages	rpa 12/31/07 & yba 12/31/07	1	-2	-2	-1	-1	-1	-1	-1	-1	-1	-4	-8
6. Exclusion from income for benefits provided to volunteer fire fighters and emergency medical responders	tyba DOE	-20	-79	-85	-92	-101	-108	-115	-123	-131	-139	-377	-994
7. Special period of limitation when uniformed services retired pay is reduced as a result of award of disability compensation	cfcorfa DOE	-2	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10
8. Permanently extend treatment of distributions to guardsmen called to active duty	12/31/07	[1]	[1]	[1]	-1	-1	-1	-1	-1	-1	-1	1	-6

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008-12	2008-17
9. Permanent extension of disclosure authority to the Department of Veterans Affairs [2]	10/01/08	---	5	9	13	16	19	22	25	27	28	43	164
10. Contributions of military death gratuities to Roth IRAs or educational savings accounts	[3]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	-1	-4
11. Suspension of 5-year period during service with the Peace Corps	tyba 12/31/07	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	-1
Total of Benefits for Military and Volunteer Firefighters		**-25**	**-117**	**-136**	**-163**	**-192**	**-222**	**-253**	**-285**	**-317**	**-352**	**-631**	**-2,067**
II. Improvements in Supplemental Security Income													
1. Ensure equitable treatment of military families under SSI [4]	DOE	-2	-2	-2	-3	-2	-3	-3	-3	-3	-3	-11	-26
2. Remove penalties for blind veterans under SSI [4]	DOE	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	-1	-3
3. Exclusion of benefits for Americorps volunteers under SSI	---	*Estimate to Be Provided By Congressional Budget Office*											
Total of Improvements in Supplemental Security Income		**-2**	**-2**	**-2**	**-3**	**-2**	**-3**	**-3**	**-3**	**-3**	**-3**	**-12**	**-29**
III. Provisions that Raise Revenue													
1. Increase in penalty for failure to file partnership returns	rfa DOE	29	60	62	65	67	69	72	74	77	79	283	654
2. Penalty for failure to file S corporation returns	rfa DOE	35	90	93	96	99	103	106	110	114	118	413	964
3. Increase in information return penalties	irrtbfo/a 1/1/08	---	---	12	35	36	37	38	39	41	42	83	280
4. Increase the minimum penalty for failure to file from $100 to $225	rrtbfa 12/31/07	8	30	31	31	32	32	32	33	33	34	132	296
Total of Provisions that Raise Revenue		**72**	**180**	**198**	**227**	**234**	**241**	**248**	**256**	**265**	**273**	**911**	**2,194**
NET TOTAL		**45**	**61**	**60**	**61**	**40**	**16**	**-8**	**-32**	**-55**	**-82**	**268**	**98**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment assumed to be December 1, 2007.

[Legend and Footnotes for the Table appear on the following page]

Legend and Footnotes for the Table:

Legend for "Effective" column:

bia = bonds issued after
cfcorfa = claims for credit or refund filed after
dodoo/a = deaths or disabilities occurring on or after
DOE = date of enactment
irrtbfo/a = information returns required to be filed on or after
rfa = returns filed after
rpa = remuneration paid after
rrtbfa = returns required to be filed after
tyba = taxable years beginning after
yba = years beginning after

[1] Loss of less than $500,000.
[2] Estimate provided by the Congressional Budget Office.
[3] Generally effective with respect to deaths from injuries occurring on or after the date of enactment and deaths from injuries occurring on or after October 7, 2001, and before the date of enactment if such contribution is made not later than one year after the date of enactment.
[4] Outlay effects provided by the Congressional Budget Office. Negative numbers indicate an increase in outlays.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. In compliance with section 308(a)(2) of the Budget Act, the Committee states that the revenue-reducing provisions of the bill involve increased tax expenditures (see revenue table in Part A., above). The revenue-increasing provisions of the bill involve reduced tax expenditures (see revenue table in Part A., above).

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

November 5, 2007.

Hon. Charles B. Rangel,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office and the Joint Committee on Taxation (JCT) have reviewed H.R. 3997, the Heroes Earnings Assistance and Relief Act of 2007, as ordered reported by the Committee on Ways and Means on November 1, 2007. The bill would provide tax relief to members of the military and volunteer firefighters, adjust the rules regarding the Supplemental Security Income (SSI) program, permanently extend the tax disclosure authority for the Department of Veterans Affairs, and adjust certain penalties that apply to tax reporting.

JCT estimates that enacting the legislation would increase revenues by $278 million over the 2008–2012 period and by $35 million over the 2008–2017 period. CBO and JCT estimate that, under the bill, direct spending would increase by $13 million over the 2008–2012 period and decrease by $58 million over the 2008–2017 period.

JCT has reviewed the tax provisions of the bill and determined that they contain no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO has reviewed the nontax provisions of the bill (title II) and determined that they contain no intergovernmental or private-sector mandates as defined in UMRA, but that those provisions would result in some spending increases by states for SSI supplemental payments and for Medicaid.

The estimated budgetary effects are summarized in the following table.

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN REVENUES												
Estimated Revenues	47	75	63	59	32	7	−21	−47	−73	−102	278	35
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	2	15	4	1	−7	−8	−12	−14	−17	−19	13	−58

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
Estimated Outlays	2	15	4	−1	−7	−8	−12	−14	−17	−19	13	−58

Sources: Congressional Budget Office and Joint Committee on Taxation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are Zachary Epstein (for revenues), and David Rafferty (for Supplemental Security Income).

Sincerely,

PETER R. ORSZAG,
Director.

D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

E. PAY-GO RULE

In compliance with clause 10 of rule XXI of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 3997, as reported: [See CBO letter]

VI. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it is appropriate and timely to enact the provisions of the bill as reported.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . ."), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that none of the tax provisions of the reported bill contain Federal private sector mandates within the meaning of Public Law No. 104–4, the Unfunded Mandates Reform Act of 1995. The tax provisions of the reported bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments within the meaning of Public Law No. 104–4, the Unfunded Mandates Reform Act of 1995.

E. Applicability of House Rule XXI 5(b)

Clause 5 of rule XXI of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses.

G. Limited Tax Benefits

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee on Ways and Means has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that rule.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

SUBTITLE A—INCOME TAXES

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart C—Refundable Credits

* * * * * * *

SEC. 32. EARNED INCOME.

(a) * * *

* * * * * * *

(c) DEFINITIONS AND SPECIAL RULES.—

(1) * * *

(2) EARNED INCOME.—

(A) * * *

(B) For purposes of subparagraph (A)—

(i) * * *

* * * * * * *

[(vi) In the case of any taxable year ending—

[(I) after the date of the enactment of this clause, and

[(II) before January 1, 2008, a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.]

(vi) a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

* * * * * * *

SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) * * *

* * * * * * *

(t) 10-PERCENT ADDITIONAL TAX ON EARLY DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS.—

(1) * * *

(2) SUBSECTION NOT TO APPLY TO CERTAIN DISTRIBUTIONS.—

(A) * * *

* * * * * * *

(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

(i) * * *

* * * * * * *

(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001[, and before December 31, 2007]. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.

* * * * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec. 101. Certain death benefits.

* * * * * * *

Sec. 139B. Benefits provided to volunteer firefighters and emergency medical responders.

* * * * * * *

SEC. 121. EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.

(a) * * *

* * * * * * *

(d) SPECIAL RULES.—

(1) * * *

* * * * * * *

(12) PEACE CORPS.—

(A) IN GENERAL.—At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving outside the United States—

(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

(B) APPLICABLE RULES.—For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D) shall apply.

* * * * * * *

SEC. 139B. BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.

(a) IN GENERAL.—In the case of any member of a qualified volunteer emergency response organization, gross income shall not include—

(1) any qualified State and local tax benefit, and

(2) any qualified payment.

(b) DENIAL OF DOUBLE BENEFITS.—In the case of any member of a qualified volunteer emergency response organization—

(1) the deduction under 164 shall be determined with regard to any qualified State and local tax benefit, and

(2) expenses paid or incurred by the taxpayer in connection with the performance of services as such a member shall be taken into account under section 170 only to the extent such expenses exceed the amount of any qualified payment excluded from gross income under subsection (a).

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED STATE AND LOCAL TAX BENEFIT.—The term "qualified state and local tax benefit" means any reduction or rebate of a tax described in paragraph (1), (2), or (3) of section 164(a) provided by a State or political division thereof on account of services performed as a member of a qualified volunteer emergency response organization.

(2) QUALIFIED PAYMENT.—

(A) IN GENERAL.—The term "qualified payment" means any payment (whether reimbursement or otherwise) provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization.

(B) APPLICABLE DOLLAR LIMITATION.—The amount determined under subparagraph (A) for any taxable year shall not exceed $30 multiplied by the number of months during such year that the taxpayer performs such services.

(3) QUALIFIED VOLUNTEER EMERGENCY RESPONSE ORGANIZATION.—The term "qualified volunteer emergency response organization" means any volunteer organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.

* * * * * * *

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

Subpart A—Private Activity Bonds

* * * * * * *

SEC. 143. MORTGAGE REVENUE BONDS: QUALIFIED MORTGAGE BOND AND QUALIFIED VETERANS' MORTGAGE BOND.

(a) * * *

* * * * * * *

(d) 3-YEAR REQUIREMENT.—

(1) * * *

(2) EXCEPTIONS.—For purposes of paragraph (1), the proceeds of an issue which are used to provide—

(A) * * *

* * * * * * *

(D) in the case of bonds issued after the date of the enactment of this subparagraph [and before January 1, 2008], financing of any residence for a veteran (as defined in section 101 of title 38, United States Code), if such veteran has not previously qualified for and received such financing by reason of this subparagraph,

* * * * * * *

(l) ADDITIONAL REQUIREMENTS FOR QUALIFIED VETERANS' MORTGAGE BONDS.—An issue meets the requirements of this subsection only if it meets the requirements of paragraphs (1), (2), and (3).

(1) * * *

* * * * * * *

(3) VOLUME LIMITATION.—

(A) * * *

(B) STATE VETERANS LIMIT.—

(i) * * *

(ii) ALASKA, OREGON, AND WISCONSIN.—In the case of the following States, the State veterans limit for any calendar year is the amount equal to—

(I) [$25,000,000] *$100,000,000* for the State of Alaska,

(II) [$25,000,000] *$100,000,000* for the State of Oregon, and

(III) [$25,000,000] *$100,000,000* for the State of Wisconsin.

[(4) QUALIFIED VETERAN.—For purposes of this subsection, the term "qualified veteran" means—

[(A) in the case of the States of Alaska, Oregon, and Wisconsin, any veteran—

[(i) who served on active duty, and

[(ii) who applied for the financing before the date 25 years after the last date on which such veteran left active service, and

[(B) in the case of any other State, any veteran—

[(i) who served on active duty at some time before January 1, 1977, and

[(ii) who applied for the financing before the later of—

[(I) the date 30 years after the last date on which such veteran left active service, or

[(II) January 31, 1985.]

(4) QUALIFIED VETERAN.—For purposes of this subsection, the term "qualified veteran" means any veteran who—

(A) served on active duty, and

(B) applied for the financing before the date 25 years after the last date on which such veteran left active service.

* * * * * * *

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

* * * * * * *

SEC. 219. RETIREMENT SAVINGS.

(a) * * *

* * * * * * *

(f) OTHER DEFINITIONS AND SPECIAL RULES.—

(1) COMPENSATION.—For purposes of this section, the term "compensation" includes earned income (as defined in section 401(c)(2)). The term "compensation" does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation. The term "compensation" shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2). For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6). *The term compensation includes any differential wage payment (as defined in section 3401(h)(2)).*

* * * * * * *

Subchapter D—Deferred Compensation, Etc

* * * * * * *

PART I—PENSION, PROFIT–SHARING, STOCK BONUS PLANS, ETC

* * * * * * *

Subpart A—General Rule

* * * * * * *

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) * * *

* * * * * * *

(37) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in

section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

* * * * * * *

SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) * * *

(b) TAXABILITY OF BENEFICIARY UNDER ANNUITY PURCHASED BY SECTION 501(C)(3) ORGANIZATION OR PUBLIC SCHOOL.—

(1) * * *

* * * * * * *

(14) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).

SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.

(a) GENERAL RULE.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) * * *

(2) EMPLOYEES' ANNUITIES.—In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17), (19), (20), (22), (26), (27), **[**and (31)**]** *(31), and (37)* and, if applicable, the requirements of section 401(a)(10) and of section 401(d), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities, or such retirement annuities and medical benefits.

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SEC. 408A. ROTH IRAS.

(a) * * *

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[Note: Section 109(a) of HR 3997 amends section 408A(e) as in effect before the amendments made by section 824 of the Pension Protection Act of 2006]

[(e) For purposes of this section, the term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section

408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.]

(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

(1) IN GENERAL.—The term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

(2) MILITARY DEATH GRATUITY.—

(A) IN GENERAL.—The term "qualified rollover contribution" includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by subparagraph (A).

(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

[Note: Section 109(b) of HR 3997 amends section 408A(e) as in effect after the amendments made by section 824 of the Pension Protection Act of 2006]

[(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term "qualified rollover contribution" means a rollover contribution—

[(1) to a Roth IRA from another such account,

[(2) from an eligible retirement plan, but only if—

[(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

[(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.]

(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

(1) IN GENERAL.—The term "qualified rollover contribution" means a rollover contribution—

(A) to a Roth IRA from another such account,

(B) from an eligible retirement plan, but only if—

(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

(2) MILITARY DEATH GRATUITY.—

(A) IN GENERAL.—The term "qualified rollover contribution" includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the subparagraph (A).

(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

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Subpart B—Special Rules

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SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) * * *

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(u) SPECIAL RULES RELATING TO VETERANS' REEMPLOYMENT RIGHTS UNDER USERRA *AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY*.—

(1) * * *

* * * * * * *

(9) TREATMENT IN THE CASE OF DEATH OR DISABILITY RESULTING FROM ACTIVE MILITARY SERVICE.—

(A) IN GENERAL.—For benefit accrual purposes, an employer sponsoring a retirement plan may treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

(B) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to the employer maintaining the plan (as determined under subsections (b), (c), (m), and (o)) who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

(C) DETERMINATION OF BENEFITS.—The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of—

(i) the 12-month period of service with the employer immediately prior to qualified military service, or

(ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

[(9)**]** *(10)* PLANS NOT SUBJECT TO TITLE 38.—This subsection shall not apply to any retirement plan to which chapter 43 of title 38, United States Code, does not apply.

[(10)**]** *(11)* REFERENCES.—For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment).

(12) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation, and

(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

(B) SPECIAL RULE FOR DISTRIBUTIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (o)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term "differential wage payment" has the meaning given such term by section 3401(h)(2).

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Subchapter E—Accounting Periods and Methods of Accounting

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PART II—METHODS OF ACCOUNTING

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Subpart B—Taxable Year for Which Items of Gross Income Included

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SEC. 457. DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) * * *

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(g) GOVERNMENTAL PLANS MUST MAINTAIN SET-ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.—

(1) * * *

* * * * * * *

(4) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A plan described in paragraph (1) shall not be treated as an eligible deferred compensation plan unless such plan meets the requirements of section 401(a)(37).

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Subchapter F—Exempt Organizations

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PART VIII—HIGHER EDUCATION SAVINGS ENTITIES

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SEC. 530. COVERDELL EDUCATION SAVINGS ACCOUNTS.

(a) * * *

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(d) TAX TREATMENT OF DISTRIBUTIONS.—

(1) * * *

* * * * * * *

(9) MILITARY DEATH GRATUITY.—

(A) IN GENERAL.—For purposes of this section, the term "rollover contribution" includes a contribution to a Coverdell education savings account made before the end of the 1-year period beginning on the date on which the contributor receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such contributor under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Roth IRA under section 408A(e)(2) or to another Coverdell education savings account.

(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—The last sentence of paragraph (5) shall not apply with respect to amounts treated as a rollover by the subparagraph (A).

(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is includible in gross income under paragraph (1), the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

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SUBTITLE C—EMPLOYMENT TAXES

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CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

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SEC. 3401. DEFINITIONS.

(a) * * *

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(h) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—

(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term "differential wage payment" means any payment which—

(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and

(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

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SUBTITLE F—PROCEDURE AND ADMINISTRATION

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter B—Miscellaneous Provisions

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

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(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) * * *

* * * * * * *

(7) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL AGENCIES ADMINISTERING CERTAIN PROGRAMS UNDER THE SOCIAL SECURITY ACT, THE FOOD STAMP ACT OF 1977, OR TITLE 38, UNITED STATES CODE, OR CERTAIN HOUSING ASSISTANCE PROGRAMS.—

(A) * * *

* * * * * * *

(D) PROGRAMS TO WHICH RULE APPLIES.—The programs to which this paragraph applies are:

(i) * * *

* * * * * * *

Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV). **[**Clause (viii) shall not apply after September 30, 2008.**]**

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CHAPTER 66—LIMITATIONS

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Subchapter B—Limitations on Credit or Refund

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SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

(a) * * *

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(d) SPECIAL RULES APPLICABLE TO INCOME TAXES.—

(1) * * *

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(8) SPECIAL RULES WHEN UNIFORMED SERVICES RETIRED PAY IS REDUCED AS A RESULT OF AWARD OF DISABILITY COMPENSATION.—

(A) PERIOD OF LIMITATION ON FILING CLAIM.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(i) the reduction of uniformed services retired pay computed under section 1406 or 1407 of title 10, United States Code, or

(ii) the waiver of such pay under section 5305 of title 38 of such Code,

as a result of an award of compensation under title 38 of such Code pursuant to a determination by the Secretary of Veterans Affairs, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund based upon the amount of such reduction or waiver, until the end of the 1-year period beginning on the date of such determination.

(B) LIMITATION TO 5 TAXABLE YEARS.—Subparagraph (A) shall not apply with respect to any taxable year which began more than 5 years before the date of such determination.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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PART I—GENERAL PROVISIONS

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SEC. 6551. FAILURE TO FILE TAX RETURN OR TO PAY TAX.

(a) ADDITION TO THE TAX.—In case of failure—

(1) * * *

* * * * * * *

In the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under paragraph (1) shall not be less than the lesser of **[**$100**]** *$225* or 100 percent of the amount required to be shown as tax on such return.

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

Sec. 6671. Rules for application of assessable penalties.

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Sec. 6699. Failure to file S corporation return.

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SEC. 6698. FAILURE TO FILE PARTNERSHIP RETURN.

(a) GENERAL RULE.—In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax), if any partnership required to file a return under section 6031 for any taxable year—

(1) * * *

* * * * * * *

such partnership shall be liable for a penalty determined under subsection (b) for each month (or fraction thereof) during which such failure continues (but not to exceed **[**5 months**]** *12 months*), unless it is shown that such failure is due to reasonable cause.

(b) AMOUNT PER MONTH.—For purposes of subsection (a), the amount determined under this subsection for any month is the product of—

(1) [$50] *$100*, multiplied by

* * * * * * *

SEC. 6699. FAILURE TO FILE S CORPORATION RETURN.

(a) GENERAL RULE.—In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax), if any S corporation required to file a return under section 6037 for any taxable year—

(1) fails to file such return at the time prescribed therefor (determined with regard to any extension of time for filing), or

(2) files a return which fails to show the information required under section 6037,

such S corporation shall be liable for a penalty determined under subsection (b) for each month (or fraction thereof) during which such failure continues (but not to exceed 12 months), unless it is shown that such failure is due to reasonable cause.

(b) AMOUNT PER MONTH.—For purposes of subsection (a), the amount determined under this subsection for any month is the product of—

(1) $100, multiplied by

(2) the number of persons who were shareholders in the S corporation during any part of the taxable year.

(c) ASSESSMENT OF PENALTY.—The penalty imposed by subsection (a) shall be assessed against the S corporation.

(d) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

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PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

* * * * * * *

SEC. 6721. FAILURE TO FILE CORRECT INFORMATION RETURNS.

(a) IMPOSITION OF PENALTY.—

(1) IN GENERAL.—In the case of a failure described in paragraph (2) by any person with respect to an information return, such person shall pay a penalty of [$50] *$100* for each return with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed [$250,000] *$600,000*.

* * * * * * *

(b) REDUCTION WHERE CORRECTION IN SPECIFIED PERIOD.—

(1) CORRECTION WITHIN 30 DAYS.—If any failure described in subsection (a)(2) is corrected on or before the day 30 days after the required filing date—

(A) the penalty imposed by subsection (a) shall be [$15] *$25* in lieu of [$50] *$100*, and

(B) the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed [$75,000] *$200,000*.

(2) FAILURES CORRECTED ON OR BEFORE AUGUST 1.—If any failure described in subsection (a)(2) is corrected after the 30th

day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs—

(A) the penalty imposed by subsection (a) shall be [$30] *$60* in lieu of [$50] *$100*, and

(B) the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed [$150,000] *$400,000*.

* * * * * * *

(d) LOWER LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—

(1) IN GENERAL.—If any person meets the gross receipts test of paragraph (2) with respect to any calendar year, with respect to failures during such taxable year—

(A) subsection (a)(1) shall be applied by substituting [$100,000] *$250,000* for [$250,000] *$600,000*,

(B) subsection (b)(1)(B) shall be applied by substituting [$25,000] *$75,000* for [$75,000] *$200,000*, and

(C) subsection (b)(2)(B) shall be applied by substituting [$50,000] *$150,000* for [$150,000] *$400,000*.

* * * * * * *

(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures described in subsection (a)(2) are due to intentional disregard of the filing requirement (or the correct information reporting requirement), then, with respect to each such failure—

(1) * * *

(2) the penalty imposed under subsection (a) shall be [$100] *$250*, or, if greater—

(A) * * *

* * * * * * *

(3) in the case of any penalty determined under paragraph (2)—

(A) the [$250,000] *$600,000* limitation under subsection (a) shall not apply, and

* * * * * * *

SEC. 6722. FAILURE TO FURNISH CORRECT PAYEE STATEMENTS.

(a) GENERAL RULE .—In the case of each failure described in subsection (b) by any person with respect to a payee statement, such person shall pay a penalty of [$50] *$100* for each statement with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed [$100,000] *$600,000*.

* * * * * * *

(c) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures to which subsection (a) applies are due to intentional disregard of the requirement to furnish a payee statement (or the correct information reporting requirement), then, with respect to each failure—

(1) the penalty imposed under subsection (a) shall be [$100] *$250*, or, if greater—

(A) * * *

* * * * * * *

(2) in the case of any penalty determined under paragraph (1)—

(A) the [$100,000] *$600,000* limitation under subsection (a) shall not apply, and

* * * * * * *

SEC. 6723. FAILURE TO COMPLY WITH OTHER INFORMATION REPORTING REQUIREMENTS

In the case of a failure by any person to comply with a specified information reporting requirement on or before the time prescribed therefor, such person shall pay a penalty of [$50] *$100* for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed [$100,000] *$600,000*.

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SOCIAL SECURITY ACT

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TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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PART A—DETERMINATION OF BENEFITS

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INCOME

Meaning of Income

SEC. 1612. (a) For purposes of this title, income means both earned income and unearned income; and—

(1) earned income means only—

(A) wages as determined under section 203(f)(5)(C) but without the application of section 210(j)(3) *(and, in the case of cash remuneration paid for service as a member of a uniformed service (other than payments described in paragraph (2)(H) of this subsection or subsection (b)(20)), without regard to the limitations contained in section 209(d))*;

* * * * * * *

(2) unearned income means all other income, including—

(A) * * *

* * * * * * *

(F) rents, dividends, interest, and royalties not described in paragraph (1)(E); [and]

(G) any earnings of, and additions to, the corpus of a trust established by an individual (within the meaning of section 1613(e)), of which the individual is a beneficiary, to which section 1613(e) applies, and, in the case of an irrevocable trust, with respect to which circumstances exist under which a payment from the earnings or additions could be made to or for the benefit of the individual[.]*; and*

(H) payments to or on behalf of a member of a uniformed service for housing of the member (and his or her dependents, if any) on a facility of a uniformed service, including payments provided under section 403 of title 37, United States Code, for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10 of such Code, or any related provision of law, and any such payments shall be treated as support and maintenance in kind subject to subparagraph (A) of this paragraph.

Exclusions From Income

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) * * *

* * * * * * *

(22) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code—

(A) * * *

(B) in the case of a cash gift, only to the extent that the total amount excluded from the income of the individual pursuant to this paragraph in the calendar year in which the gift is made does not exceed $2,000; [and]

(23) interest or dividend income from resources—

(A) * * *

(B) excluded pursuant to Federal law other than section 1613(a)[.]*;*

(24) any annuity paid by a State to the individual (or such spouse) on the basis of the individual's being a veteran (as defined in section 101 of title 38, United States Code) and blind; and

(25) any benefit (whether cash or in-kind) conferred upon (or paid on behalf of) a participant in an AmeriCorps position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

RESOURCES

Exclusions From Resources

SEC. 1613. (a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) * * *

* * * * * * *

(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused; [and]

(15) for the 9-month period beginning after the month in which received, any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution**[**.**]***; and*

(16) for the month of receipt and every month thereafter, any annuity paid by a State to the individual (or such spouse) on the basis of the individual's being a veteran (as defined in section 101 of title 38, United States Code) and blind.

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