

Update: Tax Benefits for Military Personnel in a Combat Zone or Qualified Hazardous Duty Area

Major Richard W. Rousseau
Professor, Administrative and Civil Law Department
The Judge Advocate General School, U.S. Army

“With our citizens working so hard to protect the people of Kosovo, they shouldn’t have to worry about their taxes.”
—President William J. Clinton¹

“Our men and women serving in the Kosovo area should be focused on one thing and one thing only—keeping themselves safe from harm and achieving our mission. While our troops are under fire, they certainly don’t need to be doing battle with the IRS as well.”

—Ways and Means Committee Chair Bill Archer, R-Texas²

Introduction

As the individual tax filing deadline of 15 April 1999 drew near for most taxpaying Americans, Congress and the President focused their attention on tax issues relating to service members deployed in Operation Allied Force. President Clinton issued an executive order giving tax breaks to service members serving in Operation Allied Force on 13 April 1999.³ Congress enacted similar legislation on 16 April 1999 providing tax relief to military personnel serving in the Kosovo area of operations by designating it as a qualified hazardous duty area.⁴ President Clinton signed the legislation on 19 April 1999.⁵ Judge advocates should be familiar with the details of the executive order, the legislation, and the accompanying administrative procedures regarding tax issues of service members serving in and in direct support of a combat zone or qualified hazardous duty area.

To understand recent tax developments, judge advocates must understand the basic concepts relating to “combat zone” designations, “qualified hazardous duty areas” for taxation purposes, the federal tax benefits of each designation, and the

potential state tax implications of the designations. By understanding the legal foundations for each designation, the judge advocate can provide legal assistance to service members encountering combat zone and deployment tax issues with federal and state taxing authorities. Finally, judge advocates need to know how to “invoke” these benefits for soldiers.

Historical Development

Since the inception of the first modern income taxation in the United States in 1913,⁶ special federal income tax benefits have been granted for service members in World War I, World War II, Korea, Vietnam, the Persian Gulf, Bosnia, and now Kosovo.⁷ Federal tax benefits for service members during conflicts and deployments have ranged from income exclusions, extensions or delays to file tax returns, and assistance in handling tax matters, paying taxes, or receiving tax refunds. Contemporaneously with the historical development of federal tax benefits and relief for service members in a combat zone, the states also began to provide tax relief for their citizens serving in combat zones.

What is a Combat Zone or Qualified Hazardous Duty Area?

To understand the pertinent tax code provisions and regulations, the judge advocate must understand certain tax “terms” that have developed legislatively and administratively over time. The term “combat zone” may conjure up one set of images to the infantry soldier, but in the world of taxation, federal law specifically defines a “combat zone.” A combat zone is an area in which the armed forces are or have engaged in

1. 70 Daily Tax Rept. G-1 (BNA) (Apr. 13, 1999).

2. 1999 Tax Notes Today 73-31 (Apr. 16, 1999).

3. Exec. Order No. 13,119, 64 Fed. Reg. 18,797 (1999). All executive orders are available at <www.access.gpo.gov>.

4. Pub. L. No. 106-21, 113 Stat. 34 (1999).

5. *Id.*

6. U.S. CONST. amend XVI.

7. Many articles provide a historical account of the development, underlying principles, and changes in the area of tax relief for service members in armed conflicts. See, e.g., Edward A. Beck, III, *The Taxation of Members of the Armed Services: Legislative and Administrative Changes Arising From the Persian Gulf Conflict*, 38 FED. B. NEWS & J. 350 (Aug. 1991); Lieutenant Colonel George Hancock, *Tax Note: Final Combat Zone Compensation Rules*, ARMY LAW., Dec. 1993, at 31; Major Mark Henderson, *Bosnian Tax Relief*, ARMY LAW., May 1996, at 27; Major Bernard Ingold, *Tax Note: President Paves Way for Tax Benefits by Declaring Persian Gulf Area a Combat Zone*, ARMY LAW., Mar. 1991, at 54; Major Bernard Ingold, *Tax Note: DOD Designates Imminent Danger Areas*, ARMY LAW., Apr. 1991, at 46; Patrick J. Kusiak, *Income Tax Exclusion for Military Personnel During War*, 39 FED. B. NEWS & J. 146 (Feb. 1992).

combat.⁸ The President of the United States designates combat zones by executive order. Service members may invoke combat zone tax relief only if they serve in a combat zone on or after the date designated in the executive order.⁹ The President of the United States has issued combat zone executive orders for the Korean Conflict,¹⁰ Vietnam,¹¹ the Persian Gulf,¹² and Kosovo.¹³

While an executive order creates a combat zone, legislation creates a “qualified hazardous duty area.” Members serving in a qualified hazardous duty area receive the same tax treatment under the Internal Revenue Code as members serving in a combat zone.¹⁴ The legislation will specify the date that members in the qualified hazardous duty area become eligible for tax relief. Congress has created two qualified hazardous duty areas.¹⁵ In each, Congress has designated certain countries as qualified hazardous duty areas and has specified that each designated country will lose its status as a qualified hazardous duty area when the Department of Defense (DOD) stops paying members either imminent danger or hostile fire pay for service in that country.¹⁶ Thus, the DOD, by controlling the payment of hostile fire or imminent danger pay to members in a particular country, can also control when members serving in that country will no longer be entitled to the special tax benefits applicable to service in a qualified hazardous duty area. “Hostile fire or imminent danger pay” is the name for a special pay for duty when a service member is subject to hostile fire or imminent danger.¹⁷ The DOD starts and stops this pay.¹⁸ Generally, hostile fire or imminent danger pay is includible in income for federal tax purposes. However, if a member becomes entitled to it

while serving in a qualified hazardous duty area or combat zone, it will generally be excludable from income.¹⁹

How Does a Service Member Qualify for Service in a Combat Zone or Qualified Hazardous Duty Area?

Generally, to receive combat zone tax benefits, a member must serve in a combat zone or qualified hazardous duty area. Service members outside of a combat zone or a qualified hazardous duty area can receive combat zone tax benefits if their service directly (as opposed to remotely or indirectly) supports military operations in the combat zone. These service members must meet three basic conditions. First, the direct support of military operations must maintain, uphold, or provide assistance for those involved in military operations in the combat zone (or qualified hazardous duty area).²⁰ Second, the service must qualify the service member for hostile fire pay or imminent danger pay.²¹ Finally, the reason for the imminent danger or hostile fire pay must be based on the risks or dangers related to the qualified hazardous duty area or combat zone.²²

“The [DOD] determines whether service is in direct support of military operations in a combat zone or qualified hazardous duty area.”²³ Within the DOD, the Assistant Secretary of Defense (Force Management Policy) has the general mission for administering combat zone tax benefits. The Assistant Secretary of Defense (Force Management Policy) has delegated direct support approval authority on four occasions: the United

8. I.R.C. § 112(c)(2) (West 1999).

9. *Id.* § 112(c)(3).

10. Exec. Order No. 10,195, 3 C.F.R. § 373 (1949-1953), *reprinted in* 26 U.S.C. § 23 (1952), *as cited in* Patrick J. Kusiak, *Income Tax Exclusion for Military Personnel During War*, 39 FED. B. NEWS & J. 146, at n.32 (Feb. 1992).

11. Exec. Order No. 11,216, 3 C.F.R. § 301 (1964-1965), 3 C.F.R. § 301 (1964-1965), *as cited in* Kusiak, *supra* note 10, at n.40.

12. Exec. Order No. 12,744, 56 Fed. Reg. 2661 (1991).

13. Exec. Order No. 13,119, 64 Fed. Reg. 18,797 (1999).

14. Pub. L. No. 104-117, §§ 1(a)(2), (b), (e)(1), 109 Stat. 827 (1996).

15. One qualified hazardous duty area was designated as Bosnia, Herzegovina, Croatia, and Macedonia. *Id.* The other qualified hazardous duty area pertains to the Federal Republic of Yugoslavia (Serbia/Montenegro) and Albania. Pub. L. 106-21, 113 Stat. 34 (1999).

16. *Id.* In addition, Congress could also enact legislation terminating the qualified hazardous duty area.

17. The pay is \$150 per month. 37 U.S.C.A. § 310 (West 1999).

18. Members who come under hostile fire are automatically entitled to hostile fire pay. The unit commander certifies when members of his command have come under hostile fire. The Assistant Secretary of Defense (Force Management Policy) designates an area as an imminent danger pay area after reviewing the threat assessment submitted by the theater commander.

19. Due to the pay exclusion cap applicable to commissioned officers, some officers will not be able to exclude this pay from income. Because the pay exclusion cap is not applicable to enlisted and warrant officer members, these members will be able to fully exclude the pay when they earn it in a combat zone or qualified hazardous duty area. I.R.C. § 112(b), (c) (West 1999). For more information *see infra* notes 54-59.

20. Treas. Reg. § 1.112-1 (1999).

21. *Id.*

States Commander in Chief, Central Command, has direct support approval authority for Operation Desert Storm and follow-on operations; the United States Commander in Chief, Europe (USCINCEUR) has direct support approval authority for Joint Task Force Provide Comfort; the USCINCEUR has direct support approval authority for Operation Joint Endeavor and follow-on operations; and the USCINCEUR has direct support approval authority for service members supporting the Kosovo area of operations combat zone.²⁴

As a practical matter, unit commanders generally initiate requests to extend combat zone tax benefits to service members based upon service in direct support of military operations in a combat zone or qualified hazardous duty area. Requests to extend combat zone tax benefits to service members in direct support are submitted through the chain of command to the unified commander who is responsible for the operation.²⁵ As

appropriate, commanders should also initiate requests to stop combat zone benefits.²⁶

Unless a service member has an independent basis for entitlement or qualification for hostile fire or imminent danger pay, a service member in a combat zone or qualified hazardous duty area while on leave from a duty station located outside a combat zone, or who passes over or through a combat zone during the course of a trip between two points, both of which lie outside a combat zone, or who is in a combat zone solely for his own personal convenience, is not considered eligible for combat zone tax benefits.²⁷ Service members assigned to official temporary duty in a combat zone or qualified hazardous duty area qualify for combat zone tax relief and entitlements.²⁸

22. U.S. DEP'T OF DEFENSE, DOD REG. 7000.14-R, FINANCIAL MANAGEMENT REGULATION, para. 440103B.5 (July 1996). See Guidance, Office of the Assistant Secretary of Defense Force Management Policy (Military Personnel Policy), subject: Guidance for Requesting/Approving Combat Zone Tax Benefits for Service in "Direct Support" of Military Operations (22 Apr. 1999) [hereinafter Guidance]. The DOD has imposed this third requirement since 1991. Prior to 1970, only service members who actually served in a combat zone were entitled to the combat zone pay exclusion. I.R.C. § 112; Treas. Reg. § 1.112-1. Although the law had not changed, the IRS amended its regulation interpreting I.R.C. § 112 in November of 1970. The amended regulation made members of the armed forces who performed military service outside a combat zone eligible for the I.R.C. § 112 exclusion if: (1) the service is in direct support of military operations in the combat zone; and (2) their service qualifies them for hostile fire pay under 37 U.S.C.A. § 310. Section 310 was subsequently amended to create a new type of pay known as "imminent danger pay." In 1993, the IRS amended its regulation to reflect this change and broadened the second requirement to include imminent danger pay. The DOD imposed this third requirement because it believes it is fully consistent with the intent of the regulation and that it must fully adhere to this policy to maintain the public's trust and its good working relationship with the I.R.S. But for this requirement, members serving at a radar site far from the combat zone/qualified hazardous duty area, in a country designated as an imminent danger pay area because of a threat of domestic terrorism, could claim entitlement to these tax benefits whenever they directly support operations in the combat zone/qualified hazardous duty area. To prevent what it perceived to be an unwarranted extension of the tax benefits associated with combat zone/qualified hazardous duty area service, the DOD imposed the requirement that the reason for payment of imminent danger or hostile fire pay be based on the risks or dangers related to the combat zone/qualified hazardous duty area.

23. Rev. Rul. 70-621, 1970-2 C.B. 17. See Guidance, *supra* note 22.

24. Guidance, *supra* note 22.

25. *Id.*

If the Assistant Secretary of Defense (Force Management Policy) has not delegated approval authority for that operation, the unified commander will submit the request through the Chairman's J-1 to the Assistant Secretary of Defense (Force Management Policy). Any commander in the chain may reject a request to extend combat zone tax benefits; only the unified commander who has been delegated direct support approval authority may approve a request to extend combat zone tax benefits to service members based upon service in direct support. If the Assistant Secretary of Defense (Force Management Policy) has not delegated approval authority, only the Assistant Secretary of Defense (Force Management Policy) may approve the request. Because the facts that support a determination that service is in direct support are subject to change, unit commanders must regularly reassess whether the facts justify the continuation of this benefit. Unit commanders will promptly notify higher headquarters of changes and will conduct formal, periodic (at least annual) reviews of whether the direct support determination should be continued. The unit commander will promptly initiate a request to stop combat zone benefits when circumstances merit. Unit commanders will submit these requests through their chain of command to the unified commander responsible for the operation. If the Assistant Secretary of Defense (Force Management Policy) has not delegated approval authority to the unified commander, and the unified commander determines it is appropriate to continue providing combat zone tax benefits, the unified commander will submit the request through the Chairman's J-1 to the Assistant Secretary of Defense (Force Management Policy). Any general or flag officer commander in the chain may approve a request (or independently determine that it is appropriate) to stop combat zone tax benefits. A general or flag officer commander who stops combat zone [tax benefits] will notify both Defense Finance and Accounting Service, the unified commander, and the Assistant Secretary of Defense (Force Management Policy) of the determination.

Only requests that meet the criteria as indicated in the DOD Financial Management Regulation Volume 7A, Chapter 44, paragraph 440103B.5 and Treasury Regulation § 1.112-1 will be approved. *Id.*

26. Guidance, *supra* note 22.

27. Treas. Reg. § 1.112-1(f)(1) (1999).

28. *Id.* § 1.112-1(f)(2).

Tax Benefits and Relief for Military Personnel in Combat Zone or Qualified Hazardous Duty Area

Extension of Time for Tax Actions

Generally, individual taxpayers must file their federal income tax returns by 15 April each year.²⁹ United States citizens and residents in military or naval service on duty, including permanent or short term duty outside of the United States and Puerto Rico, are allowed an additional automatic two-month extension to file taxes.³⁰ If a service member is out of the country on 15 April, he is not required to file a form to request an additional two-month extension. A service member filing his return must indicate on the return that he is claiming an extension.³¹ The extension applies to both filing returns and paying the tax that is due.³² However, service members using the automatic extension must pay interest on any unpaid tax from the original due date of the return until the date the tax is paid.³³

Soldiers qualifying for service in a designated combat zone or qualified hazardous duty area are entitled to special extensions of time for completing various tax actions. The period for filing tax returns, paying taxes, or filing a claim for a refund of

tax are suspended while the service member serves in a designated combat zone and hazardous duty area.³⁴ The deadline extension also applies to the filing of all tax schedules and forms that are attachments to the federal individual tax return. The suspension of time encompasses the period of service in the combat zone, as well as any time of continuous qualified hospitalization resulting from injury received in the combat zone and the next 180 days thereafter.³⁵

The additional time is also disregarded in determining tax liability under the Internal Revenue Code (including interest, penalty, additional amount, or addition to tax).³⁶ The Internal Revenue Service (IRS) has determined that this extension runs consecutively, not concurrently, with the tax-filing season.³⁷ Consequently, soldiers serving in a combat zone may be entitled to up to 105 additional days for a total combat zone extension of 285 days to complete action on tax matters after leaving the combat zone.³⁸ If the IRS takes any tax action during the combat zone extension period or sends a notice of examination, the service member should return the notice to the IRS with the combat zone designation written across the top of the notice or letter. Service members who use the combat extension would have been entitled to interest on any refund due beginning from

29. I.R.C. § 6072 (West 1999).

30. Treas. Reg. § 1.6081-5(a)(6).

31. *Id.* § 1.6081-5(b).

32. *Id.* § 1.6081-5(a).

33. I.R.C. § 6601(b). Several bills were introduced early in 1999 to create a specific provision in the Internal Revenue Code to exempt service members from the accrual of interest due to using the overseas extension. As of the date of publication of this article, none of the proposals were enacted into law. *See* Uniformed Services Filing Fairness Act of 1999, S. 308, S. 767, 106th Cong.

34. The suspension of time applies to the following acts pursuant to I.R.C. § 7508(a)(1):

- (A) Filing any return of income, estate, or gift tax (except employment and withholding tax);
- (B) Payment of any income, estate, or gift tax (except employment and withholding tax) or any installment thereof or of any other liability to the United States in respect thereof;
- (C) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;
- (D) Allowance of a credit or refund of any tax;
- (E) Filing a claim for credit or refund of any tax;
- (F) Bringing suit upon any such claim for credit or refund;
- (G) Assessment of any tax;
- (H) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
- (I) Collection, of the amount of any liability in respect of any tax;
- (J) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and
- (K) Any other act required or permitted under the internal revenue laws specified in regulations prescribed under this section by the Secretary;

35. I.R.C. § 7508(a).

36. *Id.*

37. *Id.*

38. The length of the extension period depends on when the soldier began serving in the combat zone. For example, a soldier serving in the combat zone from 1 October 1999 until 1 May 2000, will have the full 285 days to file the 1999 tax return. This extension equals the 180-day extension, plus the full 105 days in the tax-filing season. Soldiers beginning service in the combat zone after 1 January 2000, will not have the full extension period. For example, a soldier arriving in the combat zone on 1 February 2000 and serving until 1 May 2000, will have 254 days. This period of time is equivalent to the full 180-day extension, plus the seventy-four days remaining in the filing season since 1 February 2000. *See* I.R.S. Notice 99-30, 1999-22 I.R.B. 1.

the original due date (15 April 1999 for 1998 tax returns, or 15 April 2000 for 1999 tax returns).³⁹

Spouses of service members entitled to the combat zone tax benefits are entitled to the same suspension of time for handling tax matters.⁴⁰ The deadline extension provisions apply to both spouses whether filing a joint or separate return. If spouses choose to file a separate return, they will have the same extension of time to file and pay their taxes as the service member.⁴¹ The combat zone extensions also apply to individuals serving in the combat zone in support of the U.S. Armed Forces. These include Red Cross personnel, accredited correspondents, and civilians acting under the direction of the U.S. Armed Forces in support of those forces (both DOD civilian employees and civilian employees of defense contractors).⁴²

Generally, an individual may receive credit for contributing to an Individual Retirement Account (IRA) during the preceding tax year if he makes this contribution on or before the due date for the income tax return.⁴³ The due date is determined without regard to extensions. For example, a contribution made on 14 April 2000, by a calendar year taxpayer, could have the designation of a contribution for the 1999 tax year. On the other hand, a contribution made on 20 April 2000 could not be designated as a 1999 IRA contribution, even if the taxpayer obtains an extension to file his 1999 federal income tax return. The "combat zone" extension, however, provides the taxpayer with an additional period to contribute to an IRA for the preceding tax year.⁴⁴ To qualify, the taxpayer must make a contribution before the earlier of the end of the income tax return filing period established under the combat zone tax extensions⁴⁵ or the date on which the federal income tax return actually is filed.

A contribution made on 1 June 2000 could be designated as a contribution for the 1999 tax year if it is made before the taxpayer's combat zone suspension period expires.⁴⁶ The taxpayer would have to designate the contribution as a contribution for the 1999 tax year to claim it on his 1999 income tax return.

Exclusion of Compensation of Service Members Received in a Combat Zone from Gross Income

Perhaps the greatest tax benefit for the majority of service members serving in combat is the exclusion of combat zone compensation. Under the combat zone compensation exclusion tax rules, gross income does not include certain combat zone compensation of members of the Armed Forces.⁴⁷ Any official presence in a combat zone during the month will qualify the service member for the combat zone exclusion for the entire month. Likewise, if a service member is hospitalized outside of the combat zone for part of a month as a result of wounds, disease, or injury incurred while serving in a combat zone, he qualifies for the combat zone exclusion for the full month, provided combatant activities remain in the combat zone.⁴⁸

Enlisted personnel serving in a combat zone during any part of any month⁴⁹ may exclude from gross income all compensation received for active service for that month.⁵⁰ If the enlisted service member is hospitalized as a result of injuries, wounds, or disease incurred in a combat zone, all the military pay for the month is also excluded from gross income.⁵¹ The same compensation exclusion rule applies to commissioned officers;⁵² however, the exclusion from income is limited to the maximum enlisted amount.⁵³ "Maximum enlisted amount" means the

39. See I.R.C. § 7508(b). See also I.R.S. Notice 99-30, 1999-22 I.R.B. 1, Q & A #24.

40. I.R.C. § 7508(c).

41. I.R.S. Notice 99-30, 1999-22 I.R.B. 1, Q & A #17.

42. *Id.* Q & A #13.

43. I.R.C. § 219(f)(3).

44. I.R.S. Notice 91-17, 1991-23 I.R.B. 25; I.R.S. Notice 99-30, 1999-22 I.R.B. 1, Q & A #21; Major George Hancock, *Tax Note: IRA Contributions By Desert Storm Personnel*, ARMY LAW., Sept. 1991, at 35.

45. I.R.C. § 7508.

46. I.R.S. Notice 99-30, 1999-22 I.R.B. 1, Q & A #21.

47. I.R.C. § 112.

48. Treas. Reg. § 1.112-1(b)(3) (1999).

49. If a service member of the Armed Forces serves in a combat zone for any part of a month or is hospitalized for any part of a month as a result of wounds disease, or injury incurred while serving in the combat zone, the member is entitled to the exclusion for that month to the same extent as if the member has served in the combat zone for the entire month. Treas. Reg. § 1.112-1(b)(3).

50. I.R.C. § 112(a).

51. The exclusion is limited to hospitalization during any part of any month beginning not more than two years after the end of combat in the zone. *Id.* § 112(a)(2); Treas. Reg. 1.112-1(c).

highest rate of basic pay for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade applicable to enlisted members plus the amount of hostile fire or imminent danger pay to an officer for the month.⁵⁴ For 1999, commissioned officers may exclude up to \$4653 each month during any part of which they served in a combat zone.⁵⁵

While the service member is entitled to the combat zone exclusion, income tax withholding does not apply to the excludable compensation.⁵⁶ The Defense Finance and Accounting Service does not report these amounts to the IRS on Form W-2 as “wages, tips, other compensation.” Nevertheless, military pay for combat zone service is still subject to Social Security and Medicare taxes. The Form W-2 will report the excluded military pay in the boxes indicated “Social Security wages” and “Medicare wages and tips.” It will also show the excluded amount in block 13, as a code “Q” item.⁵⁷ Compensation for active service includes basic pay and certain other forms of compensation. The other types of compensation excluded under the rules include: pay for accrued leave earned in any month served in a combat zone;⁵⁸ a reenlistment bonus if the voluntary extension or reenlistment occurs in a month served in a combat zone;⁵⁹ and awards for suggestions, inventions, or scientific achievements members are entitled to because of a submission they made in a month they served in a combat zone.⁶⁰

As previously mentioned, service in direct support of military operations in a combat zone by performance of military

service in an area outside the combat zone, results in the service member receiving combat zone tax benefits if they are receiving hostile fire or imminent danger pay. Service members meeting the criteria receive the same combat zone compensation exclusion benefits as individuals serving in the combat zone.⁶¹

IRA Contributions by Personnel in a Combat Zone

Service members who serve an entire calendar year in a combat zone may have no taxable compensation or very little taxable compensation. If taxable compensation is less than \$2000 in a calendar year, the service member may not be eligible to make an IRA contribution.⁶² In general, a service member may contribute any amount to an IRA that is more than the smaller of the service member’s taxable compensation or \$2000.⁶³ Any contribution to an IRA that is more than the contribution limit is an excess contribution and must be withdrawn to avoid a six- percent excise tax.⁶⁴

A married service member filing a joint federal income tax return whose service in a combat zone results in less than \$2000 of taxable income, but whose spouse is working and earns more than \$2000 of taxable compensation can make contributions to his IRA up to the dollar limitation based upon the couples adjusted gross income.⁶⁵ Because of recent changes to the tax laws relating to spousal IRAs, it appears that the compensation limitation will only come into play for service members in the

52. The term “commissioned officer” does not include a commissioned warrant officer. I.R.C. § 112(c)(1).

53. *Id.* § 112(c)(5).

54. *Id.*

55. This represents the \$4503 payable monthly to the Sergeant Major of the Army and to the other senior enlisted advisors of the other services plus \$150 for imminent danger/hostile fire pay.

56. I.R.C. § 3401(a)(1).

57. Code “Q” represents military employee basic quarters, subsistence, and combat zone compensation.

58. Treas. Reg. § 1.112-1(b)(5) example 2 (1999); I.R.S. Notice 99-30, 1999-22 I.R.B. 1, Q & A #6.

59. Treas. Reg. § 1.112-1(b)(4), (5) example 5, 6.

60. Treas. Reg. § 1.112-1(b)(5) example 4.

61. *Id.* § 1.112-1(e).

62. I.R.C. § 219(b)(1)(B) (West 1999).

63. *Id.* § 219.

64. An excess payment is defined as any amount paid into an account by the taxpayer, spouse, or employer exceeding the maximum amount (the taxpayer’s taxable compensation or \$2000). Taxpayers must pay a 6% excise tax each year on the excess amount left in an account (unless withdrawn before the filing deadline). *See Shelley v. Commissioner*, 68 T.C.M. (CCH) 584 (1994). Interest earned on excess contribution generally must also be withdrawn and included in gross income, and is subject to a 10% tax for early withdrawal. A taxpayer cannot reduce an excess payment by applying it against an earlier year in which less than the full amount was contributed. If contributed during the next year, the taxpayer can reduce the contribution by applying it against the next year, but the annual contribution limit may not be exceeded. I.R.C. § 4973.

65. I.R.C. § 219(c).

combat zone if the *combined* includible compensation of a husband and wife for the tax year is less than the sum of their dollar limitations. The service member in the combat zone who has less than \$2000 taxable compensation for the calendar year can attribute his spouse's compensation to contribute to his IRA.⁶⁶

Student Loan Repayment Made on Behalf of Service Members in a Combat Zone or Qualified Hazardous Duty Area

Another issue that arises periodically concerns the taxability of student loan repayments made on behalf of service members in a combat zone as part of the DOD Loan Repayment Program.⁶⁷ Generally, a loan repayment under the program is compensation for services, but it is excluded as combat zone compensation for the months in the combat zone.⁶⁸ If a service member serves one or more days in a combat zone during a particular month, and is able to exclude compensation for that month as combat zone compensation, the service member is also entitled to exclude one-twelfth of the loan repayment corresponding to that month's service.

Separation Payments to Leave the Military Accruing While a Service Member is in a Combat Zone or Qualified Hazardous Duty Area

Compensation earned in a combat zone or qualified hazardous duty area does not include pensions and retirement pay.⁶⁹ Similarly, the Fourth Circuit Court of Appeals ruled that a separation payment for an agreement to leave military service early in lieu of retirement, which accrues while the service member

is on active duty in a combat zone, does not constitute compensation for active service in a combat zone, and is not excluded from gross income under the combat zone pay exclusion.⁷⁰ Separation payments do not fall within the definition of "compensation received for active service." A separation payment is not a payment for service in a combat zone, but rather in exchange for an agreement to leave military service early and forego any right to pension benefits.⁷¹ Therefore, separation payments do not fall within the combat zone compensation rules. The time and place of acceptance of the separation payment are irrelevant to this determination.⁷²

Exemption from Telephone Excise Tax

An excise tax is imposed on telephone or communications services, which are generally a percentage of amounts paid for the services.⁷³ The person paying for the communication services normally pays the tax.⁷⁴ The telephone excise tax is not imposed on any toll telephone service originating in a combat zone that is made by a service member.⁷⁵ If a service member uses a calling card or makes a collect call from a combat zone, a certificate of exemption must be furnished to the telephone service provider receiving payment for the call. The certificate, which is obtainable from the telephone service provider, should contain the signature and date of the telephone subscriber.⁷⁶ If there has been a payment of the federal excise tax for telephone services, a refund may be obtained either from the telephone service provider that collected the tax, or from the IRS by filing Form 8849 and providing an exemption certificate.⁷⁷

66. *Id.*

67. Pursuant to the DOD Educational Loan Repayment Program, the DOD may repay the greater of 33 1/3% or \$1500 of an enlisted member's student loans for each year of completed service performed by the borrower. The DOD makes the payments to the lending institution. 10 U.S.C.A. § 2171 (West 1999).

68. Letter, from Department of the Treasury, Internal Revenue Service, Office of Associate Chief Counsel (Employee Benefits & Exempt Organizations), to Lieutenant Colonel Thomas K. Emswiler, Deputy Chief, Legal Assistance Policy Division, Office of The Judge Advocate General, U.S. Army (12 Dec. 1997) available at <<http://www.jagcnet.army.mil/jagcnet/lalaw1.nsf/d890b173f60f083a852566110059ec15/143d50701075677285256563006bb314?OpenDocument>>.

69. I.R.C. § 112(c)(4).

70. *Waterman v. Commissioner*, 179 F.3d 123 (4th Cir. 1999). This opinion contained a well-reasoned dissent. As of the date of publication of this article, *Waterman* had not decided whether to appeal to the Fourth Circuit en banc.

71. *Id.*

72. *Id.*

73. I.R.C. § 4251(a).

74. *Id.*

75. *Id.* § 4253(d).

76. The certificate should contain the amount, the point of origin of call, the name of the service member in the combat zone, the name of the telephone service provider, and a statement that the charges are exempt from tax under I.R.C. § 4253(d). See I.R.S. Notice 99-30, 1999-22 I.R.B. 1, Q & A #30.

77. I.R.S. Notice 99-30, 1999-22 I.R.B. 1, Q & A #31.

Tax Benefits for Service Members Missing in Action or Prisoners of War

Several tax benefits accrue for service members that become prisoners of war (POW) or who are missing in action (MIA). A service member who becomes a POW or is MIA is considered to remain in active service in a combat zone and eligible for suspension of time for performing tax acts⁷⁸ pursuant to the combat zone tax rules previously discussed. The period of service in a combat zone includes the period of time during which a service member is entitled to benefits⁷⁹ pursuant to their status as missing.⁸⁰ A service member is in a "missing status" when he is officially carried or determined to be absent in a status of missing, missing in action, interned in a foreign country, captured, beleaguered, or besieged by a hostile force; or detained in a foreign country against his will⁸¹ and is entitled to continued pay and allowances based upon the missing status.⁸² A special rule applies to the spouse of a service member entitled to file a joint return for any taxable year when a service member is in a missing status⁸³ as a result of service in a combat zone.⁸⁴ The spouse is entitled to elect to delay filing a joint income tax return for a period up to two years after the date designated as the date of termination of combatant activities in the combat zone.⁸⁵

Generally, the combat zone compensation exclusion rules apply only if the service member performs active service in a combat zone. Periods during which the service member is absent from duties because of internment by the enemy, or other lawful cause, will be considered periods of active service.⁸⁶ A service member in a combat zone who becomes a POW or is MIA is deemed to continue in active service in the combat zone for the period for which the service member is treated as a POW

or as MIA for military pay purposes.⁸⁷ Therefore, the combat zone pay exclusion rules previously mentioned will be applicable to a service member that is MIA or a POW as a result of his time in the combat zone.

Death while Serving in a Combat Zone

Congress has attempted to ease some of the hardships on the survivors of service members who die as a result of service in a combat zone. The intent is to eliminate the need for the estate of a deceased service member to raise funds to satisfy an unpaid tax debt. A service member who dies while in a combat zone is entitled to an abatement of the income taxes for the tax year in which the death occurs.⁸⁸ The abatement also applies if the death occurred as a result of wounds, disease, or injury incurred while serving in a combat zone. The income tax liability of a deceased service member is canceled for the last taxable year, ending on the date of death. The income tax liability is also canceled for any prior taxable year ending on or after the first day the service member served in a combat zone.⁸⁹

Upon the death of a service member as stated above, the service member will not be assessed any amount of income tax for prior taxable years.⁹⁰ A service member who dies in a combat zone is entitled to forgiveness of taxes for previous years in which the statute of limitations is still open.⁹¹ The survivor is entitled to a refund of any taxes paid by the deceased service member in prior years for which the service member, if alive, could file an amended return. Generally, an individual can only file an amended return for three years.⁹²

78. See *supra* note 34 and accompanying text.

79. I.R.C. § 7508(d).

80. "Missing status" is defined at I.R.C. § 6013(f)(3).

81. 37 U.S.C.A. § 551(2) (West 1999).

82. *Id.* § 552.

83. I.R.C. § 6013(f)(3).

84. *Id.* § 112.

85. *Id.* § 6013(f)(1).

86. *Id.* § 112; Treas. Reg. § 1.112-1(b)(1) (1999).

87. *Id.*

88. I.R.C. § 692(a).

89. *Id.* § 692(a)(1); Treas. Reg. § 1.692-1(a)(2)(I).

90. I.R.C. § 692(a)(2); Treas. Reg. § 1.692-1(a)(3).

91. I.R.C. § 692(a)(2).

92. *Id.* § 6511(a).

For example, if a service member were to die in a combat zone in 1999, taxes owed or paid by that individual for 1996, 1997, 1998, and 1999 would be forgiven, provided that the survivor files the appropriate returns prior to 15 April 2000. If the survivor fails to file an amended return by 15 April 2000, the survivor could still receive a refund for tax paid by the decedent in 1997, 1998, and 1999, provided that the survivor files the appropriate returns prior to 15 April 2001.⁹³ The survivor will also be entitled to a refund of any income taxes that were withheld from the service member's income during the tax year in which the service member died. If there is or has been an assessment of unpaid tax, the assessment is abated.⁹⁴ In addition, if the amount of unpaid tax was collected after the date of death of the service member, the amount collected will be credited or refunded as an overpayment.⁹⁵

Where a service member has filed a joint return with his spouse, the tax abated, credited, or refunded will be prorated as a portion of the joint tax liability.⁹⁶ If the service member was in a missing status,⁹⁷ the date of the death will be considered to be the date on which a determination⁹⁸ of death is made.⁹⁹ However, there will not be a forgiveness, abatement, or refund of taxes beginning more than two years after the date of termination of combatant activities.¹⁰⁰ Therefore, where a service member has been MIA in a combat zone and is found to have died in an earlier year, the surviving spouse is allowed to treat the date of death as either the date on which the official determination is made that the service member died, or the date two

years after combatant activities in the combat zone have terminated, whichever is earlier.¹⁰¹

Special Estate Tax Exemption Available to the Estates of Service Members Dying in a Combat Zone or by Reason of Combat Zone Incurred Wound

There is a special exemption from estate taxation for the estates of service members who were citizens or residents of the United States and are killed in action in a combat zone, or died as a result of wounds, disease, or injury suffered while serving in a combat zone and in the line of duty by reason of a hazard that was incident to service.¹⁰² The estates qualifying for the exemption are exempt from the "additional estate tax."¹⁰³ The practical effect of this provision is a reduction of the estate tax by the amount of the "additional estate tax" for estates of service members killed in action in a combat zone while in active service.¹⁰⁴

Tax Consequences of Military Survivor Benefits Attributed to Death in a Combat Zone

While this article primarily addresses the effect of the combat zone designation on income taxation, periodically questions arise regarding the tax consequences of military survivor benefits. One of the major benefits available to the survivors of service members whose death was due to service-connected¹⁰⁵ causes is the Dependency and Indemnity Compensation

93. To claim the refund, the surviving spouse needs to file a Form 1040, or a 1040X for amended return with the IRS. Rev. Proc. 85-35, 1985-2 C.B. 433. In addition, Form 1310 and a certification from the DOD or the Department of State that the death was the result of terrorist or military action outside the United States must be attached. If the return in question is for a joint return, an apportionment must be done between the decedent's income and the surviving spouse's income. See Treas. Reg. § 1.692-1(b); Rev. Rul. 85-103, 1985-2 C.B. 176; Major Mark Henderson, *Tax Law Note: Assisting Survivors When Spouse Died in a Combat Zone*, ARMY LAW., May 1997, at 68.

94. *Id.*

95. *Id.*

96. The amount abated, credited, or refunded shall be an amount equal to the portion of the joint tax liability which is the same percentage of the joint tax liability as a tax computed upon the separate income of the service member is the sum of the tax computed upon the separate income of the service member and his spouse. Treas. Reg. § 1.692-1(b).

97. I.R.C. § 6013(f)(3)(A).

98. 37 U.S.C.A. § 556 (West 1999).

99. I.R.C. § 692(b).

100. *Id.* § 692(b)(2).

101. *Id.* § 2 (a)(3); Rev. Rul. 76-468, 1976-2 C.B. 202.

102. I.R.C. § 2201; Treas. Reg. § 20.2201-1 (1999).

103. I.R.C. § 2011(d) (Pursuant to the Internal Revenue Code of 1939, the "additional estate tax" was the difference between the "tentative tax" and the "basic tax." For most estates, the "additional estate tax," "tentative tax" or "basic tax" no longer applies. However, there is a "tax" and "credit for state death taxes." The net tax for estate tax purposes is the difference between the "tax" and the "credit for state death taxes," less any applicable credits. For purposes of the special exemption for service members, the "basic estate tax" is defined as 125 percent of the amount determined to be the maximum credit allowable for state death purposes. The additional tax is the difference between the regular estate tax and the basic estate tax, for service members dying after 1976. See Rev. Rul. 78-361, 1978-2 CB 246.).

104. See generally Rev. Rul. 78-361, 1978-2 C.B. 246.

(DIC).¹⁰⁶ Dependency and Indemnity Compensation is a monthly payment from the Department of Veterans Affairs to eligible persons¹⁰⁷ with other allowances added under certain circumstances (such as for additional dependents,¹⁰⁸ children over the age of eighteen and permanently incapable of self-support,¹⁰⁹ or if a surviving spouse is so severely disabled as to be housebound or in need of regular aid and attendance¹¹⁰). Currently, surviving spouses under DIC receive \$861 a month for life unless they remarry. Dependency and Indemnity Compensation is not includable in the decedent's gross estate,¹¹¹ and it is not taxable as income to the recipient.¹¹²

Service members who are on active duty and have completed twenty years of active federal service are automatically enrolled in the Survivor Benefit Plan (SBP).¹¹³ If a service member completes twenty years of active service and dies on active duty, his beneficiary becomes eligible to receive payments under SBP. The payments to the beneficiaries are taxable as ordinary income despite the death occurring in a combat zone.¹¹⁴ Generally, the present value of annuities, such as SBP are included in a decedent's gross estate.¹¹⁵ Therefore, the present value of the SBP annuity could be subject to federal estate taxation. However, when the SBP annuity is payable to a surviving spouse there would be no estate tax because of the unlimited marital deduction.¹¹⁶

Most service members have life insurance coverage through the Servicemen's Group Life Insurance (SGLI) program.¹¹⁷ The amount of SGLI benefits payable to the beneficiary is included in the decedent's gross estate for purposes of federal

estate taxation,¹¹⁸ but it is excluded from federal income taxation.¹¹⁹

Another payment to survivors is the death gratuity.¹²⁰ The death gratuity is payable if a soldier dies on active duty, or 120 days after release if the death results from disease or injury incurred while on active duty. The death gratuity is currently a lump sum payment of \$6000 made by local finance offices. The lump sum payment amount does not depend on the rank or years of service of the deceased. The tax consequences of the death gratuity payment are that the recipient would exclude \$3000 from ordinary income and \$3000 would be taxable as gross income to the recipient.¹²¹ Although the death gratuity may become payable because of a service members death in a combat zone, it will not be totally excluded from taxation.

Current Combat Zones and Qualified Hazardous Duty Areas

Operation Desert Storm (Persian Gulf Area) Combat Zone

President Bush signed an executive order on 21 January 1991, designating the Persian Gulf area a combat zone.¹²² The combat zone designation is still open, and will remain open until terminated by another executive order. Service members serving in the Persian Gulf combat zone are still eligible for the previously mentioned benefits. The executive order designated the following locations within the combat zone: the Persian Gulf; the Red Sea; the Gulf of Oman; the Gulf of Arden; that

105. 38 U.S.C.A. § 1312 (West 1999).

106. *Id.* §§ 1301-1322.

107. *Id.* §§ 1304, 1311, 1313, 1315, 1318.

108. *Id.* § 1313.

109. *Id.* § 1314.

110. *Id.* § 1311.

111. Priv. Ltr. Rul. 82-06-089 (Nov. 10, 1981).

112. I.R.C. § 134(b) (West 1999).

113. 10 U.S.C.A. §§ 1447-1460B (West 1999).

114. I.R.C. § 72(a), (n). Compensation earned in a combat zone does not include pensions and retirement pay. I.R.C. § 112(c)(4).

115. *Id.* § 2039; Priv. Ltr. Rul. 50-22.004 (June 1, 1990); Major Mark Henderson, *Taxation of the Survivor Benefits*, ARMY LAW., Oct 1995, at 29.

116. *Id.* § 2056.

117. 38 U.S.C.A. §§ 1965-1976 (West 1999).

118. I.R.C. § 2042.

119. *Id.* § 101(a).

120. 10 U.S.C.A. §§ 1475-1480 (West 1999).

portion of the Arabian Sea that lies north of ten degrees north latitude and west of sixty-eight degrees east longitude; and the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.¹²³ As previously mentioned, service members serving outside of the combat zone in direct support of the military operations within the Persian Gulf combat zone under conditions which they are entitled to hostile fire pay are entitled to the combat zone tax benefits.

*Qualified Hazardous Duty Area of Bosnia, Herzegovina, Croatia and Macedonia (Operation Joint Forge)*¹²⁴

Tax relief was legislatively extended to service members in the qualified hazardous duty area of Bosnia, Herzegovina, Croatia, or Macedonia if they are serving in any of those areas and receiving hostile fire or imminent danger pay.¹²⁵ Congress specifically designated these areas as qualified hazardous duty areas, which resulted in service members receiving all the federal tax benefits of a combat zone as if it was designated by a presidential executive order. Therefore, all of the combat zone tax benefits previously mentioned apply to this qualified hazardous duty area. Service members assigned outside of the qualified hazardous duty area in direct support of the military operations within this designated qualified hazardous duty area

under conditions for which they are not entitled to hostile fire pay are entitled to very limited combat zone tax benefits.¹²⁶

Operation Allied Force (Federal Republic of Yugoslavia (Serbia/Montenegro) and Albania) Combat Zone

On 13 April 1999, President Clinton issued an executive order designating a combat zone for the area of the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, the Ionian Sea north of the thirty-ninth parallel, and the airspace above the locations.¹²⁷ The executive order designated 24 March 1999 as the date of commencement of activities in the combat zone.¹²⁸ Service members serving outside of the combat zone in direct support of the military operations within the Operation Allied Force combat zone under conditions which entitled them to hostile fire pay are entitled to the combat zone tax benefits.¹²⁹ The combat zone designation is still open, and has not been terminated by another executive order. Service members serving in the Operation Allied Force combat zone are still eligible for the previously described benefits.

121. At one point in history, the death gratuity was entirely exempt from taxation. In 1955, the IRS ruled "amounts paid gratuitously to the beneficiary of a deceased officer or enlisted member of the Armed Forces . . . represents a gift by the United States and are, therefore, excludable from the gross income of such beneficiaries." Rev. Rul. 55-330, 1955-1 C.B. 236. In 1955, the death gratuity was equal to six months pay. Congress amended the death gratuity to make the payment \$3000 for all service members. In 1986, Congress enacted 26 U.S.C. § 134, which made the amount of the death gratuity on 9 September 1986, excludable from gross income. Adjustments to the death gratuity enacted after 9 September 1986 are not considered excludable. I.R.C. § 134(b)(3). Following Operation Desert Storm, Congress increased the death gratuity to \$6000. The increase was not excludable under I.R.C. § 134, but I.R.C. § 101(b) was applicable to exclude \$2000 of the \$3000 additional death gratuity enacted during the Persian Gulf conflict. However, I.R.C. § 101(b) was repealed for decedents dying after 20 August 1996. The result of the repeal of I.R.C. § 101(b) was to require the survivors of service members to pay tax upon the full post-1986 \$3000 increase in the death gratuity. Legislation has been proposed to restore the full military death gratuity to its historical excludable position, but at the time of publication of this article, the prospects for passage of the legislation were not positive.

122. Exec. Order No. 12,744, 56 Fed. Reg. 2661 (1991).

123. *Id.*

124. On 20 June 1998, Operation Joint Guard was terminated and Operation Joint Forge commenced. Operation Joint Forge is a follow-on operation to Operation Joint Guard, which was a follow-on operation to Operation Joint Endeavor. Service members serving in the geographic area of this qualified hazardous duty area are not affected by a change of the name of the operation. The IRS has stated that personnel serving under Operation Joint Forge will be treated the same as personnel serving under Operation Joint Endeavor, because Operation Joint Forge is the substantive continuation of Operation Joint Endeavor. Letter from Tommy G. Deweese, District Director for the International District, Internal Revenue Service, to Lieutenant Colonel Thomas K. Emswiler, Armed Forces Tax Council, Department of Defense, (17 July 1998), cited in STAFF OF JOINT COMM. ON TAXATION 106TH CONG., DESCRIPTION OF PRESENT LAW AND A PROPOSAL RELATING TO TAX RELIEF FOR PERSONNEL IN THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA/MONTENEGRO), ALBANIA, THE ADRIATIC SEA, AND THE NORTHERN IONIAN SEA (Comm. Print 1999) in WORLDWIDE TAX DAILY (Apr. 15, 1999) available at Westlaw 1999 WTD 72-14 (describing present law and proposing tax relief for personnel in the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, and the Northern Ionian Sea) [hereinafter Deweese Letter]. See also Information Paper, Office of The Judge Advocate General, U.S. Army, DAJA-LA, subject: Operation Joint Forge Tax Treatment (14 Aug. 1998) available at <<http://www.jagcnet.army.mil/jagcnet/lalaw1.nsf/d890b173f60f083a852566110059ec15/daf4ce7c63901d858525669100657a22?OpenDocument>>; Major Mark Henderson, *Tax Law Note: Bosnian Tax Relief*, ARMY LAW., May 1996, at 27.

125. Pub. L. No. 104-117, § 1(a)(2), (b), (e)(1), 109 Stat. 827 (1996).

126. Service members who are performing services as part of the operation outside of the United States while deployed away from their permanent duty stations in support of the qualified hazardous duty area are allowed an extension of time for performing most acts required by the Internal Revenue Code. I.R.C. § 7508. This was the only combat zone tax provision extended to these individuals. Pub. L. No. 104-117, § 1(a)(2), (b), (e)(1), 109 Stat. 827 (1996).

127. Exec. Order No. 13,119, 64 Fed. Reg. 18,797 (1999); I.R.S. News Release IR-99-43 (Apr. 26, 1999) available at <<http://www.fedworld.gov/pub/irs-news/ir-99-43.pdf>>.

128. Exec. Order No. 13,119, 64 Fed. Reg. 18,797.

*Operation Allied Force Qualified Hazardous Duty Area
(Federal Republic of Yugoslavia (Serbia/Montenegro),
and Albania)*

On 19 April 1999, President Clinton signed legislation designating a qualified hazardous duty area for the area of the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, and the northern Ionian Sea above the thirty-ninth parallel during the period that a service member is entitled to hostile fire or imminent danger pay for service performed in the designated area.¹³⁰ The areas mentioned were specifically designated as a qualified hazardous duty area and entitle service members to all the tax benefits of a combat zone as if it was designated by executive order by the President. All of the combat zone tax benefits apply to the specified geographic locations of

the qualified hazardous duty area. Service members serving outside of the combat zone in direct support of the military operations within this designated qualified hazardous duty area under conditions for which they are not entitled to hostile fire pay are entitled to very limited combat zone tax benefits.¹³¹

The area of operations for Operation Allied Force has been designated as both a combat zone by executive order¹³² and a qualified hazardous duty area by specific legislation.¹³³ Generally, the two provide the same tax benefits. However, the qualified hazardous duty area provides that service members performing services outside of the areas, but still a part of Operation Allied Force, would qualify for the suspension of time to perform various tax acts¹³⁴ during the periods in which they are not paid hostile fire or imminent danger pay provided the ser-

129. As previously indicated, the DOD, Assistant Secretary of Defense (ASD) (Force Management Policy (FMP)), delegated "direct support approval authority to the USCINCEUR for Joint Task Force Provide Comfort, Operation Joint Endeavor, and the Kosovo area of operations combat zone." Effective 31 May 99, the ASD (FMP) designated the following locations in Italy, Greece, and Hungary as Imminent Danger Pay areas:

Italy: Land areas of Aviano Air Base; Cervia Air Base; Gioia del Colle Air Base; Trapani Air Base; Vicenza (areas bounded within military installations); San Vito Air Station; Brindisi (areas bounded within military installations); NSA Naples; NAS Sigonella; and NSA Gaeta. Greece: NSA Souda Bay; Thessaloniki, land area within a 25 kilometer radius of 40°27'N, 22°59'E; waters of Themaikos Kolpos north of 40°15'N. Hungary: Taszar, land area within 50 kilometer radius of 46°23N, 17°55E. Also effective 31 May 99, the USCINCEUR determined that all personnel assigned, attached, or deployed to these locations, whether permanent duty or temporary duty, are in direct support of combat zone operations in Kosovo, that the reason they receive imminent danger pay is directly related to the combat zone operations, and that they are eligible for combat zone tax relief.

Tax Day (CCH), F99-162-001 (June 11, 1999).

Effective 15 September 1999, the ASD (FMP), terminated the following imminent danger area designations, including the airspace above:

The Adriatic Sea and the Ionian Sea north of the 39th parallel.

Italy: Land areas of Aviano Air Base; Cervia Air Base; Gioia del Colle Air Base; Trapani Air Base; Vicenza (all military installations and facilities); San Vito Air Station; Brindisi (all military installations and facilities); Naples (all military installations and facilities including the port of Naples); Sigonella and Augusta Bay (all military installations and facilities including the ports of Catania and Augusta Bay); Gaeta (all military installations and facilities including the port of Gaeta); and Bari (all military facilities).

Greece: Land area of Souda Bay (all military installations and facilities including the port of Souda Bay); Thessaloniki, land area within a 25 kilometer radius of 40°27'N, 22°59'E; waters of Themaikos Kolpos north of 40°15'N.

Hungary: Taszar, land area within 50 kilometer radius of 46°23N, 17°55E.

The action of the ASD (FMP) does not end combat zone tax benefits for those actually serving in the Operation Allied Force combat zone or qualified hazardous duty area. However, many serving *in direct support of military operations* in the Balkans lose *imminent danger pay* and consequently, combat zone tax benefits. To qualify for combat zone tax benefits, service members performing military service outside of a combat zone or qualified hazardous duty area must receive imminent danger pay. Therefore, service members serving in a direct support role in these areas no longer qualify for combat zone tax benefits (after 15 September 1999). This does not end such benefits for those actually serving in the combat zone or qualified hazardous duty area.

See Termination of Imminent Danger Pay (IDP) for Locations in Italy, Greece, and Hungary and for the Adriatic Sea and Ionian Sea and Combat Zone (visited Oct. 12, 1999) <<http://www.jagcnet.army.mil/jagcnet/lalaw1.nsf/?Open>>.

130. The Act is generally effective as of 24 March 1999. Pub. L. No. 106-21, 113 Stat. 34 (1999).

131. Service members who are performing services as part of the operation outside of the United States while deployed away from their permanent duty stations in support of the qualified hazardous duty area are allowed an extension of time allowed for performing most acts required by the Internal Revenue Code. I.R.C. § 7508. This was the only combat zone tax provision extended to these individuals. Pub. L. No. 106-21, 113 Stat. 34 (1999).

132. Exec. Order No. 13,119; I.R.S. News Release IR-99-43.

133. Pub. L. No. 106-21, 113 Stat. 34.

134. I.R.C. § 7508.

vices are performed both outside the United States and while deployed away from the service member's permanent duty station.¹³⁵ The combat zone designation for Operation Allied Force will remain open until terminated by another executive order. Likewise, the qualified hazardous duty area will remain in effect until Congress terminates it, or until the IRS determines that any future follow-on operation is not a substantive continuation of the qualified hazardous duty area.¹³⁶ Although the Operation Allied Force area of operations is commonly referred to as the Operation Allied Force Combat Zone, judge advocates must not forget that the area has been designated a combat zone and a qualified hazardous duty area. If one of the designations is terminated in the future, relief may still be available under the rules of the other designation.

Filing Tax Returns for Combat Zone Participants

Service members who qualify for extensions of time to file federal tax returns pursuant to the combat zone extensions can file their returns according to the filing extensions previously mentioned. In addition, service members can elect to file their returns before the end of the extension period. Service members in a combat zone can authorize someone else to file their taxes in their absence by executing a special power of attorney, a general power of attorney, or the Internal Revenue Form 2848 (Power of Attorney and Declaration of Representative).¹³⁷ When someone will act on behalf of a service member to file a tax return using a power of attorney, the form, or a copy of the power of attorney, must be attached to the tax return.

Service members using a combat zone or qualified hazardous duty area extension to file any type of tax form should write the name of the combat zone or qualified hazardous duty area at the top of any tax return, reply notice, or other correspondence sent by the IRS (for example, "Operation Desert Storm combat zone," "Operation Joint Forge combat zone," "Operation Allied Force combat zone").¹³⁸ Many resources are available to judge advocates for use as preventive law handouts to service members on how to "invoke" the combat zone extensions and properly notify the IRS (and other taxing authorities) of the combat zone application.¹³⁹

State Taxation Implications of Combat Zone Designations

Generally, most states follow the federal government's lead in granting tax relief for service members in combat zones or qualified hazardous duty areas. However, the manner in which the various states reach that determination, the amount of exclusion, and the amount of time extended to handle tax matters and file tax returns varies from state to state. Some states have enacted legislation, which in effect adopts the applicable sections of the federal Internal Revenue Code dealing with combat zone extensions, exclusions, and other benefits. Other states enact specific legislation dealing with each combat zone or qualified hazardous duty area designation.

The states are very diverse in the treatment of penalties and interest. Some states "waive" penalties and interest during the combat zone extension period. Other states "abate" or "forgive" penalties and interest during the combat zone extension period. A few states simply state in policy guidance that service members will not be charged interest and penalties during the combat extension period. Finally, some states simply do not provide explicit guidance regarding the treatment of interest and penalties.

While most states follow the lead of the federal government in providing combat zone tax relief, the judge advocate should avoid providing the general tax advice that "all states follow the federal government combat zone tax rules." This advice could lead to false assumptions that are contrary to applicable state laws. Judge advocates should also learn of the legal basis for a states' combat zone tax rules (based upon state statutes, administrative codes, and policy guidance) before providing tax advice to service members regarding individual state combat zone tax rules.

An appendix follows this article that summarizes state combat zone tax rules as of the date of publication. The summaries generally track the language found in the applicable state rules. While some states have extensive statutes, tax codes, and policy guidance regarding the combat zone tax rules, several of the states lack substantive guidance in all of the combat zone tax issues. The result is that the state summaries in the appendix appear to use some inconsistent terms (for example, for interest

135. Pub. L. No. 106-21, 113 Stat. 34; See Dewese Letter, *supra* note 124.

136. The first qualified hazardous duty area was designated in 1996 for Operation Joint Endeavor. That qualified hazardous duty area remains open at this time. Service members serving in the geographic area of this qualified hazardous duty area are not affected by a change of the name of the operation. The IRS has stated that personnel serving under Operation Joint Forge will be treated that same as personnel serving under Operation Joint Endeavor since Operation Joint Forge is the substantive continuation of Operation Joint Endeavor. Dewese Letter, *supra* note 124. Although there is no clear precedent for terminating of a qualified hazardous duty area, it appears Congress would have to terminate the qualified hazardous duty area by legislation or if a successor operation is not considered to be a "substantive continuation" of Operation Allied Force, the IRS may administratively determine that the operation has ceased and thus the qualified hazardous duty area has ceased.

137. *Internal Revenue Service Form 2848* (visited Oct. 1, 1999) available at <<http://ftp.fedworld.gov/pub/irs-pdf/f2848.pdf>>.

138. I.R.S. News Release IR-99-43 (Apr. 26, 1999) available at <<http://www.fedworld.gov/pub/irs-news/ir-99-43.pdf>>.

139. *Tax Relief for those Affected by Operation Allied Force*, Internal Revenue Bulletin 1999-22 I.R.B. 1, Notice 99-30 (visited Oct. 1, 1999) <<http://www.jagc-net.army.mil/jagcnet/lalaw1.nsf/d890b173f60f083a852566110059ec15/dae956d24ef22d9e85256775005e0e4d?OpenDocument>>; *IRS Publication 3, Armed Forces Tax Guide* (visited Oct. 1, 1999) <<http://ftp.fedworld.gov/pub/irs-pdf/p3.pdf>>.

and penalties, the various terms throughout the summaries include waiver, abatement, and no assessment).

Judge advocates can use this information as a “base line” from which to research applicable state combat zone tax provisions. State tax rules are constantly changing, and new guidance issued regularly by the state taxing authorities regarding combat zones. Judge advocates should use the Internet and electronic legal research information (such as LEXIS) to update state tax information before providing state combat zone tax advice.¹⁴⁰ Almost every state taxing authority maintains a web site where news releases, publications, and tax information can be obtained quickly and easily.¹⁴¹

Conclusion

Judge advocates must understand the basic concepts associated with the tax aspects of combat zones and qualified hazardous duty areas. The increase in deployment of service members to combat zones and qualified hazardous duty areas require active duty and reserve component judge advocates to educate service members on the tax benefits of the respective designations. The tax benefits for military personnel in deployments should be integrated into preventive law programs, family support briefings, and deployment briefings. Finally, tax assistance and preparation services are a part of the deployment arsenal of judge advocates serving in combat zones and qualified hazardous duty areas. Service members should remain focused on achieving the military mission while in a combat zone or qualified hazardous duty area. Judge advocates rendering tax assistance services allow service members to focus on mission accomplishment while providing a tremendous morale benefit.

140. Judge advocates researching state combat zone tax provisions should (at a minimum) research the following information: state statutes, state administrative codes, policy guidance (news releases and fact sheets), state tax authority web sites (*State Tax Agencies*, available at <<http://www.taxsites.com/agencies.html>>), tax service web sites (*State Tax Online*, available at <<http://www.tax.org/state/state.htm>>) and listings on LEXIS or Westlaw (for example, Commerce Clearing House, Tax Analyst, Bureau of National Affairs, Research Institute of America).

141. The following site lists web addresses for state taxing authorities: Kent Information Services, *Tax Resources Site Seeker*, (visited Oct. 1, 1999) <<http://www.kentis.com/siteseeker/taxusst.html>>.

APPENDIX

ALABAMA: Compensation paid to service members in a combat zone designated by an executive order is not subject to state income taxation.¹⁴² The exclusion applies equally to all ranks. Personnel serving in a combat zone are granted a 180-day income tax filing extension following the end of their service in the area. The period of service is further extended for those injured as the result of services for the period of any continuous hospitalization, provided the hospitalization does not exceed five years. The extensions also apply to the member's spouse. Service members serving in Bosnia, Croatia, Herzegovina, and Macedonia are granted an automatic filing extension of 180 days following the service member's termination of service in the qualified hazardous duty area. Alabama applies the combat zone exclusion rules to service members in the qualified hazardous duty area of Bosnia, Croatia, Herzegovina, and Macedonia.¹⁴³

ALASKA: Alaska currently has no state individual income tax.

ARIZONA: To the extent that military pay earned while serving in a designated combat zone is exempt from taxation under federal law, it also is exempt under Arizona law.¹⁴⁴ Unlike federal law, Arizona law provides that all of an officer's pay earned in a designated combat zone is exempt from state taxation.¹⁴⁵ Military members are not required to file Arizona tax returns until at least 180 days after they leave the combat zone. Applicable penalties and interest run from the 181st day until the tax due is paid. The extension also applies to the service member's spouse, providing a joint Arizona income tax return is filed. Service members serving outside the United States as a result of combat zone activities, but not inside the combat zone, are required to file Arizona tax returns within thirty days of their return to the United States, or by the date of their federal extension, whichever is later. Applicable penalties and interest run from the later of those dates until the tax due is paid.¹⁴⁶ Arizona also has a special provision regarding income taxes of service members upon death.¹⁴⁷

ARKANSAS: For enlisted personnel, gross income does not include compensation received while on active duty in a combat zone or while hospitalized as a result of serving in a combat zone to the same as extent as federal law.¹⁴⁸ With respect to commissioned officers, gross income shall not include compensation received while on active service in a combat zone or while hospitalized as a result of serving in a combat zone the same as federal law.¹⁴⁹ Although Arkansas does not have a specific state statute or regulation pertaining to combat zone extensions for tax actions and the filing of tax returns, generally, Arkansas grants an extension of time to file a state tax return corresponding to the federal extension.¹⁵⁰ Arkansas did grant an extension of time for filing income tax returns for service members in Bosnia for 180 days after the service member's "release from active duty" (or departure from combat zone).¹⁵¹

CALIFORNIA: In general, California follows federal tax law regarding combat pay exclusion and qualified hazardous duty area.¹⁵² California follows the federal combat zone tax provisions relating to extensions of time for performing certain tax acts.¹⁵³

COLORADO: Because income excluded for federal income tax purposes is also excluded for Colorado income tax purposes, military pay received while serving in a combat zone is also excluded from income in Colorado.¹⁵⁴ Colorado follows the income tax

142. ALA. CODE § 40-18-3 (1999).

143. 97 State Tax Notes 34-2 (Tax Analyst) 97-4840 (Feb. 20, 1997).

144. ARIZ. REV. STAT. § 43-1022(19) (1999).

145. *Id.*

146. Arizona Department of Revenue News Release, *Tax Relief For Combat Troops* (visited Oct. 1, 1999) <<http://www.revenue.state.az.us/news.htm>>.

147. ARIZ. REV. STAT. § 43-568 (1999).

148. ARK. TAX REG. § 1.26-51-306(a)(4) (1999).

149. *Id.*

150. ARK. CODE ANN. § 26-51-807(a)(2) (Michie 1999).

151. 97 State Tax Notes 9-4 (Tax Analyst) 97-519 (Dec. 2, 1996).

152. CAL. REV. & TAX. CODE § 17142.5 (West 1999); See State of California–Franchise Tax Board, *California Tax Information for Military Personnel Involved in Operation Allied Force, Operation Joint Endeavor or Operation Desert Storm*, F.T.B. Pub. 1021 (visited Oct. 1, 1999) <<http://www.ftb.ca.gov/forms/misc/1021.pdf>>.

153. CAL. REV. & TAX. CODE § 18571.

filing guidelines set by the IRS regarding service members. State law authorizes service members serving in a combat zone or in support of a combat zone a grace period of 180 days after such service for filing returns and paying their current and previous years taxes.¹⁵⁵ Interest and penalties are abated during this period.¹⁵⁶

CONNECTICUT: To the extent that military pay earned while serving in a designated combat zone is exempt from taxation under federal law, it also is exempt under Connecticut law.¹⁵⁷ The Connecticut income tax return of any individual in the U.S. armed forces serving in a combat zone or injured and hospitalized while serving in a combat zone is due 180 days after returning.¹⁵⁸ During the period of delay penalties and interest are not charged.¹⁵⁹ Combat zone tax provisions apply to service members in support of combat zones and qualified hazardous duty areas designated by Congress.¹⁶⁰ Therefore, service members serving in Bosnia and Herzegovina, Croatia or Macedonia, are eligible for the combat zone tax provisions and extensions.

DELAWARE: Delaware follows the federal income tax rules. Service members in combat zones may exclude the same amount of income as under federal law.¹⁶¹ Generally, the same extensions for filing tax returns and handling tax actions apply as under federal law, except the extension for filing a tax return is for a period of 195 days after departure from the combat zone.¹⁶²

DISTRICT OF COLUMBIA: To the extent that military pay earned while serving in a designated combat zone is exempt from taxation under federal law, it also is exempt under District of Columbia law.¹⁶³ The same extensions for tax filing and actions apply as under federal law.¹⁶⁴

FLORIDA: Florida income tax is limited in its application to corporations and other artificial entities. The tax does not extend to “natural persons.” Income tax does not apply to individual residents of Florida, and state income tax is not withheld.

GEORGIA: Georgia follows the federal rules on income. Service members who serve in a combat zone may exclude the same amount of income as under federal law.¹⁶⁵ The same extensions for tax filing and tax actions apply in Georgia as under federal law.¹⁶⁶

HAWAII: Hawaii follows the Internal Revenue Code in excluding from gross income the military pay earned while serving in a combat zone.¹⁶⁷ The same period of extension is allowed as under the federal law. The Hawaii provisions apply to personnel in a combat zone or in support of a combat zone. The service member will not be charged penalties or interest for a late return filed or tax payments made during the extension period.¹⁶⁸

154. COLO. REV. STAT. ANN. § 39-22-104(1) (West 1999).

155. *Id.* § 39-22-610.

156. Colorado Department of Revenue, Revenue Bulletin, No. 92-7, 1992 COLO. TAX LEXIS 27.

157. CONN. GEN. STAT. ANN. § 27-102a (West 1999); *Gavin Explains Tax Filing Extension For Military Personnel Serving In Kosovo Region* (Apr. 23, 1999) (visited on Oct. 1, 1999) <<http://www.state.ct.us/drs/news/23apr99.htm>>; *Connecticut Income Tax Information for Military Personnel and Veterans* (visited Oct. 1, 1999) <<http://www.state.ct.us/drs/pubs/ip922-4.html>>.

158. CONN. GEN. STAT. ANN. § 12-724.

159. *Id.*

160. *Id.* § 12-724(a)(2).

161. DEL. CODE ANN. tit. 30 §§ 376, 529, 1171 (1999).

162. *See* 96 State Tax Notes 616-61 (Tax Analyst) 96-9220 (Mar. 20, 1996).

163. D.C. CODE ANN. § 47-1803.2 (1999).

164. *Id.*

165. GA. CODE ANN. §§ 48-7-27, 48-7-37 (1999).

166. *Id.* § 48-7-36.

167. HAW. REV. STAT. §§ 235-1, 235-2, 235-2.3, 235-2.4, 235-2.5, 235-3, 235-7 (1999).

168. *Id.* § 231-15.8; Department of Taxation Announcement No. 99-7, *Extension of Time for Taxpayers Serving in Kosovo Conflict* (visited Oct. 1, 1999) <<http://www.state.hi.us/tax/99ann07.htm>>.

IDAHO: Idaho allows a deduction from taxable income for pay received for military services performed outside of Idaho.¹⁶⁹ Idaho follows federal law with respect to pay earned while in a combat zone and extensions of time to file returns. Returns are not due for individuals serving in a combat zone or hospitalized as a result of serving in a combat zone until 180 days after the period of qualified service or qualified hospitalization, whichever last occurs.¹⁷⁰

ILLINOIS: A subtraction (deduction) is allowed from state base income of any sum which is paid to a resident by reason of being on active duty in the armed forces (including service members missing in action or prisoner of war).¹⁷¹ In addition, Illinois automatically grants an “exclusion” benefit because the state income tax computation of taxable income begins with the federal adjusted gross income. A service member serving in a combat zone and subject to a filing extension in accordance with a Presidential executive order incurs no interest or penalty for the applicable tax year.¹⁷²

INDIANA: Military pay earned while on active duty in a combat zone is excluded from income, to the same degree as under federal law. Indiana follows federal law since state taxable income is based on the federal adjusted gross income.¹⁷³ Returns are timely filed within 210 days of the date the service member leaves the combat zone.¹⁷⁴ Interest and penalties that accrue on past liabilities owed by Indiana residents who serve in a combat zone are forgiven for the period of the extension.¹⁷⁵

IOWA: Income excluded under federal law is also excluded for Iowa income tax purposes.¹⁷⁶ Therefore, combat zone pay is excluded on the Iowa return because it is also excluded for federal income taxation purposes. The same rules apply for extensions for combat zones, qualified hazardous duty areas, and troops in direct support.¹⁷⁷ Service members are given an additional 180 days after leaving the hazardous-duty area or other areas where persons were in support of the troops in the hazardous area to file state tax returns.¹⁷⁸

KANSAS: Kansas follows the federal rules regarding active duty pay earned while in a combat zone, and pay excluded from income for federal purposes is also excluded for Kansas purposes.¹⁷⁹ The same rules apply for extensions for combat zones, qualified hazardous duty areas, and troops in direct support. Service members will be given an additional time period for filing state returns of 180 days after leaving the hazardous-duty area or other areas where persons were in support of the troops in the hazardous area. Kansas does not assess penalties or interest during the period of extension.¹⁸⁰

KENTUCKY: Any income earned in a combat zone that is exempt for federal tax purposes is also exempt for Kentucky tax purposes since the Kentucky state tax is based upon the federal adjusted gross income.¹⁸¹ Service members in a combat zone who are required to file a state tax return, and pay income taxes to Kentucky are not required to file the return or pay taxes until twelve months after the combat zone service.¹⁸² A taxpayer granted an extension of time for filing a federal income tax return is granted the same extension of time for filing a Kentucky income tax return.¹⁸³ An automatic extension was granted for those serving outside the United States in support of Operation Joint Endeavor in order to retain or renew any licenses, file any return, report or other document, pay

169. IDAHO CODE § 63-3022(J) (1999); IDAHO ADMIN. CODE § 35.01.01.121 (1999).

170. IDAHO CODE § 63-3033.06; IDAHO ADMIN. CODE § 35.01.01.815.

171. 35 ILL. COMP. STAT. ANN. § 5/203(a)(2)(E) (West 1999).

172. *Id.* § 5/602(b).

173. IND. CODE ANN. §§ 6-3-1-3.5, 6-3-1-8 (West 1999); IND. ADMIN. CODE tit. 45, r. 3.1-1-5 (1999).

174. Indiana Department of Revenue News Flash (May 25, 1999) available at <<http://www.ai.org/dor/pubs/press/5-25-99.html>>.

175. *Id.*

176. IOWA CODE ANN. § 422.1 (West 1999).

177. *Id.* § 422.21; IOWA DEPT. REV. & FIN. R. §§ 701-39.12(422), 701-39.14(422) (1999).

178. *Id.*

179. KAN. STAT. ANN. §§ 79-32,109, 79-32,117(1999).

180. *Id.* § 79-3221; New Release, *Tax Relief for Kansas Troops in Bosnia* (Mar. 22, 1996) available at <<http://www.ink.org/public/kdor/news/032296news.html>>.

181. KY. REV. STAT. ANN. § 141.010 (Michie 1999).

182. *Id.* § 141.215.; 103 KY. ADMIN. REGS. 17:041 (1999) available at <<http://www.lrc.state.ky.us/kar/103/017/041.htm>>.

any tax, fee or other charge, which became due or expiring during the period the service member was outside the United States. The extension expires ninety days after the individual returns to the United States.¹⁸⁴ A penalty is not assessed during the period of extension.

LOUISIANA: The Louisiana income tax calculation starts with federal adjusted gross income. Therefore, military pay earned while serving in a combat zone, which is also excluded from federal income, is excluded from Louisiana income.¹⁸⁵ Service members in the Persian Gulf area or associated with Operation Desert Shield were specifically granted tax relief to the full extent of such relief granted by federal law.¹⁸⁶ A reduction or waiver of interest or penalties, or any extension of time to pay or file that is granted for federal purposes due to participation in Operation Desert Storm is also granted for Louisiana individual income tax purposes. Tax relief was granted to military personnel in Bosnia by specific legislation to the full extent of such relief granted by federal law.¹⁸⁷ Besides the specific legislation, generally an extension of time to file a federal income tax return automatically extends time to file a Louisiana tax return.¹⁸⁸ Therefore, the combat zone extensions under federal law will operate to extend the time for filing a Louisiana return. Louisiana has a "Louisiana Military Powers of Attorney" code provision that "mandates" or allows a service member to designate someone to handle all state and local tax matters by way of a military power of attorney.¹⁸⁹

MAINE: Maine follows federal income tax provisions in determining what income is taxable. The taxable income of a service member from Maine is equal to the individual's federal adjusted gross income as defined by federal law.¹⁹⁰ Therefore, federal combat zone pay exclusion provisions apply to Maine taxation. As a general rule, a Maine income tax return must be filed on or before the date that a federal income tax return is due, without regard to whether an extension is granted.¹⁹¹ However, the state tax assessor can grant a reasonable extension of time to file,¹⁹² and in the case of Operation Allied Force, specifically announced that service members would have the number of days served in the combat zone plus 180 days after they leave the combat zone or their supporting operation to file their Maine returns.¹⁹³ All return examinations and collection actions are suspended during the extension period.¹⁹⁴ During this time, no interest or penalty will be added to any tax due.¹⁹⁵ The governor had made a similar announcement for peacekeeping in Bosnia.¹⁹⁶

MARYLAND: Any income earned in a combat zone that is exempt for federal income tax purposes is also exempt for Maryland tax purposes since state tax is based upon the federal adjusted gross income.¹⁹⁷ Besides the combat zone exclusion, military income received while serving outside the United States is subtracted from the federal adjusted gross income of a Maryland service member to determine Maryland adjusted gross income (up to \$15,000 annually). Any amount above \$15,000 declines dollar for dollar that the military income exceeds \$15,000 and at \$30,000 the modification is zero.¹⁹⁸ Time periods for filing income tax returns, estimated tax, refund claims, and tax appeals are extended similar to the federal combat zone extensions.¹⁹⁹

183. 103 KY. ADMIN. REGS. 15:050, available at <<http://www.lrc.state.ky.us/kar/103/015/050.htm>>.

184. Governor of Kentucky Exec. Order No. 96-243 (Feb. 26 1996).

185. LA. REV. STAT. ANN. § 47:293(1) (West 1999).

186. *Id.* § 47:292.1.

187. *Id.* § 47:292.2.

188. *Id.* § 47:103(D).

189. *Id.* § 9:3882.

190. ME. REV. STAT. ANN. tit. 36, §§ 5102, 5121 (West 1999).

191. *Id.* § 5227.

192. *Id.* § 5231.

193. Press Release, "Governor Announces State Tax Relief for Combat Zone Troops" (Apr. 1999) (visited Oct. 1, 1999) <<http://janus.state.me.us/revenue/yugo.pdf>>.

194. *Id.*

195. *Id.*

196. 96 State Tax Notes 66-65 (Tax Analyst) 96-9982 (Mar. 1996).

197. MD. CODE ANN., TAX-GEN. § 10-203 (1999).

198. *Id.* § 10-207.

MASSACHUSETTS: Massachusetts's gross income is based on federal gross income.²⁰⁰ Massachusetts adopted the federal Internal Revenue Code as of 1 January 1998.²⁰¹ Massachusetts excludes from income, to the same extent as under federal tax law, compensation earned by service members for service in a combat zone. Massachusetts also grants an extension of time to file income tax returns and pay taxes due for those serving in a combat zone. Similar to federal law, Massachusetts extends the income tax filing and payment deadlines similar to federal law for 180 days (including individuals serving in support of the armed forces who are serving in a combat zone during the designated period).²⁰² Massachusetts has issued specific guidance for service members for Kosovo and the Persian Gulf combat zones.²⁰³

MICHIGAN: Service members who are legal residents of Michigan, but maintain an abode elsewhere, are required to file a Michigan income tax return. Taxable income in Michigan is federally defined adjusted gross income.²⁰⁴ However, all military pay is exempt. Service members are allowed to deduct, to the extent included in adjusted gross income, compensation received for services in the armed forces.²⁰⁵ Michigan law provides that military personnel assigned to a combat zone on the income tax return due date may delay filing and paying any state income tax due until 180 days after the period of such service. The period of service includes continuous hospitalization due to injuries received while serving in the combat zone. These provisions apply to the spouse as well as the individual entitled to the benefits. Persons claiming a refund may file any time within four years following the due date of the return.²⁰⁶

MINNESOTA: Minnesota state tax is based upon the service member's federal taxable income as defined by federal law.²⁰⁷ Therefore, Minnesota follows the federal rules regarding pay earned in a combat zone.²⁰⁸ Minnesota state tax law is identical to federal tax law for extending the time for filing returns, paying taxes, claiming refunds, collecting taxes, claiming refunds, or appealing Tax Court decisions to the Supreme Court.²⁰⁹ Minnesota, like its federal counterpart, suspends assessing and collecting interest and penalties on income tax during the extended period.²¹⁰ The time is extended for assessing tax, penalty, and interest for an additional six months beyond the extension period and includes a further six-month period to commence a collection action on the assessment.²¹¹ Income tax is not imposed for the year of death when an individual dies while serving in the military.²¹² For prior taxable years, income taxes yet to be assessed will not be assessed, and if assessed and unpaid will be abated. Income taxes paid for any year in which the decedent was in active service will be refunded, but the refund claim must be filed within seven years after the return was filed. An uncodified provision was enacted to apply combat zone income tax extensions available to soldiers in the combat zone designated by the President, to military personnel directly supporting Operation Allied Force who are away from their permanent duty stations but are not within the combat zone.²¹³

199. *Id.* §2-111; *See* 96 State Tax Notes 70-38 (Tax Analyst) 96-9465 (Apr. 10, 1996).

200. MASS. GEN. LAWS ANN. ch. 62 § 2(a) (West 1999).

201. *Id.* § 1(c).

202. *Id.* § 81.

203. Technical Information Release 99-6 (Apr. 14, 1999), *Personal Income Tax Military Personnel Serving in Kosovo* (visited Oct. 1, 1999) <<http://www.mag-net.state.ma.us/dor/rul%5Freg/tir/99/tir99%5F6.htm>>; Technical Information Release 91-3 (Apr. 12, 1991), *Massachusetts Income Tax Filing Extensions for Military Personnel in the Persian Gulf*, 1991 MASS. TAX LEXIS 35.

204. MICH. COMP. LAWS ANN. § 7.557(130) (West 1999).

205. *Id.* § 206.30(1)(e).

206. *See* State of Michigan Department of Treasury, *Income Tax Exemption, Household Income Determination, Filing Requirements, and Income Tax Collection Deferment for Military Personnel Serving in Operation Desert Storm*, Revenue Administrative Bulletin 1991-2, 1991 MICH. TAX LEXIS 12 (Jan. 31, 1991).

207. MINN. STAT. ANN. § 290.01 subd. 19 (West 1999).

208. *See* Minnesota Department of Revenue, *Military Personnel, Income Tax Fact Sheet 5* (visited Oct. 1, 1999) <<http://www.taxes.state.mn.us/individ/factshts/individ/ifs5.pdf>>.

209. MINN. STAT. ANN. § 289A.39, subd. 1.

210. *Id.* § 289A.39, subd. 2.

211. *Id.* § 289A.39, subd. 3.

212. *Id.* § 289A.39, subd. 6.

MISSISSIPPI: Enlisted service members may exclude from gross income all pay received for any month they serve in a combat zone.²¹⁴ Officers may exclude up to \$500 per month.²¹⁵ In addition, all amounts paid to a service member for hazardous duty pay in a combat zone designated by executive order by the President is excluded from gross income.²¹⁶ Compensation received by persons who are POW/MIA is treated the same as under the federal Internal Revenue Code.²¹⁷ The state tax commissioner has the discretion to automatically recognize extensions of time authorized and granted by the IRS for filing annual income tax returns.²¹⁸

MISSOURI: A domiciliary who is a member of the Armed Forces is exempt from Missouri income tax if: (1) he maintained no permanent place of abode in the state during the tax year; (2) maintained a permanent place of abode elsewhere; and (3) did not spend more than thirty days of the tax year in Missouri.²¹⁹ Service members in a military conflict in which reserve components have been called to active duty under the authority of 10 U.S.C. § 672(d) or 10 U.S.C. § 673b or any such subsequent call or order by the President or Congress for any period of thirty days or more are relieved from various provisions of state law.

Any person with an indebtedness, liability or obligation for state income tax or property tax on personal or real property who is performing such military service, or a spouse of such person filing a combined return or owning property jointly, is granted an extension of time to handle tax actions similar to federal law.²²⁰ Any tax due is not subject to penalties or interest if paid within the 180-day period.²²¹ The period of service in a combat zone plus any period of continuous hospitalization outside of Missouri attributable to service in the combat zone plus the next 180 days are disregarded in determining whether various tax matters were performed within time limits.²²² Death of a service member in a combat zone or because of wounds, disease, or injury incurred while in a combat zone results in relief from of various taxes.²²³

For Operation Allied Force, the Department of Revenue specifically addressed tax relief for combat zone troops. For tax year 1998, members of the U.S. Armed Forces serving in Operation Allied Force in the Kosovo area and their spouses are granted an extension for filing their Missouri individual income tax returns and paying the tax due.²²⁴ The extension is until the later of fifteen days after any extension provided by the IRS or one year.²²⁵ Affected military personnel and their spouses have an extended time to file returns, pay taxes, or perform other acts related to their taxes, such as making contributions to individual retirement arrangements.²²⁶ During the extension of time, no interest or penalty charge will accrue and Missouri will not pursue any tax enforcement actions, such as an audit or collection activity.²²⁷

213. The effective date of this state provision was tied to the effective date of the similar federal law, which was 24 March 1999. See Minnesota Department of Revenue Bulletin (1999) available at <<http://www.state.mn.us/ebranch/mdor/laws/99bull/collect.html>>.

214. MISS. CODE ANN. § 27-7-15(4)(n) (1999); MISS. TAX COMM. INCOME TAX REG. § 704 (1999).

215. *Id.*

216. MISS. CODE ANN. § 27-7-15(4)(j).

217. *Id.* § 27-7-15(5).

218. *Id.* § 27-7-50; MISS. TAX COMM. INCOME TAX REG. § 111.

219. MO. ANN. STAT. § 143.101 (West 1999). See Paulson v. Missouri Dep't of Revenue, 961 S.W.2d 63 (Mo. 1998); Willenburg v. Director of Revenue, 1992 Mo. Tax LEXIS 159 (Mo. Admin. Hearing Comm'n Oct. 23, 1992).

220. MO. ANN. STAT. § 41.950.

221. *Id.*

222. *Id.* § 143.991.1.

223. *Id.* § 143.991.2.

224. News Release, Missouri Department of Revenue (June 30, 1999), *Tax Relief for Combat Zone Troops* (visited Oct. 1, 1999) <<http://dor.state.mo.us/news/kosova.htm>>.

225. *Id.*

226. *Id.*

227. *Id.*

The relief also applies to civilians in the combat zone who are in support of the combat operations, such as relief workers. The extension continues until 180 days after leaving the combat zone or the supporting operation, plus the number of days in the combat zone during the tax filing season after the air strikes began on 24 March 1999.²²⁸ Enlisted personnel will not pay income taxes on any pay received for any month they were in the combat zone.²²⁹ Officers in the combat zone may exclude up to the maximum amount excludable for enlisted personnel.²³⁰ In addition, no income taxes are withheld on such pay.²³¹

MONTANA: Salaries received by Montana residents serving on active duty in the regular armed forces and who entered into active duty from Montana are exempt from state income tax.²³² Military pay earned as a result of service performed under the authority of Title 10 of the United States Code is exempt from Montana taxation. Pay earned as a result of service performed under any other authority (for example Title 32 or Title 5) is subject to state tax.²³³ Montana defines “gross income” as the taxpayer’s gross income for federal income tax purposes as defined by federal law.²³⁴ Therefore, combat pay is excluded pursuant to this definition. Montana also applies its state “Soldiers’ and Sailors’ Relief” for any tax by the state on income. The collection of any state income tax is deferred for a period extending not more than six months after the termination of military service if the service member’s ability to pay the tax is materially impaired by their service. During the deferral, no interest or penalty will accrue due to nonpayment.²³⁵ If a service member is claiming exempt military wages, they need to attach verification, such as orders, which specify that the service member is serving under the authority of Title 10.

NEBRASKA: Nebraska adjusted gross income is based upon the service members federal adjusted gross income.²³⁶ Therefore, Nebraska follows the federal rules regarding pay earned in a combat zone. This exclusion also extends to periods of hospitalization resulting from injury or sickness suffered while serving in the combat zone. Members of the armed forces and support personnel serving in the combat zone will receive an automatic extension of time to file of 180 days after the later of the last day in a combat zone (or the last day the area qualifies as a combat zone), or the last day of any continuous qualified hospitalization for injury from service in the combat zone.²³⁷ The extension also applies to the service member’s spouse who wishes to file a joint return. A statement must be attached to the return noting the entitlement to the extension.²³⁸ Despite the extension of time for payment of tax, interest will be imposed from the due date of the return until the day payment is received.²³⁹

NEVADA: Nevada currently does not have a state individual income tax.

NEW HAMPSHIRE: New Hampshire does not tax military compensation. Any “full time” service member is exempt from payment of the residence tax.²⁴⁰ The exemption of service member’s salaries also applies to the New Hampshire “commuter income tax.”²⁴¹ A special provision applies to surviving spouses of service members killed in wars, conflicts, armed conflicts, or combat zones, and allows the survivor to receive a tax credit for the taxes due upon the surviving spouse’s real and personal property.²⁴²

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. MONT. CODE ANN. § 15-30-116(2) (1999).

233. MONT. ADMIN. R. § 42.15.111 (1999).

234. MONT. CODE ANN. § 15-30-101(7).

235. *Id.* §§ 15-30-313, 314.

236. NEB. REV. STAT. § 77-2714.01(1) (1999).

237. *Id.* § 77-27,123.

238. NEB. ADMIN. R. & REGS. § 22-014.02C (1999).

239. *Id.* § 22-014.03.

240. N.H. REV. STAT. ANN. § 72:3-a (1999).

241. *Id.* § 77-B:2.

242. *Id.* § 72:29-a.

NEW JERSEY: While New Jersey does not have a specific statutory or administrative provision relating to exclusion of income earned in a combat zone, the definition of “resident” and “nonresident” provides some state income tax relief. Residents are taxed on their entire gross income after deductions and personal exemptions. Nonresidents are taxed on their gross income only from New Jersey sources.²⁴³

Service members who are domiciled (defined as place the service member regards as permanent home) in New Jersey, but who meet all of the following conditions for the entire year, are considered nonresidents for state income tax purposes: (1) did not maintain a permanent home in New Jersey; and (2) maintained a permanent home outside of New Jersey; and (3) did not spend more than thirty days in New Jersey during the taxable year.²⁴⁴ A resident is also defined as an individual who is domiciled in New Jersey, or if not domiciled in New Jersey, has a permanent place of abode in New Jersey and spends more than 183 days of the tax year in the state (however, service members stationed in New Jersey, but New Jersey is not their domicile, are not residents under this definition). A service member maintaining an apartment or house for himself and family in another state, whether the dwelling is on a military base or private property, is considered a permanent place of abode. A barracks room, bachelor officers quarters, and billets are not considered a permanent place of abode.²⁴⁵ Compensation paid to service members not domiciled in New Jersey is excludable from income.²⁴⁶

If a domiciliary of New Jersey meets the three conditions for nonresident status, the service member should file a Form DD-2058-1, State Income Tax Exemption Test Certificate, with their finance officer to stop New Jersey income tax from being withheld from military pay. Service members and civilians providing support to the armed forces who are serving in a designated combat zone, qualified hazardous duty area, or were hospitalized outside the United States as a result of an injury received while serving in a combat zone are granted an extension of time for filing individual income tax returns and paying tax for the period of combat service or hospitalization, plus 180 days. The extensions of time for performing tax actions closely mirror the federal law.²⁴⁷ This extension is also granted to the taxpayer’s spouse who files jointly. No penalty, interest, or addition to tax will be assessed for late filing or late payment of the tax pursuant to this section.²⁴⁸ New Jersey also provides for specific relief for service members who die in a combat zone.²⁴⁹

NEW MEXICO: There is no provision in New Mexico law expressly exempting a service member’s combat zone compensation from taxation or extending tax filing deadlines. However, most income exempt under the federal Internal Revenue Code is exempt from New Mexico taxation. New Mexico adjusted gross income equals federal adjusted gross income.²⁵⁰ Therefore, combat zone pay is excluded from New Mexico taxation to the same extent as federal law. New Mexico allows for an extension of time to file state income taxes when an extension has been granted under the Internal Revenue Code. Automatic extensions (without giving notice to the state) are allowed for no more than four months from the date upon which payment of New Mexico income tax or the filing of any New Mexico income tax return is required.²⁵¹ For any income tax imposed upon a service member serving in a combat zone under orders of the President of the United States, interest accrues beginning the day after any applicable extension.²⁵²

NEW YORK: Combat zone pay is exempt from New York taxation to the same extent as it is from federal taxation because state adjusted gross income is defined as federal adjusted gross income.²⁵³ Recent legislation conformed New York’s tax relief provisions to the federal tax relief provisions granted to service members serving in a qualified hazardous duty area as part of Operation Allied Force.²⁵⁴ New York grants service members extensions of time for handling tax matters and interest on overpayments of tax from the

243. N.J. STAT. ANN. § 54A:2-1.1 (West 1999).

244. *Id.* § 54:8A-3.

245. *See* 98 State Tax Notes 65-14 (Tax Analyst) 98-10776 (Apr. 6, 1998).

246. N.J. STAT. ANN. § 54A:6-7.

247. *Id.* § 54A:9-16.

248. N.J. ADMIN. CODE § 18:35-6.2 (1999).

249. N.J. STAT. ANN. § 54A:9-16(c).

250. N.M. STAT. ANN. § 7-2-2A (Michie 1999).

251. *Id.* § 7-1-13E.

252. *Id.* § 7-1-67.

253. N.Y. TAX LAW § 612 (a) (McKinney 1999).

original due date similar to federal law.²⁵⁵ The same relief provisions apply to those hospitalized as a result of injury sustained while serving in a qualified hazardous duty area. Spouses of those qualifying under these provisions are also entitled to the relief.²⁵⁶ If a member of the armed forces or support personnel dies as a result of serving in a qualified hazardous duty area, no New York state personal income tax or gift tax will be imposed for any tax year during which the decedent served in the area.²⁵⁷ Further, the New York state estate tax will be forgiven. Using discretionary power, the New York State Tax Department is granting members of the armed forces and support personnel impacted by Operation Allied Force, who are not serving in a qualified hazardous duty area, a six-month extension of time to file their 1998 New York income tax return and to pay any tax due. However, interest will be due on any unpaid tax from the original due date of the return.²⁵⁸

NORTH CAROLINA: Combat zone pay is exempt from North Carolina taxation to the same extent as it is from federal taxation as state gross income is defined as federal gross income.²⁵⁹ Service members are granted an extension of time to file a return or take other tax actions concerning North Carolina state tax for any period during which the combat zone provisions apply.²⁶⁰ Interest and penalties are not assessed against a service member for any period that is attributable to a combat zone in determining the tax liability for federal tax purposes. North Carolina applies the same rules regarding income taxes of a service member upon death in a combat zone as federal law.²⁶¹

NORTH DAKOTA: All income excluded for federal income tax purposes is similarly excluded for North Dakota income tax purposes. North Dakota computes state income based on federal adjusted gross income and federal taxable income.²⁶² Therefore, since combat pay is excluded for federal purposes, it will be excluded for state taxation. A service member serving outside of the United States may defer the filing of an income tax return and the payment of the income tax until the federal income tax return is required to be filed. No penalty or interest will apply during the extension period.²⁶³

OHIO: Military pay and allowances received by service members that are not included in gross income under federal law are not included in Ohio adjusted gross income.²⁶⁴ Ohio also has exemptions for service members who die in a combat zone.²⁶⁵ Ohio statutes, administrative codes, and policy statements do not address the issue of extensions of time to file a state income tax return for service members in a combat zone.²⁶⁶ However, as a matter of practice, Ohio automatically grants an extension of time to file a state tax return when a federal extension has been granted. When the service member files the Ohio return, he should write the combat zone designation on the top of the return and the date of exit from the combat zone.

OKLAHOMA: Income excluded for federal income tax purposes is similarly excluded for Oklahoma income tax purposes. The term's "taxable income," "adjusted gross income," and "Oklahoma adjusted gross income" in state law are the same as defined under federal law in the federal Internal Revenue Code.²⁶⁷ Therefore, as combat pay is excluded for federal purposes, it is excluded for state

254. See New York State Department of Taxation and Finance News Release N-99-9 (May 3, 1999), *New York State Tax Information for Operation Allied Force (Kosovo) Personnel* (visited Oct. 1, 1999) <http://www.tax.state.ny.us/pubs_and_bulls/n-99-9.htm>.

255. N.Y. TAX LAW § 696.

256. *Id.* § 696(g).

257. *Id.* § 696(d).

258. See New York State Department of Taxation and Finance News Release N-99-9 (May 3, 1999), *New York State Tax Information for Operation Allied Force (Kosovo) Personnel* (visited Oct. 1, 1999) <http://www.tax.state.ny.us/pubs_and_bulls/n-99-9.htm>. See generally *New York State Tax Information for Military Personnel and Veterans*, Publication 361 (Jan. 1999) available at <<http://www.tax.state.ny.us/pdf/publications/income/pub361199.pdf>>.

259. N.C. GEN. STAT. §§ 105-134.1(1), (5), 105-228.90(b)(1a), 105-134.5 (1999).

260. *Id.* § 105-249.2.

261. *Id.* § 105-158.

262. N.D. CENT. CODE §§ 57-38-01.2, 57-38-30.3(1999).

263. *Id.* § 57-38-34.

264. OHIO REV. CODE ANN. §§ 5747.01, 5747.024 (Anderson 1999).

265. *Id.* § 5747.023.

266. *Id.* § 5747.08 (providing general information on filing of return); *id.* § 5703.35 (providing information on extensions); OHIO ADMIN. CODE §5703-7-01 (1999) (detailing information on time for filing returns); *id.* § 5703-7-05 (providing information on extensions, interest, and penalties).

taxation. Also, the salary or any other form of compensation received from the United States by a service member is deducted from taxable income during the time in which the person is detained by the enemy in a conflict, is a prisoner of war, or is missing in action and not deceased.²⁶⁸

Whenever the filing of a timely income tax return by a service member is made impracticable or impossible of accomplishment by reason of absence from the state of Oklahoma while on active duty, outside the United States, or confinement in a hospital within the United States for treatment of wounds, injuries or disease, the time for filing a return and paying an income tax is extended. Filing an extension precludes incurring liability for interest or penalties, to the fifteenth day of the third month following the month in which the service member does one of the following: returns to the United States, returns to Oklahoma if the extension is granted for reason of being absent from the state, or from the date of discharge from a hospital if the extension is granted due to the service members confinement for treatment of wounds, injuries, or disease. If an executor, administrator, or conservator of the estate of a service member is appointed, the time for filing a return and paying taxes is extended until the fifteenth day of the third month following the month of whichever event occurs the earliest. The tax commission has the discretion to grant any service member an extension of time for filing of income tax returns and payment of income tax without incurring liabilities for interest or penalties. The extension may be granted for good cause and for a period in excess of six months.²⁶⁹

OREGON: Oregon attempts to conform its state personal income taxation laws to the federal Internal Revenue Code.²⁷⁰ Terminology used in Oregon state taxation laws has the same meaning as those in federal income taxation.²⁷¹ “Taxable income” for purposes of Oregon taxation is the same as taxable income defined by federal law, with some additions, subtractions, and adjustments.²⁷² Therefore, as combat pay is excluded for federal purposes, it is excluded for state taxation.²⁷³ Specific legislation was passed for income exclusion for Operation Desert Shield. Compensation received for active service in the “Persian Gulf Desert Shield area” is excluded from gross income.²⁷⁴

In addition, if service members from Oregon are stationed outside of Oregon, they may be considered a nonresident for tax purposes and not subject to Oregon taxation of military pay. If a service member from Oregon does not have a permanent residence in the state for himself or his family for any part of the tax year, maintains a permanent residence outside of Oregon during the entire tax year, and spends less than thirty-one days in Oregon during the tax year, then the service member will be considered a nonresident for tax purposes and subject to Oregon taxation.²⁷⁵ Generally, Oregon allows an extension of time for filing tax returns equal in length to the extension periods allowed under the Internal Revenue Code and its regulations.²⁷⁶ The time for performing tax acts and filing returns are generally postponed by reason of service in a combat zone to the same extent as the federal law.²⁷⁷ Oregon will waive penalty and interest because of late filing and late payment of personal income tax in situations where the IRS does the same for persons who served in a combat zone.²⁷⁸ Interest is paid on refunds of service members in a combat zone from the due date of the original return.²⁷⁹ Oregon law also allows for a forgiveness of income tax liability for service members whose death is attributable to their service in a combat zone.²⁸⁰

267. OKLA. STAT. ANN. tit. 68 § 2353.1, .10, .11, .13 (West 1999).

268. *Id.* § 2358 D6.

269. *Id.* § 2358 D 5.

270. OR. REV. STAT. § 316.007 (1999).

271. *Id.* § 316.012.

272. *Id.* § 316.022.

273. OR. ADMIN. R. 150-314.870 (1999).

274. OR. REV. STAT. § 316.789.

275. *Id.* § 316.027.

276. *Id.* § 314.385(1)(c).

277. *Id.* § 314.870; OR. ADMIN. R. 150-316.789.

278. OR. ADMIN. R. 150-314.385(c)-(A).

279. OR. REV. STAT. § 314.870(2).

280. *Id.* § 314.870(3).

PENNSYLVANIA: Any compensation received by a service member serving in a combat zone is not taxable by Pennsylvania.²⁸¹ Combat zone extensions in Pennsylvania are similar to federal combat zone extensions and disregard interest, penalties, and additions to tax.²⁸² For Pennsylvania local earned income tax purposes, wages or compensation paid to persons on active military service, regardless of whether or not the person is a resident or nonresident individual and regardless of whether or not the service is performed within or outside the Commonwealth, is not taxable.²⁸³ Combat zone extensions for local taxation are similar to federal combat zone extensions.²⁸⁴ Pennsylvania law also allows for a waiver of local income tax liability for service members whose death occurs in a combat zone.²⁸⁵ Pennsylvania law uses the term combat zone and does not mention the term qualified hazardous duty area. However, Pennsylvania did announce that it would extend personal income tax deadlines to file and pay taxes for service members serving in Bosnia-Herzegovina, Croatia, and Macedonia for one hundred and eighty days after they leave the qualified hazardous duty area.²⁸⁶

RHODE ISLAND: Rhode Island income of a resident individual means adjusted gross income for federal income tax purposes, with some modifications.²⁸⁷ Likewise, the Rhode Island income of a nonresident is based upon the net amount of items of income entering his federal adjusted gross income derived from or connected with Rhode Island sources. Military compensation paid to a service member not domiciled in Rhode Island does not constitute income derived from Rhode Island sources.²⁸⁸ Rhode Island policy guidance indicates that federal income tax provisions governing armed forces pay while serving in a combat zone or in an area under conditions that qualify for hostile fire pay are applicable for state tax purposes. Therefore, pay relating to a combat zone is excluded to the same extent as federal law.²⁸⁹ An estate of a service member who has been classified as MIA shall be exempt from estate and transfer taxation.²⁹⁰

However, the Rhode Island tax statutes and regulations do not specifically deal with combat zone extensions.²⁹¹ For Bosnia, Rhode Island issued guidance that it would follow the lead of the IRS by granting an automatic extension to service members serving in "Operation Joint Endeavor." An automatic extension to file returns for service members serving in Bosnia on or after 15 March 1995 had an automatic extension of time to file their 1995 return until 15 December 1996. The extension ensured that service members would not be assessed either a failure to file or failure to pay penalty.²⁹² Despite the lack of written authority in Rhode Island for combat zone extensions, Rhode Island Division of Taxation is still applying the same rules as the federal combat zone extension for state taxation purposes.

SOUTH CAROLINA: South Carolina has applied the federal Internal Revenue Code to state tax laws.²⁹³ Adjusted gross income for South Carolina purposes means adjusted gross income for federal income tax purposes.²⁹⁴ Likewise, taxable income in South Carolina is computed as determined under the federal Internal Revenue Code.²⁹⁵ Therefore, to the extent combat pay is excluded for

281. PA. STAT. ANN. tit. 72 § 7301(d)(vii) (West 1999).

282. *Id.* § 7330.

283. PA. STAT. ANN. tit. 53 § 6913 (West 1999).

284. PA. STAT. ANN. tit. 72 § 4753-1(a) (West 1999).

285. *Id.* § 4753-1(b).

286. *Id.* § 7330. See News Release, Commonwealth of Pennsylvania, Department of Revenue, *Tax Deadline Extension for Troops in Hazardous Duty Areas* (Apr. 2, 1996) (visited Oct. 1, 1999) <<http://www.revenue.state.pa.us/news/press/1996/040296.htm>>.

287. R.I. GEN. LAWS § 44-30-12(a) (1999).

288. *Id.* § 44-30-32. See *id.* § 44-30-5 (defining "resident" and "nonresident").

289. 1998 General Instructions for RI-1040, Rhode Island Income Tax Return (visited Oct. 1, 1999) <<ftp://www.doa.state.ri.us/tax/forms/1998/pers/1040.pdf>>.

290. R.I. GEN. LAWS § 44-22-2.

291. *R.I. Personal Income Tax Reg. 90-10* (visited Oct. 1, 1999) <<http://www.tax.state.ri.us/regs/regs/pit90-10.htm>>.

292. *R.I. Tax News*, Spring 1996 (visited Oct. 1, 1999) <<http://www.tax.state.ri.us/news/vol10no3.htm>>.

293. S.C. CODE ANN. § 12-6-40 (Law Co-op. 1999).

294. *Id.* §§ 12-6-40(C), 12-6-1120.

295. *Id.* §§ 12-6-560, 1110, 1130.

federal purposes, it is excluded for state taxation. In general, when a taxpayer in South Carolina has been granted an extension of time to file a federal income tax return, the taxpayer is not required to apply to South Carolina for an extension of time to file a state return.²⁹⁶ In addition to the general rule, military personnel serving in Bosnia, Herzegovina, Croatia, and Macedonia have been granted at least 180 days after the service member departs the area to file state tax returns.²⁹⁷ For service members serving in Bosnia, Herzegovina, Croatia, and Macedonia, South Carolina will waive any penalties and interest that accrue because of any extension or suspension of collection activities.²⁹⁸ South Carolina issued guidance for the Operation Desert Storm combat zone and tax issues.²⁹⁹ For the Operation Desert Storm combat zone, South Carolina applied all the federal combat zone exclusions and extensions. As of 1 October 1999 South Carolina has not issued specific guidance on the most recent combat zones and qualified hazardous duty area extensions.

SOUTH DAKOTA: South Dakota currently does not have a state individual income tax.

TENNESSEE: Tennessee does not levy a personal income tax upon the earnings of its citizens. Tennessee income tax does not apply to salaries and wages. Tennessee does apply an income tax to individuals, partnerships, associations, and trusts that are legally domiciled in the state.³⁰⁰ A person who is legally domiciled in another state but maintains a place of residence in Tennessee for more than six months of the year is also subject to the tax. However, this does not apply to military personnel and full-time students legally domiciled in another state. The income (non-earnings, wages) a person receives while legally domiciled in Tennessee is subject to the tax. Most income from stocks, bonds, and notes receivable is taxable. Tennessee does provide for an exclusion of interest, penalties, and assessments of tax or liabilities for service members serving in a combat zone.³⁰¹

TEXAS: Texas currently has no individual income tax.

UTAH: Because Utah's tax system is tied to the federal tax system, combat pay that is exempt from federal income taxation will also be exempt from the state income tax.³⁰² Income excluded from federal adjusted gross income as combat pay is exempt from withholding.³⁰³ Utah does grant an extension of time to file tax returns for service members in a combat zone that coincides with the federal rules. The Utah return will be due on the same day as the federal return. Service members that are Utah residents and stationed outside the United States, are granted an extension of time to file returns to the fifteenth day of the fourth month after returning to the United States, or their discharge date, whichever is earlier.³⁰⁴ Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns.³⁰⁵ No penalty or interest is charged on unpaid tax provided service members file their returns and pay any taxes due within the applicable extended time period. The Utah Tax Commission will also suspend audits and collection activities for back taxes owed by service members serving in the combat zone.³⁰⁶

VERMONT: Vermont's income tax laws are intended to conform to the federal Internal Revenue Code.³⁰⁷ Adjusted gross income under Vermont tax laws means the federal adjusted gross income.³⁰⁸ Military pay for full-time active duty earned outside of the state

296. *Id.* § 12-6-4980(B).

297. S.C. REV. PROC. NO. 96-2 (June 12, 1996) available at <<http://www.dor.state.sc.us/search?NS-search-page=document&NS-rel-doc-name=/dor/policy/rp96-2.html&NS-query=96-2&NS-search-type=NS-boolean-query&NS-collection=Website&NS-docs-found=9&NS-doc-number=5>>.

298. *Id.*

299. S.C. Tax Information Letter #91-18 (July 1, 1991) (visited Oct. 1, 1999) <<http://www.dor.state.sc.us/search?NS-search-page=document&NS-rel-doc-name=/dor/policy/il91-18.html&NS-query=91-18&NS-search-type=NS-boolean-query&NS-collection=Website&NS-docs-found=12&NS-doc-number=10>>.

300. TENN. CODE ANN. § 67-2-101 (1999).

301. *Id.* § 67-2-114.

302. UTAH CODE ANN. § 59-10-117 (1999).

303. UTAH ADMIN. CODE R865-9I-47A (1999).

304. UTAH CODE ANN. § 59-10-516; UTAH ADMIN. CODE R865-9I-23C.

305. UTAH ADMIN. CODE R865-9I-47B.

306. Utah Tax Bulletin 3-91, (visited Oct. 1, 1999) <<http://www.tax.ex.state.ut.us/cgi-bin/folioisa.dll/bulletin/query=combat+!7Aone/doc/{@5222}?>>.

307. VT. STAT. ANN. tit. 32 § 5820 (1999).

308. *Id.* § 5811.

is exempt from Vermont taxation (limited amounts of pay of service members of the National Guard are exempted from state taxation).³⁰⁹ Therefore, based upon the nature of Vermont's individual tax law, as a minimum, service members from Vermont would have the same combat zone exclusions as under federal law. Service members in a combat zone or serving in an area treated by federal law as if it were a combat zone, are entitled to all the combat zone tax extensions to the same extent as under federal law.³¹⁰

VIRGINIA: Generally, Virginia's taxable income of a resident means federal adjusted gross income for the tax year, and specifically excludes combat pay for service members as provided by federal law.³¹¹ However, Virginia law was amended in 1998 to provide additional benefits beyond federal law. All military pay and allowances, to the extent included in federal adjusted gross income and not exempted while serving in a combat zone or qualified hazardous duty area, which is treated as a combat zone for federal tax purposes, are exempt from state taxation.³¹²

The practical effect of this new provision is to exclude all officer compensation earned in a combat zone or qualified hazardous duty area instead of only partial exclusion for state taxation. Virginia law specifically addresses military service in the former Yugoslavia. All military pay and allowances earned by service members for military service in any part of the former Yugoslavia, including air space above or any waters subject to related naval operations in support of Operation Joint Endeavor as part of the NATO Peace Keeping Force is excluded from state taxation until the service member completes service in the area.³¹³

Generally, an extension of time to file a Virginia tax return is granted to service members to the first day of the seventh month following the close of the taxable year for service members outside of the United States.³¹⁴ However, service members that qualify for the federal combat zone extension are allowed an extension by Virginia for filing income tax returns and paying the tax. The extension is for fifteen days after the date on which the federal period of postponement terminates, if the date is greater than one year from the original due date of the return.³¹⁵ This extension has also been specifically applied to service members in any part of the former Yugoslavia in support of Operation Joint Endeavor as part of the NATO Peace Keeping Force.³¹⁶

Virginia indicated that all estimated tax payments, installment payments, and collection activities will be suspended during these extension periods for Operation Allied Force.³¹⁷ Interest and penalties will not accrue during the extension period.³¹⁸ The basic rules have been applied for service members in the former Yugoslavia as part of Operation Joint Endeavor.³¹⁹ The Commonwealth of Virginia Department of Taxation issued a bulletin in regards to the Operation Desert Storm combat zone. However, service members must make sure to apply the recent tax law changes to the guidance issued for Operation Desert Storm.³²⁰

WASHINGTON: Washington currently does not tax individual income.

WEST VIRGINIA: Combat zone pay is exempt from West Virginia taxation to the same extent it is from federal taxation as state adjusted gross income is defined as federal gross income as defined under federal law.³²¹ West Virginia's requirement to withhold taxes from wages does not apply to payments by the United States to service members.³²² West Virginia has not enacted a general

309. *Id.* § 5823.

310. *Id.* § 5830d.

311. VA. CODE ANN. § 58.1-322A (Michie 1999).

312. *Id.* § 58.1-322 D 21.

313. *Id.* § 58.1-322 D 18.

314. *Id.* § 58.1-344 D.

315. *Id.* § 58.1-344 F 2.

316. *Id.* § 58.1-344 G.

317. Commonwealth of Virginia, Department of Taxation, Tax Bulletin, No. 99-5 (May 1, 1999), 1999 WL 313892 (Va. Dept. Tax.).

318. *Id.*

319. Commonwealth of Virginia, Department of Taxation, Tax Bulletin, No. 96-2 (Apr. 23, 1996), 1996 Va. Tax LEXIS 89.

320. Commonwealth of Virginia, Department of Taxation, Tax Bulletin, No. 91-3 (Apr. 1, 1991), 1991 WL 352435 (Va. Dept. Tax.).

321. W. VA. CODE § 11-21-12(a) (1999).

combat zone extension provision. West Virginia law allows an automatic extension of time to file a tax return where there is an extension of time for federal income tax purposes.³²³ West Virginia law requires taxes shown due on an annual return to be paid on or before the due date of the return, determined without regard to extensions of time for filing a return. Nevertheless, West Virginia law allows the tax commissioner to grant extensions of time to file or pay West Virginia personal income tax.³²⁴ Extensions of time to pay are limited by the law to not more than six months. However, in the case of persons who are outside of the United States, extensions of time for paying West Virginia personal income tax are not limited to a set period of time.³²⁵

For service members participating in peacekeeping efforts in Bosnia, Herzegovina, Croatia and Macedonia, extensions of time for paying state personal income tax and to file personal income tax returns have been granted to all persons who are subject to the extensions of time for filing or paying federal income taxes allowed under federal law. For service members participating in peacekeeping efforts in Bosnia, Herzegovina, Croatia, and Macedonia the extensions of time to pay the West Virginia personal income tax and to file personal income tax returns granted apply to the current tax period and future periods until revoked or otherwise amended.³²⁶ Statutory authority exists for Operation Desert Shield, which applies state law very similar to federal combat zone extensions for the Persian Gulf area.³²⁷ West Virginia law is similar to federal law regarding income taxes of service members that die while on active duty in a combat zone or as a result of wounds, disease or injury incurred while so serving and for service members MIA.³²⁸

WISCONSIN: Wisconsin adjusted gross income means federal adjusted gross income with some modifications.³²⁹ For purposes of withholding taxes, Wisconsin wages does not include remuneration paid for active service in a combat zone or during hospitalization as a result of wounds, disease, or injury incurred while in a combat zone.³³⁰ Therefore, military pay, that is exempt for federal tax purposes is also exempt for Wisconsin taxation.³³¹ A specific statute relating to Operation Desert Storm combat zone is still found in the Wisconsin statutes. Under the statute, all enlisted compensation and up to \$500 per month of officer compensation earned in the Operation Desert Storm Combat Zone is specifically subtracted from gross income under Wisconsin law.³³²

While this specific combat zone provision is still in the Wisconsin statutes, it appears that the current general definition of adjusted gross income and the policy guidance recently issued have effectively amended the Operation Desert Storm officer exclusions. The monthly compensation of service members is excluded from gross income if the taxpayer served in a combat zone similar to federal law. Areas in eastern Europe, including the countries of Croatia, Bosnia, Herzegovina, Serbia, Macedonia, Montenegro, Hungary, Austria, Slovakia, Czech Republic, and Slovenia, are currently designated as a hazardous duty area, and the exclusion is available for military personnel serving in that area. The exclusion for commissioned officers is limited to the maximum amount that enlisted personnel may exclude.³³³ Wisconsin allows the same combat zone pay exclusion for qualified hazardous duty areas.³³⁴ Any extension of time allowed under federal law for filing a federal income tax return also applies to Wisconsin income tax returns.³³⁵ Taxes

322. *Id.* § 11-21-71.

323. W. VA. CODE STATE R. tit. 110, §§ 52.1.1.1, 52.1.1.1 (1999).

324. W. VA. CODE § 11-21-52.

325. *Id.* § 11-21-57.

326. West Virginia Department of Tax and Revenue, Administrative Notice 96-24, *Personal Income Tax—Implementation of West Virginia Personal Income Tax Relief for Military Personnel Deployed in Bosnia and Herzegovina, Croatia and Macedonia, Pursuant to the Provisions of Pub. L. No. 104-117*, 1996 W. Va. Tax LEXIS 26 (June 10, 1996).

327. W. VA. CODE § 11-21-61.

328. *Id.* § 11-21-62.

329. WIS. STAT. ANN. § 71.01(13) (West 1999).

330. *Id.* §§ 71.63(6)(a), 71.19(5)(a).

331. Wisconsin Department of Revenue, Publication 104 (Oct. 1998), *Wisconsin Taxation of Military Personnel*, (visited Oct. 1, 1999) <<http://www.dor.state.wi.us/pubs/98pb104.pdf>>.

332. WIS. STAT. ANN. § 71.05(6)(b)(13), (14).

333. Wisconsin Department of Revenue, *Wisconsin Individual Income Tax, Individual Summary, 1998*, (visited Oct. 1, 1999) <<http://www.dor.state.wi.us/ra/sum98ind.html#Combat Pay>>.

334. *Id.*; Wisconsin Department of Revenue, “*Wisconsin Taxation of Military Personnel*,” Publication 104 (Oct. 1998).

that are payable upon the filing of the return do not become delinquent during the period of the extension, but are subject to interest at the rate of twelve percent per year during the period.³³⁶

WYOMING: Wyoming currently does not have an income tax.

335. WIS. STAT. ANN. § 71.03(7).

336. *Id.* §§ 71.03, 71.85.