The original documents are located in Box 19, folder "1/2/75 HR8214 Tax Relief for Prisoners of War and Those Missing in Action" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: January 4

January 1, 1975

Posted 1/3

To Archives 1/3

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill H.R. 8214 - Tax Relief for Prisoners of War and Those Missing in Action

Attached for your consideration is H.R. 8214, sponsored by Representative Mills, which modifies the tax treatment of members of the U.S. Armed Forces and civilian employees who are prisoners of war or missing in action.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign H.R. 8214 (Tab B).

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8214 - Tax relief for prisoners of war and those missing in action
Sponsor - Rep. Mills (D) Arkansas

Last Day for Action

January 4, 1975 - Saturday

Purpose

Modifies the tax treatment of members of the U.S. Armed Forces and civilian employees who are prisoners of war or missing in action.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval
Department of Defense	Approval (Informally)

Discussion

The enrolled bill originated as an Administration proposal which was submitted by the Treasury Department to the Congress on February 21, 1973. It would resolve several problems that have arisen for servicemen, their families, and the families of deceased servicemen by extending and liberalizing various benefits provided under the tax laws. It differs from the Administration's bill principally by (a) limiting the benefits involved to taxable years beginning two years after the termination of combatant activities, and (b) adding a benefit for crew members of the U.S.S. Pueblo.

Provisions of current law

The Internal Revenue Code provides special rules for members of the Armed Forces and civilian employees to cover hardships with respect to filing income tax returns and claims for refund and the payment of their taxes during their assignment to a combat zone.

First, an income tax exclusion is provided to a service member for any month during which he either served in a combat zone or was hospitalized as a result of wounds, disease, or injury received while serving in a combat zone. (This exclusion benefit only applies during the period of actual combat activity.) In the case of enlisted personnel, the exclusion applies to all of their pay; for officers the exclusion applies to the first $500 per month of their pay.

Military personnel and civilian employees who served in the Vietnam conflict and are listed as prisoners of war or missing in action are entitled to an income tax exclusion for all of their pay received while they are in a missing status.

Federal income taxes are forgiven in the case of service members who die while serving in a combat zone or as a result of wounds, disease, or injury received while assigned to a combat zone. However, where a serviceman is reported in a missing status for some time and it is subsequently determined that he actually died at an earlier time, his income for taxable years after his actual death is subject to tax.

A spouse may file a joint return for the period of her husband's service in a combat zone. The service member is allowed an extension of time for filing tax returns, paying taxes, and filing claims for tax credits or refunds. A surviving spouse is accorded a special status with lower tax rates for the two taxable years following the year of her husband's death.

Finally, an individual must be serving during an induction period in order to be eligible for the combat pay exclusion as well as certain other benefits.

Provisions of H.R. 8214

The enrolled bill would amend the provisions of existing law as follows:

-- Military personnel who are hospitalized with combat wounds could exclude their military pay during the period of hospitalization up to two years after all combatant activities had ceased. (Section 2)

-- Widows would be eligible for surviving spouse tax treatment (i.e., lower tax rates) for the two years following the year in which their husbands' missing status is changed, rather than the two years following the year of actual death. (Section 3)

-- The current provision which forgives Federal income tax liability for individuals missing in action would be extended to cover the entire period of their missing status, even if it is subsequently determined that they actually died at an earlier time. (Section 4)

-- Existing law would be clarified to ensure (a) that spouses are granted the same time-extension privileges as now provided to service members for filing returns and claims and paying taxes; and (b) that spouses of individuals in missing status may file joint returns during the full period of their missing status, even if it is subsequently determined that they had been killed in action in a prior year. (Section 5)

-- The requirement that servicemen must be serving during an "induction period" in order to be eligible for certain tax benefits would be deleted. This change is necessitated by the fact that the Military Selective Service Act of 1967 has expired and there is no longer an induction period. (Section 6)

-- Combat zone tax exclusion benefits would be extended to crew members of the U.S.S. Pueblo who were illegally detained as a result of the North Korean seizure in 1968. (Section 7)

Treasury objects to singling out this small group of individuals for retroactive preferred treatment while denying it to others who may be similarly detained.

Revenue impact of H.R. 8214

The reports accompanying this legislation by both the House Ways and Means Committee and the Senate Finance Committee anticipated that its enactment would decrease revenues by approximately $4 million spread over the next few years, based upon the present law as it operated on June 30, 1973. However, with the lapse

of the "induction period" (a requirement for certain benefits) as of that date, there would have been an increase in receipts of approximately $12.5 million. The effect of H.R. 8214 would be to offset this revenue increase.

Wilfred H. Rommel

Assistant Director for
Legislative Reference

Enclosures

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

December 27, 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This is in response to your request for the views of the Department of Defense with respect to the enrolled enactment of H. R. 8214, 93rd Congress, an Act "To modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisioners of war or missing in action, and for other purposes."

The primary purpose of this bill is to assure humane and equitable tax treatment in certain complex tax situations involving prisoners of war or those carried in missing status as a result of the Vietnam conflict and/or their survivors. Provisions of the bill will accomplish the following:

- Extend the combat zone tax exclusion benefits of 26 U. S. C. 112 to cover military pay received by servicemen up through the month hospitalization ceases even if all combatant activities in Vietnam have terminated, not to extend beyond two years after enactment of the bill.

- Forgive the income tax liability of a serviceman who dies while in missing status for the entire period he was missing even though it is determined that death occurred at an earlier date than that on which such determination is made.

- Allow the spouse of an individual who is listed in a missing status to file a joint return for such year even if it is subsequently determined that he was killed in an earlier year.

- In general, permit the spouse of a serviceman and the representative of his estate to defer filing any returns or paying any taxes until after the serviceman returns or his missing status is terminated.

- Strike the "induction period" provisos from sections 112, 692, 1034(h), and 2201 of the Internal Revenue Code of 1954, effective July 1, 1973, the day following expiration of the draft authority. Section 112 pertains to combat zone tax exclusion, section 692 relates to forgiveness of taxes if death occurs while serving in a combat zone, section 1034(h) extends from one to four years the time required for military members to report the capital gain from the sale of a personal residence, or purchase a new residence and section 2201 increases from $60,000 to $100,000 the amount in excess of which is includable for estate tax purposes of military members killed in a combat zone.

- Extend combat zone tax exclusion benefits to those illegally detained in 1968 by North Korea as a result of the Pueblo incident.

The enrolled enactment represents the bill as originally passed by the House of Representatives. It does not include certain technical amendments contained in the Senate version of the bill, amendments supported by the Department of Defense. One such amendment would have permitted termination of the designation of Vietnam as a combat zone without jeopardy to the tax benefits of members continued in a missing status. These minor shortcomings are more than offset by the overall value of the bill. The Department of Defense thus strongly endorses this legislation and recommends that the President approve H. R. 8214. Approval will not result in any increase in budgetary requirements in the Department of Defense.

Sincerely,

Martin R. Hoffmann

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

DEC 26 1974

Dear Sir:

This is in response to your request for the Treasury Department's views and recommendation on the enrolled bill H. R. 8214, which modifies the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action. The enrolled bill expands existing tax benefits provided for the relief of such persons.

Section 112 of the Internal Revenue Code currently exempts from gross income combat pay received for active service in the Armed Forces of the United States for any month in which the serviceman served in a combat zone or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone. This exclusion may not exceed $500 per month for commissioned officers. Section 2 of the bill would extend this benefit for a period of hospitalization which does not exceed two years after the date of termination of combat activities. This provision seeks to eliminate the unfair treatment of those servicemen hospitalized, as a result of injury incurred in a combat zone in the waning days of the Vietnam conflict, for a period which extended beyond the date of termination of combatant activities.

Section 3 of the bill amends section 6013 of the Internal Revenue Code which currently permits the spouse of a deceased serviceman to file a joint return for the year in which he died. The bill provides that the spouse of a serviceman or civilian who is listed in a missing status may file a joint return for such year even if it is subsequently determined that he was killed in an earlier year. This provision is limited to taxable years which begin before two years after the date of termination of combatant activities in the combat zone.

Section 4 of the bill would amend section 692 of the Internal Revenue Code which currently forgives income taxes of servicemen who die while in active service in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone. Under present law, the forgiveness applies to the year of death and prior years of service in the combat zone. The bill would extend this benefit and forgive the income tax liability of a serviceman who dies while in missing status for the entire period he was missing. The spouse of such a serviceman would be permitted to claim the benefits of this provision within one year from the date of enactment of the bill notwithstanding any statute of limitations. The provision is, however, limited to taxable years beginning before two years after the date of termination of combatant activities.

Section 5 of the bill would amend section 7508 of the Internal Revenue Code which currently provides that in determining whether an individual has timely performed enumerated acts required under the federal tax laws, the period for which such individual serves in a combat zone, plus any period of continuous hospitalization outside the United States as a result of an injury received in a combat zone, and the next 180 days thereafter, are to be disregarded. The bill would extend this benefit to the spouse of any such individual for any taxable year beginning before two years after the termination of combatant activities.

Finally, the bill extends all of the benefits to which a serviceman or civilian in a missing status during the Vietnam conflict is entitled to the members of the Pueblo crew illegally detained during 1968 by the Democratic Peoples Republic of Korea.

The Administration proposed a bill which is substantially the same as H. R. 8214. The only significant differences are that (1) H. R. 8214 limits the benefits to taxable years beginning before two years after the date of termination of combatant activities, and (2) H. R. 8214 adds the provision relating to the Pueblo crew. The Department agrees with the

two year limitation but objects to the provision extending the benefits to the Pueblo crew. However, the Department supports the bill on the whole and recommends that the President approve it.

Sincerely yours,

s/ Frederic W. Hickman

Frederic W. Hickman
Assistant Secretary

Director, Office of Management and Budget
Attention: Assistant Director for
Legislative Reference, Legislative
Reference Division
Washington, D. C. 20503

To: M. Lynch
12-30-74
1:00 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8214 - Tax relief for prisoners of war and those missing in action
Sponsor - Rep. Mills (D) Arkansas

Last Day for Action

January 4, 1975 - Saturday

Purpose

Modifies the tax treatment of members of the U.S. Armed Forces and civilian employees who are prisoners of war or missing in action.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval
Department of Defense	Approval (Informally)

Discussion

The enrolled bill originated as an Administration proposal which was submitted by the Treasury Department to the Congress on February 21, 1973. It would resolve several problems that have arisen for servicemen, their families, and the families of deceased servicemen by extending and liberalizing various benefits provided under the tax laws. It differs from the Administration's bill principally by (a) limiting the benefits involved to taxable years beginning two years after the termination of combatant activities, and (b) adding a benefit for crew members of the U.S.S. Pueblo.

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Finally, an individual must be serving during an induction period in order to be eligible for the combat pay exclusion as well as certain other benefits.

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Treasury objects to singling out this small group of individuals for retroactive preferred treatment while denying it to others who may be similarly detained.

Revenue impact of H.R. 8214

The reports accompanying this legislation by both the House Ways and Means Committee and the Senate Finance Committee anticipated that its enactment would decrease revenues by approximately $4 million spread over the next few years, based upon the present law as it operated on June 30, 1973. However, with the lapse

of the "induction period" (a requirement for certain benefits) as of that date, there would have been an increase in receipts of approximately $12.5 million. The effect of H.R. 8214 would be to offset this revenue increase.

Wilfred H. Rommel

Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

WASHINGTON

December 31, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: Vern Loen for MAX L. FRIEDERSDORF

SUBJECT: Action Memorandum - Log No. 910

The Office of Legislative Affairs concurs with the Agencies that the enrolled bill should be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 910

Date: December 30, 1974 Time: 5:00 p.m.

FOR ACTION: Geoff Shepard ok
Max Friedersdorf ok
Phil Areeda no obj

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, December 31 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill H.R. 8214 - Tax Relief for prisoners of war and those missing in action

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 910

Date: December 30, 1974 Time: 5:00 p.m.

FOR ACTION: Geoff Shepard
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, December 31 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill H.R. 8214 - Tax Relief for prisioners of war and those missing in action

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Approve
H C S.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 910

Date: December 30, 1974 Time: 5:00 p.m.

FOR ACTION: Geoff Shepard
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, December 31 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill H.R. 8214 - Tax Relief for prisioners of war and those missing in action

ACTION REQUESTED:

_____ For Necessary Action _____ For Your Recommendations

_____ Prepare Agenda and Brief _____ Draft Reply

_____ For Your Comments _____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection
P Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 93-397

TAX TREATMENT OF MEMBERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES WHO ARE PRISONERS OF WAR OR MISSING IN ACTION

JULY 24, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLS of Arkansas, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 8214]

The Committee on Ways and Means, to whom was referred the bill (H.R. 8214) to amend sections 112, 692, 6013, and 7508 of the Internal Revenue Code of 1954 for the relief of certain members of the Armed Forces of the United States returning from the Vietnam conflict combat zone, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enacting clause and inserts in lieu thereof a substitute which appears in the reported bill in italic type.

The other amendment modifies the title of the bill to make it conform to the changes made by the amendment to the text.

I. SUMMARY

H.R. 8214, in general, amends present law in several respects to provide certain relief for military and civilian personnel returning from the Vietnam conflict, and the families of those individuals who were listed as missing in action and are subsequently determined to have died at an earlier time. First, the bill extends the provision under present law, which permits military personnel who are hospitalized as a result of service in a combat zone to exclude military pay they receive during the period of hospitalization, to cover for a period of time the pay they receive while hospitalized after all combatant activities have terminated. Since the exclusion under present law only applies during the period in which there are combatant activities in a combat zone, the bill extends this exclusion for a period of time to

cover a member of the Armed Forces who was hospitalized for an injury incurred in a combat zone in the waning days of the Vietnam conflict.

Second, the bill extends the provision which forgives Federal income taxes on income other than combat pay, which is presently excludable under another provision, in the case of a member of the Armed Forces who dies while serving in a combat zone (or as a result of an injury incurred while serving in a combat zone) to cover the period he is in a missing status even though it is subsequently determined that he actually died at an earlier time. Present law forgives income taxes through the year of a serviceman's actual death. Your committee believes it is appropriate to prevent any additional hardship to his family which could result from the collection of taxes for years following his actual death and, therefore, extends this forgiveness to cover the years a serviceman is in missing status until his status is changed.

With respect to the first two changes, your committee believes that these special benefits should not extend longer than a reasonable period after the termination of combatant activities and, accordingly, has provided, in general, that these benefits are not to apply for more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, the benefits provided under the provisions described above will be available, in general, for a 2-year period after the bill is enacted.

Third, the bill deals with the question of when the special tax rates available to a surviving spouse should be available for a spouse whose husband was reported in missing status and is subsequently determined to have died at an earlier time. The bill provides that the widow is to be eligible for surviving spouse tax treatment for the 2 years following the year in which her husband's missing status is changed rather than the 2 years following the year of actual death.

Your committee's bill also clarifies existing law in two respects. First, present law provides an extension of time for performing various acts such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax in the case of an individual serving in the Armed Forces of the United States (or serving in support of the Armed Forces in a combat zone). Since it is common for these individuals and their spouses to file joint returns, the question has arisen as to whether their spouse is entitled to the benefit of these extensions. Your committee's bill clarifies this by providing that the spouse of a serviceman (or the spouse of an individual serving in support of the Armed Forces) in a combat zone is to have the same extension benefits as is available to her husband. Second, your committee's bill also makes it clear that the spouse of an individual in missing status may file a joint return during the period he is in missing status even if it is subsequently determined that he had been killed in action in a prior year. In each of these two changes, your committee's bill also provides a similar 2-year limitation after the termination of combatant activities and with respect to the Vietnam conflict as described above.

The bill also deals with the tax treatment of certain individuals who were illegally detained when the *U.S.S. Pueblo* was seized in 1968 by North Korea. In this regard, the bill provides an exclusion

from income with respect to compensation received by the members of the crew to conform to the treatment available for prisoners of war in a combat zone.

Finally, the bill removes the requirement that a serviceman must be serving during an "induction period" in order to be eligible for certain benefits otherwise accorded. This change is necessary since the Military Selective Service Act of 1967 has expired and there is no longer an induction period.

This bill has been reported unanimously by your Committee, and the Treasury Department indicated that it supports the enactment of the legislation.

II. GENERAL STATEMENT

Congress has enacted several special rules for members of the Armed Forces and civilian employees to cover certain hardships with respect to the filing of income tax returns and the payment of tax during the period they are in a combat zone [1] and for certain subsequent periods. Your committee has been informed that certain problems have arisen as a result of the Vietnam conflict. These are discussed below.

Military pay during hospitalization after termination of combatant activities

Under present law (sec. 112), an exclusion is provided for pay received for active service by a member of the Armed Forces for any month during which he either served in a combat zone or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone.[2] In the case of enlisted personnel, the exclusion applies to all of their pay. In the case of commissioned officers, the exclusion applies to the first $500 per month of their pay. In addition, military personnel and civilian employees who were serving in the Vietnam conflict and who are listed in a missing status [3] are entitled to the income tax exclusion for all compensation (without the $500 per month limitation in the case of commissioned officers) received for active service during the period they are in a missing status.

The exclusion for compensation received while hospitalized applies only to a month during which there are combatant activities in a combat zone. As a result, a member of the Armed Forces who is hospitalized for an injury incurred in a combat zone in the waning days of the Vietnam conflict will not get the benefit of this exclusion for any month following the month of his injury if all combatant activities have been terminated. However, a serviceman injured at an earlier date whose period of hospitalization was entirely within the

[1] The term "combat zone" means any area which the President of the United States designates as an area in which Armed Forces of the United States are or have engaged in combat. The President designated Vietnam and the waters adjacent thereto as a combat zone as of January 1, 1964. See Executive Order 11216, 1965-1 C.B. 62.

[2] Members of the Armed Forces who are serving in direct support of military operations in a combat zone and who qualify for Hostile Fire Pay (as authorized under section 9(a) of the Uniformed Services Pay Act of 1963 (37 U.S.C. 310)) are treated as serving in a combat zone. Accordingly, an individual who is serving in Cambodia, Laos, or Thailand may be eligible for this exclusion.

[3] The term "missing status" means the status of a member of a uniformed service who 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 will (37 U.S.C. 551 (2)).

period of combatant activities would be able to treat his military compensation as combat pay and therefore exclude it from gross income. For this reason, your committee's bill extends the exclusion to cover military pay received by a serviceman through the month his hospitalization ends even if all combatant activities have been terminated.

Your committee has been informed that a serviceman who has been hospitalized as a result of wounds, disease or injury incurred while serving in a combat zone, as a general rule, either recovers and is returned to active duty, or is discharged and brought under the care of the Veterans' Administration, within 2 years from the date of hospitalization. Accordingly, your committee has provided that the exclusion is to apply for any month beginning not more than 2 years after the termination of combatant activities. This will insure that a serviceman who is hospitalized at a time which is near the end of the combatant activities, will be able to exclude his military pay for up to 2 years and at the same time prevent the exclusion from continuing indefinitely. In the case of the Vietnam conflict, however, it is uncertain when the combatant activities will be officially terminated, but in view of the fact that a truce agreement has been signed, your committee's bill provides that the exclusion for a serviceman who is hospitalized is to apply to any month beginning not more than 2 years after the date of enactment of this bill.

Tax forgiveness in the case of missing servicemen subsequently determined to have died

Under present law (sec. 692), Federal income taxes are forgiven in the case of a member of the Armed Forces who dies while serving in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone. This forgiveness of tax applies to the taxable year in which the death occurs and also to any prior year ending after the member of the Armed Forces first served in a combat zone.[4]

Congress enacted this provision to alleviate some of the hardships borne by survivors of servicemen dying as a result of service in a combat zone. However, where a serviceman is reported in a missing status for a number of years and it is subsequently determined that he actually died at an earlier time, his income (other than his combat pay excluded under sec. 112) for taxable years after the year of his actual death is subject to tax.

Your committee recognizes that the uncertainty as to a serviceman's status (when he is classified as missing) creates unusual difficulties in the case of the families of these servicemen. The imposition of a back tax liability resulting from a determination that a serviceman listed as missing died at an earlier date, could have the effect of imposing a severe hardship on the surviving family at a most inopportune time. With respect to the survivors in these cases, the date of death of the serviceman is not as significant as the date his missing status is changed. The military pay his family had been receiving during the period he was in missing status is not required to be returned on account of a subsequent determination that he died at an earlier date.

[4] This provision, however, only applies to taxable years ending on or after June 24, 1950.

In addition, death benefits are made available to survivors at the time a serviceman's name is removed from missing status and a finding of death (or presumptive death) is made. Consistent with this policy and in order to alleviate any additional hardship that could result from imposing a tax on the serviceman's income from the date of his death (or presumptive death) until the date that his status is changed from missing, your committee's bill extends the benefits of current law by forgiving the income taxes on his income other than combat pay, which is excluded under sec. 112, through the taxable year in which his missing status is changed rather than just through the year of his actual death.

Your committee does not believe that it is appropriate to continue the forgiveness of Federal income taxes indefinitely, but that after the termination of combatant activities a reasonable period should be provided while the status of those servicemen who are missing is determined. Accordingly, the bill provides that, as a general rule, Federal income taxes will not be forgiven in the case of any taxable year beginning more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, it is uncertain when the combatant activities will be officially terminated but in view of the fact that a truce agreement has been signed, your committee has provided that with respect to the Vietnam conflict, Federal income taxes will not be forgiven in the case of any taxable year beginning more than 2 years after the date of enactment of the bill.[5]

Filing of joint return by spouse during period her husband is in missing status

There has been some question during the Vietnam conflict with respect to the filing of joint returns in the case of spouses of servicemen in the combat zone, especially where the serviceman was listed in a missing status. Initially, there were varying practices; in some cases the spouse filed a separate return, others a joint return, and still others no return at all. As a result of this uncertainty, in 1966 the Internal Revenue Service announced that the spouse may file a joint return and need only indicate in the space provided for her husband's signature that he is in fact in Vietnam. In the case of those in missing status, it has been the administrative practice of the Internal Revenue Service to consider such a return as a valid joint return even if it is subsequently determined that the serviceman had been killed in action in a prior year. Your committee's bill clarifies existing law in this regard by providing that where the spouse of a missing serviceman or civilian elected to file a joint return, the election is valid even though it is subsequently determined that her husband died at an earlier time. In addition, the bill provides that where the spouse did not file a joint return in this case, she may elect to file one for those years he was in a missing status. Furthermore, any income tax liability of the serviceman or civilian (including his spouse and estate), except for purposes of the income tax forgiveness provisions, will be deter-

[5] The bill also provides that in those cases where a return has been filed for any taxable year ending on or after February 28, 1961, without claiming any income tax forgiveness and a claim would otherwise have been allowed if the claim for forgiveness had been filed on the due date for the final return, a claim for refund or credit will be permitted to be filed if the claim is filed within one year from the date of enactment of this bill.

mined as if he were alive for the entire year during each of the years she elected to file a joint return.

If the spouse elects to file a joint return while her husband is in missing status, the election may be revoked by either the spouse or the returning serviceman prior to the due date for the taxable year involved (including extensions). In the case where it is determined that a serviceman listed in missing status has died, if an executor or administrator is appointed after the surviving spouse has filed a joint return, the executor or administrator may revoke the election by making, within 1 year after the last day (including extensions) prescribed by law for filing the return of the surviving spouse, a separate return for the deceased serviceman.

Your committee's bill provides that a spouse whose husband is listed in missing status may file a joint return only for any taxable year beginning not more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, the bill provides that a joint return may not be filed for any taxable year beginning more than 2 years after the date of enactment.

Surviving spouse tax rates after change of missing status of previously deceased servicemen

Under present law, a surviving spouse (as defined in sec. 2(a)) is accorded a special status for the two taxable years following the year of her spouse's death. The surviving spouse provisions (which are available to a widow with a dependent child) are intended to give the survivor a two-year transitional period at the lower surviving spouse tax rates (which are the same as the joint return income tax rates) following the death of the spouse and before the single or head-of-household tax rates would apply.

Your committee has been made aware that there is an unusual problem in the case of a spouse whose husband was reported in a missing status for a number of years, and where it is subsequently determined that he died at an earlier time than the date on which his missing status is changed. Your committee believes that in this case, a transitional period is most needed by the widow after the date on which her husband's status is changed. For this reason, your committee's bill provides that the widow is eligible for surviving spouse tax treatment for the 2 years following the year in which her husband's status as missing is changed rather than the 2 years following the year of actual death. However, as indicated above, your committee's bill also permits the widow to file a joint return for the years her husband is in a missing status (but not for any taxable year beginning more than 2 years from the date of enactment in the case of the Vietnam conflict or more than 2 years from the termination of combatant activities in the case of any future conflict). The effect of these two changes is to allow the widow not only to file a joint return during the period her husband is in missing status (subject to the limitations discussed above with respect to the period after the termination of combatant activities) even though it is subsequently determined that he was already dead during that period, but also to file a return as a surviving spouse for the 2 years after it has been determined that he was killed and his status is changed.

Extension of time for performing certain acts in the case of the spouse of an individual serving in a combat zone

Under present law (sec. 7508), an extension of time is provided for performing various acts, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax. The extension of time applies to any individual who is serving in the Armed Forces of the United States or serving in support of such Armed Forces in a combat zone. Present law also provides for the extension of these benefits to the executor, administrator, or conservator of the estate of an individual entitled to them. The period of service in the combat zone (and the period of continuous hospitalization outside the United States, as a result of injury received in a combat zone) plus the next 180 days thereafter may be disregarded in determining whether the individual performed the various specified acts on time.

Although it is common for these individuals and their spouses to file joint returns, it was somewhat unclear at the beginning of the Vietnam conflict as to whether the spouse was entitled to this extension. The administrative practice of the Internal Revenue Service (announced April 8, 1968) has been to allow the spouse of a serviceman entitled to this extension of time to defer the filing of a joint return or payment of tax until the date the serviceman is required to file and pay the tax. Your committee's bill clarifies existing law by providing that the spouse of an individual serving in a combat zone is entitled to the benefits of this provision.

Your committee's bill provides, as a general rule, that this provision will apply to the spouse for any taxable year beginning not more than 2 years after the termination of combatant activities in a combat zone. In the case of the Vietnam conflict, however, the bill provides that the spouse will be entitled to the benefits of this provision for any taxable year beginning not more than 2 years after the date of enactment of the bill.

Tax treatment of certain individuals serving on U.S.S. "Pueblo"

In 1970 Congress enacted P.L. 91–235 which dealt with the members of the crew of the *U.S.S. Pueblo* who were illegally detained by North Korea in 1968. The Act provided that the members of the crew were to be treated for purposes of the tax laws in the same manner as if they had served in a presidentially designated combat zone during the period of their detention by North Korea. This meant that for the period of their detention, members of this crew received an exclusion from income tax for their pay for service in the Armed Forces; for the member of the crew who was killed during this period there was a forgiveness of unpaid income taxes and a reduction of Federal estate taxes; and for all personnel on the ship there was an extension of time for filing tax returns, paying taxes, etc.

The exclusion from income tax provided in P.L. 91–235 for the crew aboard the *Pueblo* did not apply to the pay of any civilian employee and was limited to $500 per month in the case of a commissioned officer. This was because when Congress enacted P.L. 91–235, the exclusion of compensation received by individuals serving in a combat zone was not available to any civilian government employee and the exclusion for compensation in the case of a commissioned officer serving in a combat

zone was limited to the first $500 per month. Subsequently, in 1972, Congress enacted P.L. 92–279 which extended the exclusion to compensation received by civilian employees and removed the $500 per month limitation for commissioned officers in any case where these individuals were in a missing status as a result of the Vietnam conflict. However, no corresponding amendment was made for those aboard the *Pueblo* who were illegally detained in North Korea.

Your committee believes that it is appropriate to provide the same treatment for the crew of the *Pueblo* (both military and civilian crew members) as was made available under P.L. 92–279 to those listed in a missing status as a result of the Vietnam conflict. Accordingly, your committee's bill extends the exclusion to compensation received by those civilian government employees aboard the *Pueblo* and removes the $500 monthly limitation in the case of commissioned officers. Under your committee's bill, those benefited by these changes will be permitted to file a claim for refund or credit if such claim is filed within one year from the date of the enactment of the bill.

Induction period requirement

Under present law an individual must be serving during an induction period in order to be eligible for the combat pay exclusion as well as certain other benefits. Since the Military Selective Service Act of 1967, as amended, expired on June 30, 1973, there is no longer an induction period so that the special provisions are not operative. Accordingly, your committee's bill removes the requirement that there be an induction period in order for a serviceman to be entitled to these benefits. This change is effective on July 1, 1973, so that there will be no lapse of benefits on account of the expiration of the Military Selective Service Act.

III. EFFECT ON REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on the revenues of this bill. From the standpoint of the level of revenues with respect to present law as it operated on June 30, 1973, this bill is expected to result in a decrease in receipts of approximately $4 million spread over the next several fiscal years. However, the fact that the "induction period" (a requirement for certain benefits) has been allowed to lapse as of June 30, means that there would have been an increase in receipts of approximately $12.5 million, primarily in fiscal year 1974. With the changes made in this bill, this increase in revenue will not occur. The Treasury agrees with this statement.

In compliance with clause 27(b) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported unanimously by voice vote.

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

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as re-

ported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of Tax Liability

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PART I—TAX ON INDIVIDUALS

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SEC. 2. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITION OF SURVIVING SPOUSE.—

(1) IN GENERAL.—For purposes of section 1, the term "surviving spouse" means a taxpayer—

(A) whose spouse died during either of his two taxable years immediately preceding the taxable year, and

(B) who maintains as his home a household which constitutes for the taxable year the principal place of abode (as a member of such household) of a dependent (i) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer, and (ii) with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) LIMITATIONS.—Notwithstanding paragraph (1), for purposes of section 1 a taxpayer shall not be considered to be a surviving spouse—

(A) if the taxpayer has remarried at any time before the close of the taxable year, or

(B) unless, for the taxpayer's taxable year during which his spouse died, a joint return could have been made under the provisions of section 6013 (without regard to subsection (a)(3) thereof).

(3 ECIAL RULE WHERE DECEASED SPOUSE WAS IN MISSING STATUS.—If an individual was in a missing status (within the meaning of section 6013(f)(3)) as a result of service in a combat zone (as determined for purposes of section 112) and if such individual remains in such status until the date referred to in subparagraph (A) or (B), then, for purposes of paragraph (1)(A), the date on which such individual died shall be treated as the earlier of the date determined under subparagraph (A) or the date determined under subparagraph (B):

(A) the date on which the determination is made under section 556 of title 37 of the United States Code or under section 5566 of title 5 of such Code (whichever is applicable) that such individual died while in such missing status, or

(B) the date which is 2 years after—

(i) the date of the enactment of this paragraph, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(ii) the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in clause (i).

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Subchapter B—Computation of Taxable Income

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PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

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SEC. 112. CERTAIN COMBAT PAY OF MEMBERS OF THE ARMED FORCES.

(a) ENLISTED PERSONNEL.—Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member—

(1) served in a combat zone [during an induction period], or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone [during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c) (3) of this section]*; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.*

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month beginning more than 2 years after the date of the enactment of this sentence.

(b) COMMISSIONED OFFICERS.—Gross income does not include so much of the compensation as does not exceed $500 received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

(1) served in a combat zone [during an induction period], or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone [during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c) (3) of this section]*; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.*

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month be-

ginning more than 2 years after the date of the enactment of this sentence.

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

(1) The term "commissioned officer" does not include a commissioned warrant officer.

(2) The term "combat zone" means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term "compensation" does not include pensions and retirement pay.

[(5) The term "induction period" means any period during which, under laws heretofore or hereafter enacted relating to the induction of individuals for training and service in the Armed Forces of the United States, individuals (other than individuals liable for induction by reason of a prior deferment) are liable for induction for such training and service.]

(d) PRISONERS OF WAR, ETC.—

(1) MEMBERS OF THE ARMED FORCES.—Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status (as defined in section 551(2) of title 37, United States Code) during the Vietnam conflict as a result of such conflict, other than a period with respect to which it is officially determined under section 552(c) of such title 37 that he is officially absent from his post of duty without authority.

(2) CIVILIAN EMPLOYEES.—Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this paragraph, the terms "active service", "employee", and "missing status" have the respective meanings given to such terms by section 5561 of title 5 of the United States Code.

(3) PERIOD OF CONFLICT.—For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.

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Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

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PART II—INCOME IN RESPECT OF DECEDENTS

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SEC. 692. INCOME TAXES ON MEMBERS OF ARMED FORCES ON DEATH.

(a) GENERAL RULE.—In the case of any individual who dies [during an induction period (as defined in section 112(c)(5))] while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 112) or as a result of wounds, disease, or injury incurred while so serving—

(1) any tax imposed by this subtitle shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950; and

(2) any tax under this subtitle and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) INDIVIDUALS IN MISSING STATUS.—For purposes of this section, in the case of an individual who was in a missing status within the meaning of section 6013(f)(3)(A), the date of his death shall be treated as being not earlier than the date on which a determination of his death is made under section 556 of title 37 of the United States Code. The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after—

(1) the date of the enactment of this subsection, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(2) the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1).

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Subchapter O—Gain or Loss on Disposition of Property

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PART III—COMMON NONTAXABLE EXCHANGES

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SEC. 1034. SALE OR EXCHANGE OF RESIDENCE.

(a) NONRECOGNITION OF GAIN.—If property (in this section called "old residence") used by the taxpayer as his principal residence is sold by him after December 31, 1953, and, within a period beginning 1 year before the date of such sale and ending 1 year after such date, property (in this section called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's adjusted sales

price (as defined in subsection (b)) of the old residence exceeds the taxpayer's cost of purchasing the new residence.

* * * * * * *

(c) RULES FOR APPLICATION OF SECTION.—For purposes of this section:

(1) An exchange by the taxpayer of his residence for other property shall be treated as a sale of such residence, and the acquisition of a residence on the exchange of property shall be treated as a purchase of such residence.

(2) A residence any part of which was constructed or reconstructed by the taxpayer shall be treated as purchased by the taxpayer. In determining the taxpayer's cost of purchasing a residence, there shall be included only so much of his cost as is attributable to the acquisition, construction, reconstruction, and improvements made which are properly chargeable to capital account, during the period specified in subsection (a).

(3) If a residence is purchased by the taxpayer before the date of his sale of the old residence, the purchased residence shall not be treated as his new residence if sold or otherwise disposed of by him before the date of the sale of the old residence.

(4) If the taxpayer, during the period described in subsection (a), purchases more than one residence which is used by him as his principal residence at some time within 1 year after the date of the sale of the old residence, only the last of such residences so used by him after the date of such sale shall constitute the new residence.

(5) In the case of a new residence the construction of which was commenced by the taxpayer before the expiration of one year after the date of the sale of the old residence, the period specified in subsection (a), and the 1 year referred to in paragraph (4) of this subsection, shall be treated as including a period of 18 months beginning with the date of the sale of the old residence.

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(h) MEMBERS OF ARMED FORCES.—The running of any period of time specified in subsection (a) or (c) (other than the 1 year referred to in subsection (c) (4) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence [and during an induction period (as defined in section 112 (c) (5))] except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence. For purposes of this subsection, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

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CHAPTER 11—ESTATE TAX

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Subchapter C—Miscellaneous

SEC. 2201. MEMBERS OF THE ARMED FORCES DYING [DURING AN INDUCTION PERIOD] *IN COMBAT ZONE OR BY REASON OF COMBAT-ZONE-INCURRED WOUNDS, ETC.*

The additional estate tax as defined in section 2011(d) shall not apply to the transfer of the taxable estate of a citizen or resident of the United States dying [during an induction period (as defined in sec. 112(c)(5)),] while in active service as a member of the Armed Forces of the United States, if such decedent—

(1) was killed in action while serving in a combat zone, as determined under section 112(c); or

(2) died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section 112(c)), and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART II—TAX RETURNS OR STATEMENTS

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Subpart B—Income Tax Returns

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SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

(a) JOINT RETURNS.—A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) no joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien;

(2) no joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of

either or both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 443(a)(1);

(3) in the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within 1 year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

* * * * * * *

(f) JOINT RETURN WHERE INDIVIDUAL IS IN MISSING STATUS.—For purposes of this section and subtitle A—

(1) ELECTION BY SPOUSE.—If—

(A) an individual is in a missing status (within the meaning of paragraph (3)) as a result of service in a combat zone (as determined for purposes of section 112), and

(B) the spouse of such individual is otherwise entitled to file a joint return for any taxable year which begins on or before the day which is 2 years after the date designated under section 112 as the date of termination of combatant activities in such zone,

then such spouse may elect under subsection (a) to file a joint return for such taxable year. With respect to service in the combat zone designated for purposes of the Vietnam conflict, no such election may be made for any taxable year beginning more than 2 years after the date of the enactment of this sentence.

(2) EFFECT OF ELECTION.—If the spouse of an individual described in paragraph (1)(A) elects to file a joint return under subsection (a) for a taxable year, then, until such election is revoked—

(A) such election shall be valid even if such individual died before the beginning of such year, and

(B) except for purposes of section 692 (relating to income taxes of members of the Armed Forces on death), the income tax liability of such individual, his spouse, and his estate shall be determined as if he were alive throughout the taxable year.

(3) MISSING STATUS.—For purposes of this subsection—

(A) UNIFORMED SERVICES.—A member of a uniformed service (within the meaning of section 101(3) of title 37 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 552 of such title 37.

(B) CIVILIAN EMPLOYEES.—An employee (within the meaning of section 5561(2) of title 5 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 5562 of such title 5.

(4) MAKING OF ELECTION; REVOCATION.—An election described in this subsection with respect to any taxable year may be made by filing a joint return in accordance with subsection (a) and under such regulations as may be prescribed by the Secretary or his delegate. Such an election may be revoked by either spouse on or before the due date (including extensions) for such taxable year, and, in the case of an executor or administrator, may be revoked by disaffirming as provided in the last sentence of subsection (a)(3).

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CHAPTER 77—MISCELLANEOUS PROVISIONS

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SEC. 7508. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

(a) TIME TO BE DISREGARDED.—In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for purposes of section 112, at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section, or hospitalized outside the States of the Union and the District of Columbia as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the States of the Union and the District of Columbia attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) Filing any return of income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(B) Payment of any income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) 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, by the Secretary or his delegate, by levy or otherwise, 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 or his delegate;

(2) The amount of any credit or refund (including interest).

(b) APPLICATION TO SPOUSE.—The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning more than 2 years after—

(1) the date of the enactment of this subsection, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(2) the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1).

(c) MISSING STATUS.—The period of service in the area referred to in subsection (a) shall include the period during which an individual entitled to benefits under subsection (a) is in a missing status, within the meaning of section 6013(f)(3).

[(b)] *(d)* EXCEPTIONS.—

(1) TAX IN JEOPARDY; BANKRUPTCY AND RECEIVERSHIP; AND TRANSFERRED ASSETS.—Notwithstanding the provisions of subsection (a), any action or proceeding authorized by section 6851 (regardless of the taxable year for which the tax arose), chapter 70, or 71, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the Secretary or his delegate determines that collection of the amount of any assessment would be jeopardized by delay, the provisions of subsection (a) shall not operate to stay collection of such amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this paragraph the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (a). In any case, to which this paragraph relates, if the Secretary or his delegate is required to give any notice to or make any demand upon any person, such requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of such person last known to the Secretary or his delegate is in an area for which United States post offices under instructions of the Postmaster General are not, by reason of the combatant activities, accepting mail for delivery at the time the notice or demand is signed. In such case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(2) ACTION TAKEN BEFORE ASCERTAINMENT OF RIGHT TO BENEFITS.—The assessment or collection of any internal revenue tax or

of any liability to the United States in respect of any internal revenue tax, or any action or proceeding by or on behalf of the United States in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

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THE ACT OF APRIL 24, 1970

AN ACT To provide that, for purposes of the Internal Revenue Code of 1954, individuals who were illegally detained during 1968 by the Democratic People's Republic of Korea shall be treated as serving in a combat zone.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for purposes of sections 112, 692, 2201, and 7508 of the Internal Revenue Code of 1954, individuals who were removed from a United States vessel and illegally detained (or who died while being illegally detained) by the Democratic People's Republic of Korea at any time during the calendar year 1968 shall be treated while so detained as serving in an area designated by the President of the United States by Executive order as a combat zone for purposes of section 112 and during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section. *For purposes of section 112(d) of the Internal Revenue Code of 1954, the period during which any member of the Armed Forces of the United States or any employee was so detained shall be treated as a period in which such member or employee is in a missing status during the Vietnam conflict as a result of such conflict.*

SEC. 2. The provisions of this Act shall apply—

(1) for purposes of section 112 of such Code, with respect to compensation received for periods of active service after December 31, 1967, in taxable years ending after such date;

(2) for purposes of sections 692 and 2201 of such Code, with respect to decedents dying after December 31, 1967; and

(3) for purposes of section 7508 of such Code, with respect to individuals who were detained after December 31, 1967.

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93D CONGRESS
1st Session

SENATE

REPORT
No. 93-554

TAX TREATMENT OF MEMBERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES WHO ARE PRISONERS OF WAR OR MISSING IN ACTION AND CERTAIN OTHER AMENDMENTS ADDED BY THE COMMITTEE

NOVEMBER 27, 1973.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 8214]

The Committee on Finance, to which was referred the bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

H.R. 8214, as passed by the House, amends present law in several respects to provide relief for military and civilian personnel returning from the Vietnam conflict, and the families of those individuals who are listed as missing in action and are subsequently determined to have died at an earlier time. With minor technical changes, the committee agrees with the bill as passed by the House. However, in addition, the committee has added a series of amendments. The House-passed provisions and also the committee amendments are summarized below.

House provisions.—First, the bill extends the provision under present law, which permits military personnel who are hospitalized as a result of service in a combat zone to exclude military pay they receive during the period of hospitalization, to cover for a period of time the pay they receive while hospitalized after all combatant activities have terminated. Since the exclusion under present law only applies during the period in which there are combatant activities in a combat zone, the bill extends this exclusion for a period of time to

cover a member of the Armed Forces who was hospitalized for an injury incurred in a combat zone in the waning days of the Vietnam conflict.

Second, the House bill extends the provision which forgives Federal income taxes on income other than combat pay, which is presently excludable under another provision, in the case of a member of the Armed Forces who dies while serving in a combat zone (or as a result of an injury incurred while serving in a combat zone) to cover the period he is in a missing status even though it is subsequently determined that he actually died at an earlier time. Present law forgives income taxes through the year of a serviceman's actual death. The committee agrees with the House that it is appropriate to prevent any additional hardship to his family which could result from the collection of taxes for years following his actual death and, therefore, is in accord with the House treatment extending this forgiveness to cover the years a serviceman is in missing status until his status is changed.

With respect to the first two changes, the committee agreed with the House that these special benefits should not extend longer than a reasonable period after the termination of combatant activities and, accordingly, is in agreement with the House bill which provided, in general, that these benefits are not to apply for more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, the benefits provided under the provisions described above will be available, in general, for a 2-year period after the bill is enacted.

Third, the House bill deals with the question of when the special tax rates available to a surviving spouse should be available for a spouse whose husband was reported in missing status and is subsequently determined to have died at an earlier time. The bill provides that the widow is to be eligible for surviving spouse tax treatment for the 2 years following the year in which her husband's missing status is changed rather than the 2 years following the year of actual death.

The House bill also clarifies existing law in two respects. First, present law provides an extension of time for performing various acts such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax in the case of an individual serving in the Armed Forces of the United States (or serving in support of the Armed Forces in a combat zone). Since it is common for these individuals and their spouses to file joint returns, the question has arisen as to whether their spouse is entitled to the benefit of these extensions. The bill clarifies this by providing that the spouse of a serviceman (or the spouse of an individual serving in support of the Armed Forces) in a combat zone is to have the same extension benefits as is available to her husband. Second, the bill also makes it clear that the spouse of an individual in missing status may file a joint return during the period he is in missing status even if it is subsequently determined that he had been killed in action in a prior year. In each of these two changes, the House bill also provides a similar 2-year limitation after the termination of combatant activities and with respect to the Vietnam conflict as described above.

The House bill also deals with the tax treatment of certain individuals who were illegally detained when the *U.S.S. Pueblo* was seized in 1968 by North Korea. In this regard, the bill provides an exclusion from income with respect to compensation received by the members of

the crew to conform to the treatment available for prisoners of war in a combat zone.

Finally, the House bill removes the requirement that a serviceman must be serving during an "induction period" in order to be eligible for certain benefits otherwise accorded. This change is necessary since the Military Selective Service Act of 1967 has expired and there is no longer an induction period.

Committee amendments.—The first committee amendment is intended to make it clear that cooperative arrangements formed by educational organizations, and certain organizations supporting educational organizations, for the collective investment of their funds are to be exempt from Federal income taxation.

The second amendment deals with the treatment processes which are treated as mining in computing the percentage depletion allowance for trona. The committee's amendment provides that the decarbonation of trona is to be treated as an ordinary treatment process. The effect of this is to continue, as provided prior to 1971, to allow percentage depletion on trona based on the value of soda ash extracted from it.

The third committee amendment deals with the application of the moving expense provisions to members of the armed services. The Tax Reform Act of 1969 made certain revisions with respect to the deduction for moving expenses. Several of the changes made in the 1969 Act present significant problems with respect to their application to members of the armed services, especially with respect to the administrative aspects of the changes dealing with reporting and withholding for the Department of Defense. Since the enactment of the 1969 changes, the Internal Revenue Service has, by administrative determination, provided a moratorium with respect to the application of the new moving expense rules to members of the armed services. The most recent extension of this moratorium expires at the end of this year. The committee has by legislation extended this moratorium one more year until January 1, 1975, pending the development of a legislative solution.

The fourth committee amendment extends to distilled spirits brought into the United States from Puerto Rico and the Virgin Islands the same abatement or refund provisions in the case of loss or destruction that are presently applicable to imported or domestic spirits.

The fifth committee amendment deals with the provision relating to the use of appreciated property by corporations to redeem their own stock. Present law provides that if a stockholder owns at least 10 percent in value of a corporation's shares and completely terminates his interest in the corporation, the corporation will not recognize gain where it distributes appreciated property in redemption of the stock. Under present law the constructive ownership rules apply for purposes of determining whether a redemption of a shareholder's stock is in complete termination of his interest. This amendment applies the same constructive ownership rules for purposes of determining whether the shareholder has a 10 percent interest in the corporation.

The sixth committee amendment repeals the tax and other regulatory provisions on filled cheese in the Internal Revenue Code. These provisions serve no Internal Revenue purposes. Regulations as to the wholesomeness and purity of filled cheese products are enforced by

the Food and Drug Administration outside of the provisions of the Internal Revenue Code.

The seventh committee amendment continues for one more year (until January 1, 1974) the treatment which has been available for taxable years ending before January 1, 1973, with respect to the deduction for accrued vacation pay.

The eighth committee amendment deals with certain disaster losses where taxpayers were allowed casualty loss deductions and subsequently were compensated for those losses based on claims of tort. The committee amendment provides that in these circumstances in lieu of taking the compensation into income immediately, the taxpayers may reduce the basis of their damaged property (or replacement property) by the amount of compensation they received up to a maximum of $5,000 of tax benefits. Excess benefits over this level are to be included in the income of a taxpayer over a five-year period.

The ninth committee amendment provides an exclusion under the unemployment compensation program, similar to the exclusion that exists under the Social Security program, for the services of students performed in the employ of an auxiliary non-profit organization which is organized and operated exclusively for the benefit of, and supervised or controlled by, the school, college, or university in which the student is enrolled.

The tenth committee amendment permits certain private foundations whose assets are largely invested in the stock of a multi-state regulated company (described in section 101(l)(4) of the Tax Reform Act of 1969) to exclude the value of this stock in computing the amount of their required charitable distributions under the private foundation provisions. This amendment is designed to effectuate the intent of Congress in the 1969 Act by preventing the charitable distribution provisions from resulting in a forced divestiture of stock that Congress determined certain types of foundations should be permitted to retain.

The eleventh committee amendment deals with the tax treatment of tuition and educational expenses paid on behalf of members of the uniformed services. The exclusion from gross income for certain amounts received as a scholarship at an educational institution or as a fellowship grant generally does not apply if the amounts received represent compensation for past, present, or future employment services. The Internal Revenue Service has notified the Department of Defense in response to its request for a ruling that certain amounts received by students toward their educational expenses while participating in the recently instituted Armed Forces Health Professions Scholarship Program are not excludable from their gross income because of the individual's commitment to future service with the Armed Forces; thus, under this position the individuals are subject to tax on the amounts received. The committee amendment provides that the exclusion for scholarship and fellowship grants is to apply to payments made by the Government for the tuition and certain other educational expenses of a member of the uniformed services attending an educational institution under the Armed Forces Health Professions Scholarship Program (or substantially similar programs) until January 1, 1975, pending a review by the staff of the effect of application of this provision.

The twelfth committee amendment makes a change in the tax deferral DISC provisions relating to export sales. The amendment

provides that a corporation is not to be prevented from qualifying as a DISC if it holds accounts receivable which arise by reason of the export-related transactions of a related DISC. The present tax law requires that at least 95 percent of a corporation's assets be export-related in order to qualify as a DISC. These export-related assets include accounts receivable which arise in connection with the export transactions of the corporation. This corporation can retain these accounts receivable as its only assets and continue to qualify as a DISC. However, if these accounts receivable are transferred to another corporation, which retains these as its only assets, this transferee corporation cannot presently qualify as a DISC. The committee amendment would allow the transferee corporation to hold these accounts receivable and qualify as a DISC if they arise by reason of the export-related transactions (whether as principal or agent) of a related DISC.

II. GENERAL STATEMENT

A. Tax Treatment of Members of the Armed Forces and Civilian Employees Who Are Prisoners of War or Missing in Action

Congress has enacted several special rules for members of the Armed Forces and civilian employees to cover certain hardships with respect to the filing of income tax returns and the payment of tax during the period they are in a combat zone [1] and for certain subsequent periods. The committee has been informed that certain problems have arisen as a result of the Vietnam conflict. These are discussed below.

1. Military pay during hospitalization after termination of combatant activities.

Under present law (sec. 112), an exclusion is provided for pay received for active service by a member of the Armed Forces for any month during which he either served in a combat zone or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone.[2] In the case of enlisted personnel, the exclusion applies to all of their pay. In the case of commissioned officers, the exclusion applies to the first $500 per month of their pay. In addition, military personnel and civilian employees who were serving in the Vietnam conflict and who are listed in a missing status [3] are entitled to the income tax exclusion for all compensation (without the $500 per month limitation in the case of commissioned officers) received for active service during the period they are in a missing status.

The exclusion for compensation received while hospitalized applied only to a month during which there are combatant activities in a combat zone. As a result, a member of the Armed Forces who is hospitalized for an injury incurred in a combat zone in the waning days of the Vietnam conflict will not get the benefit of this exclusion for any month following the month of his injury if all combatant

[1] The term "combat zone" means any area which the President of the United States designates as an area in which Armed Forces of the United States are or have engaged in combat. The President designated Vietnam and the waters adjacent thereto as a combat zone as of January 1, 1964. See Executive Order 11216, 1965-1 C.B. 62.

[2] Members of the Armed Forces who are serving in direct support of military operations in a combat zone and who qualify for Hostile Fire Pay (as authorized under section 9(a) of the Uniformed Services Pay Act of 1963 (37 U.S.C. 310)) are treated as serving in a combat zone. Accordingly, an individual who is serving in Cambodia, Laos, or Thailand may be eligible for this exclusion.

[3] The term "missing status" means the status of a member of a uniformed service who is officially carried or determined to be absent in a status of missing; missing in action; interned in a foreign country; captured beleaguered, or beseiged by a hostile force; or detained in a foreign country against his will (37 U.S.C. 551 (2)).

activities have been terminate. However, a serviceman injured at and earlier date whose period of hospitalization was entirely within the period of combatant activities would be able to treat his military compensation as combat pay and therefore exclude it from gross income. For this reason, the bill extends the exclusion to cover military pay received by a serviceman through the month his hospitalization ends even if all combatant activities have been terminated.

The committee has been informed that a serviceman who has been hospitalized as a result of wounds, disease or injury incurred while serving in a combat zone, as a general rule, either recovers and is returned to active duty, or is discharged and brought under the care of the Veterans' Administration, within 2 years from the date of hospitalization. Accordingly, the exclusion applies for any month beginning not more than 2 years after the termination of combatant activities. This will insure that a serviceman who is hospitalized at a time which is near the end of the combatant activities, will be able to exclude his military pay for up to 2 years and at the same time prevent the exclusion from continuing indefinitely. In the case of the Vietnam conflict, however, it is uncertain when the combatant activities will be officially terminated, but in view of the fact that a truce agreement has been signed, the bill provides that the exclusion for a serviceman who is hospitalized is to apply to any month beginning not more than 2 years after the date of enactment of this bill. In addition, the exclusion for those servicemen in a missing status is to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

2. Tax forgiveness in the case of missing servicemen subsequently determined to have died

Under present law (sec. 692), Federal income taxes are forgiven in the case of a member of the Armed Forces who dies while serving in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone. This forgiveness of tax applies to the taxable year in which the death occurs and also to any prior year ending after the member of the Armed Forces first served in a combat zone.[4]

Congress enacted this provision to alleviate some of the hardships borne by survivors of servicemen dying as a result of service in a combat zone. However, where a serviceman is reported in a missing status for a number of years and it is subsequently determined that he actually died at an earlier time, his income (other than his combat pay excluded under sec. 112) for taxable years after the year of his actual death is subject to tax.

The committee agrees with the House that the uncertainty as to a serviceman's status (when he is classified as missing) creates unusual difficulties in the case of the families of these servicemen. The imposition of a back tax liability resulting from a determination that a serviceman listed as missing died at an earlier date could have the effect of imposing a severe hardship on the surviving family at a most inopportune time. With respect to the survivors in these cases, the date of death of the serviceman is not as significant as the date his

[4] This provision, however, only applies to taxable years ending on or after June 24, 1950.

missing status is changed. The military pay his family had been receiving during the period he was in missing status is not required to be returned on account of a subsequent determination that he died at an earlier date. In addition, death benefits are made available to survivors at the time a serviceman's name is removed from missing status and a finding of death (or presumptive death) is made. Consistent with this policy and in order to alleviate any additional hardship that could result from imposing a tax on the serviceman's income from the date of his death (or presumptive death) until the date that his status is changed from missing, the bill extends the benefits of current law by forgiving the income taxes on his income other than combat pay, which is excluded under section 112, through the taxable year in which his missing status is changed rather than just through the year of his actual death.

The committee agrees with the House that it is not appropriate to continue the forgiveness of Federal income taxes indefinitely, but that after the termination of combatant activities a reasonable period should be provided while the status of those servicemen who are missing is determined. Accordingly, the bill provides that, as a general rule, Federal income taxes will not be forgiven in the case of any taxable year beginning more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, it is uncertain when the combatant activities will be officially terminated, but in view of the fact that a truce agreement has been signed, the bill provides that with respect to the Vietnam conflict, Federal income taxes will not be forgiven in the case of any taxable year beginning more than 2 years after the date of enactment of the bill. In the case of those servicemen in a missing status, the taxes will be forgiven even though Vietnam is no longer designated as a combat zone if the date his missing status is changed is within any taxable year beginning not later than 2 years after the date of enactment of the bill.[5]

3. Filing of joint return by spouse during period her husband is in missing status

There has been some question during the Vietnam conflict with respect to the filing of joint returns in the case of spouses of servicemen in the combat zone, especially where the serviceman was listed in a missing status. Initially, there were varying practices; in some cases the spouse filed a separate return, others a joint return, and still others no return at all. As a result of this uncertainty, in 1966 the Internal Revenue Service announced that the spouse may file a joint return and need only indicate in the space provided for her husband's signature that he is in fact in Vietnam. In the case of those in missing status, it has been the administrative practice of the Internal Revenue Service to consider such a return as a valid joint return even if it is subsequently determined that the serviceman had been killed in action in a prior year. The bill clarifies existing law in this regard by providing that where the spouse of a missing serviceman or civilian elected to file a joint return, the election is valid even though it is subsequently determined that her husband died at an earlier time. In addition, the

[5] The bill also provides that in those cases where a return has been filed for any taxable year ending on or after February 28, 1961, without claiming any income tax forgiveness and a claim would otherwise have been allowed if the claim for forgiveness had been filed on the due date for the final return, a claim for refund or credit will be permitted to be filed if the claim is filed within one year from the date of enactment of this bill.

bill provides that where the spouse did not file a joint return in this case, she may elect to file one for those years he was in a missing status. Furthermore, any income tax liability of the serviceman or civilian (including his spouse and estate), except for purposes of the income tax forgiveness provisions, will be determined as if he were alive for the entire year during each of the years she elected to file a joint return.

If the spouse elects to file a joint return while her husband is in missing status, the election may be revoked by either the spouse or the returning serviceman prior to the due date for the taxable year involved (including extensions). In the case where it is determined that a serviceman listed in missing status has died, if an executor or administrator is appointed after the surviving spouse has filed a joint return, the executor or administrator may revoke the election by making, within one year after the last day (including extensions) prescribed by law for filing the return of the surviving spouse, a separate return for the deceased serviceman.

The bill provides that a spouse whose husband is listed in missing status may file a joint return only for any taxable year beginning not more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, the bill provides that a joint return may not be filed for any taxable year beginning more than 2 years after the date of enactment. In addition, the filing of joint returns in the case of those servicemen in a missing status is to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

4. Surviving spouse tax rates after change of missing status of previously deceased servicemen

Under present law, a surviving spouse (as defined in sec. 2 (a)) is accorded a special status for the 2 taxable years following the year of her spouse's death. The surviving spouse provisions (which are available to a widow with a dependent child) are intended to give the survivor a 2-year transitional period at the lower surviving spouse tax rates (which are the same as the joint return income tax rates) following the death of the spouse and before the single or head-of-household tax rates would apply.

The committee agrees with the House that there is an unusual problem in the case of a spouse whose husband was reported in a missing status for a number of years, and where it is subsequently determined that he died at an earlier time than the date on which his missing status is changed. The committee, like the House, believes that in this case, a transitional period is most needed by the widow after the date on which her husband's status is changed. For this reason, the bill provides that the widow is eligible for surviving spouse tax treatment for the 2 years following the year in which her husband's status as missing is changed rather than the 2 years following the year of actual death. However, as indicated above, the bill also permits the widow to file a joint return for the years her husband is in a missing status (but not for any taxable year beginning more than 2 years from the date of enactment in the case of the Vietnam conflict or more than 2 years from the termination of combatant activities in the case of any future conflict). The effect of these two changes is to allow the widow not only to file a joint return during the period her husband is in missing status (subject

to the limitations discussed above with respect to the period after the termination of combatant activities) even though it is subsequently determined that he was already dead during that period, but also to file a return as a surviving spouse for the 2 years after it has been determined that he was killed and his status is changed.

5. Extension of time for performing certain acts in the case of the spouse of an individual serving in a combat zone

Under present law (sec. 7508), an extension of time is provided for performing various acts, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax. The extension of time applies to any individual who is serving in the Armed Forces of the United States or serving in support of such Armed Forces in a combat zone. Present law also provides for the extension of these benefits to the executor, administrator, or conservator of the estate of an individual entitled to them. The period of service in the combat zone (and the period of continuous hospitalization outside the United States, as a result of injury received in a combat zone) plus the next 180 days thereafter may be disregarded in determining whether the individual performed the various specified acts on time.

Although it is common for these individuals and their spouses to file joint returns, it was somewhat unclear at the beginning of the Vietnam conflict as to whether the spouse was entitled to this extension. The administrative practice of the Internal Revenue Service (announced April 8, 1968) has been to allow the spouse of a serviceman entitled to this extension of time to defer the filing of a joint return or payment of tax until the date the serviceman is required to file and pay the tax. The bill clarifies existing law by providing that the spouse of an individual serving in a combat zone is entitled to the benefits of this provision.

The bill provides, as a general rule, that this provision will apply to the spouse for any taxable year beginning not more than 2 years after the termination of combatant activities in a combat zone. In the case of the Vietnam conflict, however, the bill provides that the spouse will be entitled to the benefits of this provision for any taxable year beginning not more than 2 years after the date of enactment of the bill. In addition, in the case of those servicemen in a missing status these benefits are to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

6. Tax treatment of certain individuals serving on U.S.S. "Pueblo"

In 1970 Congress enacted P.L. 91–235 which dealt with the members of the crew of the *U.S.S. Pueblo* who were illegally detained by North Korea in 1968. The Act provided that the members of the crew were to be treated for purposes of the tax laws in the same manner as if they had served in a presidentially designated combat zone during the period of their detention by North Korea. This meant that for the period of their detention, members of this crew received an exclusion from income tax for their pay for service in the Armed Forces; for the member of the crew who was killed during this period there was a forgiveness of unpaid income taxes and a reduction of Federal estate taxes; and for all personnel on the ship there was an extension of time for filing tax returns, paying taxes, etc.

The exclusion from income tax provided in P.L. 91–235 for the crew aboard the *Pueblo* did not apply to the pay of any civilian employee and was limited to $500 per month in the case of a commissioned officer. This was because when Congress enacted P.L. 91–235, the exclusion of compensation received by individuals serving in a combat zone was not available to any civilian government employee and the exclusion for compensation in the case of a commissioned officer serving in a combat zone was limited to the first $500 per month. Subsequently, in 1972, Congress enacted P.L. 92–279 which extended the exclusion to compensation received by civilian employees and removed the $500 per month limitation for commissioned officers in any case where these individuals were in a missing status as a result of the Vietnam conflict. However, no corresponding amendment was made for those aboard the *Pueblo* who were illegally detained in North Korea.

The committee agrees with the House that it is appropriate to provide the same treatment for the crew of the *Pueblo* (both military and civilian crew members) as was made available under P.L. 92–279 to those listed in a missing status as a result of the Vietnam conflict. Accordingly, the bill extends the exclusion to compensation received by those civilian government employees aboard the *Pueblo* and removes the $500 monthly limitation in the case of commissioned officers. Under the bill, those benefited by these changes will be permitted to file a claim for refund or credit if such claim is filed within one year from the date of the enactment of the bill.

7. Induction period requirement

Under present law an individual must be serving during an induction period in order to be eligible for the combat pay exclusion as well as certain other benefits. Since the Military Selective Service Act of 1967, as amended, expired on June 30, 1973, there is no longer an induction period so that the special provisions are not operative. Accordingly, the bill removes the requirement that there be an induction period in order for a serviceman to be entitled to these benefits. This change is effective on July 1, 1973, so that there will be no lapse of benefits on account of the expiration of the Military Selective Service Act.

B. Cooperative Investment Activities of Educational Institutions

The Common Fund ("the Fund"), a cooperative arrangement formed by a large group of educational organizations for the collective investment of their funds, has been held to be exempt from Federal income taxation under a ruling issued by the Internal Revenue Service in 1970. The Fund was organized by a number of educational institutions to provide a cooperative investment fund that could contract with professional advisors for research, advice, and actual investment of the colleges' and universities' contributions to the Fund. The Fund receives capital from the participating exempt organizations, which capital is then placed in one or more common funds and invested upon the advice of independent investment counsel retained by the organization. It now has more than $220 million in assets, including investment assets of approximately 270 participating colleges and universities.

The 1970 ruling issued to the Fund provided that its exempt status would continue only so long as the investment services of the Fund are provided to members at a charge substantially below cost. The practical effect of this requirement is that the Fund must receive support from outside sources, either in the form of grants or through income from an endowment fund. During the formative years of the Fund, its management and administrative expenses were met by start-up grants from a private foundation and the member organizations paid only a nominal fee for the services performed. However, since the start-up grants from the foundation have now been terminated and the Fund must depend solely upon member institutions for payment of continued operational costs, it appears to be in danger of losing its exemption.

This amendment would make it clear that cooperative arrangements for investment of the type represented by The Common Fund will be exempt from taxation. The new provision is limited to organizations formed and controlled by the investing educational institutions themselves, and is not to apply to any organization formed to promote the furnishing of investment services by private interests even though those services might be made available only to educational organizations. In other words, if the schools that were involved formed their own cooperative investing organization, then it would be exempt under this provision. However, if a private brokerage company or investment advisory company were to initiate the formation of a cooperative investing organization, in order to obtain customers for its business, such an organization would not be exempt under this provision even though it were limited to schools.

The new provision provides that the term "charitable" as used in section 501(c)(3) is to include a common investment fund of educational organizations, including government educational organizations and certain organizations organized for the benefit of these organizations. This means that such an organization would qualify under section 501(c)(3) only if the other relevant requirements of that provision are also met. In other words, the organization would still have to comply with the rules prohibiting electioneering, limiting lobbying, and prohibiting inurements of benefits to private shareholders. It is intended that school investment funds qualifying under section 501(c)(3) but organized separately from the particular college in connection with and for the benefit of which it operates, could participate (on the same basis as the school itself) in the cooperative investment organization, unless they represent private foundations. This type of fund is principally illustrated by a foundation that operates as an arm of a State college or university, and is already recognized as a "public charity" under the Internal Revenue Code (sec. 170(b)(1)(A)(iv)).

This amendment is to apply with respect to taxable years ending on or after January 1, 1974. However, it is not intended to imply that such a cooperative investing organization would not be exempt for prior years. Also, in adding this provision relating specifically to cooperative investment funds, it is not intended that any inference be drawn as to the exempt status of other organizations formed by educational institutions or by other charities on their behalf to carry out their normal functions in a cooperative manner.

C. Treatment Process of Decarbonation of Trona Ore To Be Considered as Mining

Under existing law, percentage depletion is allowed for certain minerals at specified rates. In computing the percentage depletion deduction, the rate of the depletion allowance is applied to the "gross income from the property." In the case of depletion on property other than oil or gas wells, present law provides (sec. 613(c)(1)) that the term "gross income" means "gross income from mining." Present law further provides that the term "mining" for this purpose (sec. 613(c)(2)), in general, includes not only the extraction of the ores or minerals from the ground, but also certain "ordinary treatment processes" (specified in sec. 613(c)(4)).

In the case of trona, percentage depletion is allowed at the rate of 14 percent. Trona ore, however, is not sold in its crude form as extracted from the ground. The valuable mineral in the ore is sodium carbonate, commonly known as soda ash, and treatment processes must be applied to separate the waste materials from the soda ash. One of the processes applied is a calcining process which separates the unwanted water and carbon dioxide from the soda ash. A controversy now exists as to whether the process of calcining to achieve the decarbonation is an ordinary treatment process in the case of trona (as it has been treated prior to 1971) so that percentage depletion will be allowed on the value added by that process.

The controversy which now has arisen with respect to the tax treatment of trona relates to the application in its case of the term "ordinary treatment processes" of extracted ores or minerals. Prior to 1961, the term "ordinary treatment processes" was described in the code as processes normally applied by mine owners or operators to extracted ores or minerals in order to obtain the commercially marketable product. In the case of trona, the first commercially marketable product is soda ash. Thus, it was held under this description that the calcining of trona to produce soda ash qualified as an ordinary treatment process. In 1960, however, this description of treatment processes was eliminated (in P.L. 86–564) and instead an exclusive specific list of the ordinary treatment processes which are to be considered as mining was substituted. This list did not specifically contain the process used in the case of trona which resulted in its marketable product "soda ash." In addition, the 1960 amendment contained a provision which set forth the treatment processes not considered as mining (unless specifically provided for or necessary or incidental to processes as provided for) and calcining was among the list.

The problem that exists relates to statements made during the hearings in 1959 before the Committee on Ways and Means with respect to the Treasury Department proposal which specified the treatment processes which would be considered mining for purposes of computing percentage depletion. (Essentially, this same proposal was contained in the Senate amendment which was enacted in 1960, as described above.) The Treasury representative in response to the question of whether the Treasury proposal would prohibit the present practice of allowing decarbonation of soda ash said that it was not intended.

In 1971, the Treasury Department announced, while finalizing regulations dealing with the new code provision relating to ordinary treatment process, that for the future it will disallow the so-called "decarbonation" or "calcining" process as an ordinary treatment process with respect to trona; in effect, this would treat it as a non-mining process. This means that percentage depletion would not be based on the market value of soda ash extracted from trona, but rather on the value of trona, as mined including certain other mining processes attributable to trona. Although the Treasury Department concedes there is some justification for the argument that there were assurances given in 1959 that in the case of trona no change was intended, the Treasury states that the 1959 representations were in error and based on mistaken assumptions. However, in view of these representations the Treasury has indicated that it will allow the calcining as an ordinary treatment process for all years through 1970 the year it announced its intention not to treat the "decarbonation" process of trona as a mining process.

The committee has concluded that the trona miners should be allowed to compute percentage depletion in the same manner as was allowed in the past and in the manner in which it was represented by the Treasury in 1959 would be the result under the new provision. The committee's decision is based on its belief that the decarbonation of the trona ore to eliminate water and carbon dioxide is essentially a concentration process which should be treated as an allowable mining process. To assure this result, the amendment provides that the decarbonation of trona is to be treated as an ordinary treatment process.

It is understood that in some cases customers want a higher bulk density soda ash, and to meet that need soda ash which has already been decarbonated is placed in a second calciner to produce a denser product. This densification step was not treated as an ordinary treatment process under the past practice, and is not to be treated as an allowable process under the committee's amendment.

This provision is to apply to taxable years beginning after December 31, 1970. This will provide the continued treatment of the decarbonation process of trona as mining since the Treasury Department is allowing this treatment for all taxable years beginning before 1971.

With respect to its effect on revenues, the committee does not believe that this amendment should be viewed as resulting in a revenue loss, since the amendment continues the treatment of trona to the same extent as in the past. However, based on the position the Treasury Department is taking as to the treatment of trona for the future, it can be argued that the amendment will reduce revenues by about $2 million annually.

D. Application of Moving Expense Provisions to Members of U.S. Military Services

The Tax Reform Act of 1969 made a series of revisions in the tax treatment of moving expenses. Some of these allowed more generous treatment than prior law and some were more restrictive. In the first category the Act broadened the categories of deductible moving expenses to include three new categories of deductible moving expenses

(under sec. 217): (1) pre-move househunting trip expenses; (2) temporary living expenses for up to 30 days at the new job location; and (3) qualified expenses of selling, purchasing or leasing a residence. These additional deductions were limited to an overall limit of $2,500, with a $1,000 limit on the first two categories. Prior law already allowed deductions for the moving of household goods to the new location and the traveling expenses for the family (including meals and lodging) to the new location.

On the other hand, however, the 1969 Act in certain respects restricted the moving expense treatment. First, it provided that all reimbursements of moving from one residence to another were to be included in the taxpayer's adjusted gross income as compensation for services (under sec. 82) but with the offsetting deductions allowed to the extent they were the type of moving expenses referred to above. Second, the 1969 Act increased the minimum 20-mile test to 50 miles for a move to qualify for the deduction and third it modified the existing 39-week rule, the rule requiring a taxpayer to be employed full time for 39 weeks out of the year following the relocation in order to be eligible for the moving expense deduction.[1]

According to the Department of Defense, the restrictive changes made in the 1969 Act present significant problems with respect to their application to members of the military services. It is reported that this is especially the case with the requirement (under sec. 82 and the regulations thereunder) that all moving expense reimbursements, whether in-kind or cash, be included in gross income as compensation and reported both to the individual and the Internal Revenue Service for withholding tax purposes. The Department of Defense has indicated that identification of in-kind "reimbursements" for each serviceman where the Department of Defense pays for the moving expense to the mover, or does the moving itself, would involve substantial administrative burdens for the department as well as increasing their costs at no revenue gain to the Treasury.

The Department of Defense also has indicated that the requirements that the new place of work be at least at a 50-mile move and that the individual work for at least 39 weeks at the new location represented hardships for military personnel since many mandatory personnel moves are made for less than 39 weeks and for less than 50 miles. As a result, the servicemen involved would not be allowed any deduction for their moving expenses, but still would be required to report the moving expense "reimbursement," whether paid by the Government or paid directly to them as a cash reimbursement.

Since the enactment of the 1969 changes, the Internal Revenue Service has by administrative determination provided a moratorium on withholding and reporting with respect to the application of the new moving expense rules to members of the military services.[2] The most recent extension of this Internal Revenue Service moratorium expires at the end of 1973. The moratorium does not apply to cash reimbursements of moving expenses, which are still required to be reported. In addition, where the moving expenses paid by a serviceman exceeds his reimbursements for his expenses, the excess amounts may be allowable as a deduction.

[1] The 39-week test is waived if the employee is unable to satisfy it as a result of death, disability, or involuntary separation (other than for willful misconduct). The Act also made the moving expense deduction available to the self-employed. Self-employed individuals have a 78-week rule, instead of the 39-week rule.

[2] Internal Revenue Service, Public Information, Fact Sheet, November 30, 1970 (letter to Secretary of Defense).

The Department of Defense has submitted legislative proposals to Congress this year dealing with the application of the deduction for moving expenses to the military. Since the present moratorium expires at the end of this year there is not sufficient time in this session of Congress to analyze these proposals. As a result the committee by legislative action is extending this moratorium as to the application of the 1969 changes in the moving expense rules to members of the military services for one more year, or until January 1, 1975. In the meantime, the committee has instructed the staff of the Joint Committee on Internal Revenue Taxation to review the proposed legislation and present an analysis to the committee for consideration during the next session of Congress.

This amendment will not have any effect on revenues since it continues existing administrative rules.

E. Treatment of Distilled Spirits Brought Into the United States From Puerto Rico and the Virgin Islands

Present law (sec. 5001(a)) imposes an excise tax both on distilled spirits imported into, and spirits produced in, the United States. A separate provision (sec. 7652) also applies this tax to spirits brought into the United States from Puerto Rico and the Virgin Islands. This provision states that goods from Puerto Rico and the Virgin Islands are to be taxed at a rate equal to the tax upon like articles of U.S. domestic goods.

Domestically produced spirts are not subject to tax until they are withdrawn from bonded premises. Similarly, when imported spirits or spirits brought into the United States from Puerto Rico or the Virgin Islands are placed on bonded premises upon arrival, the payment of the excise tax may be deferred (although liability is established) until the spirits are removed from these premises (sec. 5232). Another provision of present law (sec. 5008) provides that the distilled spirits tax is to be abated if spirits are lost or destroyed while on bonded premises and that a tax refund is to be made if, in certain circumstances, spirits removed from the bonded premises (after the payment of tax) are lost or destroyed.

The loss and refund provisions apply only to those spirits referred to in the provision (sec. 5001) that imposes the tax on imported and domestically produced spirits. However, as indicated above, in the case of spirits from Puerto Rico and the Virgin Islands, the tax is imposed by a separate provision (sec. 7652) and the loss refund provision is not made applicable in this case. The result is that even though spirits coming into the United States from Puerto Rico and the Virgin Islands are granted deferral of tax if placed on bonded premises in the same manner as spirits produced elsewhere, nevertheless they are not eligible for the decreased liability or refund treatment available to other imported or domestically produced spirits if the spirits are lost or destroyed.

The committee believes that this distinction in treatment is inadvertent, arising from the fact that this tax is imposed by a separate provision in the case of goods brought into the United States from Puerto Rico and the Virgin Islands. Since the committee sees no reason why spirits from Puerto Rico and the Virgin Islands should be treated differently in this respect than imported or domestically produced

spirits, it has extended the loss and refund treatment referred to above to spirits from Puerto Rico and the Virgin Islands.

This amendment is to apply to spirits lost or destroyed after the date of enactment of this bill.

There will be no revenue loss to the United States because of this change in the law since the revenue from this tax is covered into the treasuries of Puerto Rico—or the Virgin Islands in the case of distilled spirits coming from these locations. Moreover, the revenue loss for Puerto Rico and the Virgin Islands from the enactment of this provision will be negligible and the committee has been informed that they have no objection to the enactment of this provision.

F. Use of Appreciated Property by Corporations to Redeem Their Own Stock

Present law (sec. 311 of the code) provides, in general, that no gain or loss is to be recognized to a corporation if it distributes property with respect to its stock. The Tax Reform Act of 1969, however, made several changes in this rule when Congress became aware that large corporations were redeeming substantial amounts of their own stock with appreciated property and thus were escaping any tax on the appreciation in this type of disposition. To correct this Congress in the 1969 Act amended this provision to provide that if a corporation distributes property to a shareholder in redemption of part or all of his stock and the property has appreciated in value (i.e., the fair market value of the property exceeds its adjusted basis), then gain is to be recognized to the distributing corporation to the extent of the appreciation.

An exception to this rule enacted in the 1969 Act is provided where a substantial shareholder, who owns at least 10 percent in value of a corporation's stock for at least 12 months immediately preceding the distribution, completely terminates his interest in the corporation. For purposes of determining whether a shareholder has completely terminated his interest in a corporation, present law provides that constructive stock ownership rules (sec. 318) apply, except that a waiver of the family attribution rules can be made (sec. 302(c)(2)).[1]

However, for purposes of determining whether a shareholder owns 10 percent of a corporation's stock before the redemption, these attribution rules do not apply.

The committee believes that in the interests of uniformity of treatment the same rules should apply for purposes of both tests. Accordingly, the committee's amendment provides that the attribution rules (of sec. 318 and the waiver provided by sec. 302(c)(2)) are to apply in determining whether an individual has been a 10-percent shareholder for the required period of time before the redemption, to the same extent as they apply in determining whether he has completely terminated his interest in the corporation following the redemption.

In effect the amendment will apply to situations where two or more related shareholders (including trusts, corporations, partnerships, and estates) redeem their stock at the same time (thus terminating their

[1] The present provisions of section 302(c)(2) permit a waiver of the family attribution rules (sec. 318(a)(1)), if certain conditions are met, for purposes of determining whether a shareholder has completely terminated his interest in a corporation through a redemption and thus the property received in the redemption can qualify for non-dividend treatment (under sec. 302(b)(3)). This same waiver of the family attribution rules is also permitted under present law for purposes of the termination of interest requirement of section 311(d).

interests), but where one or more of the redeeming shareholders does not own 10 percent of the corporation's stock. By applying the attribution rules for purposes of the 10 percent ownership test as provided under the amendment, shareholders related to a trust, corporation, partnership and estate through the attribution provisions (sec. 318(a)(2) and (3)) will be allowed to combine their holdings for purposes of the 10 percent ownership rule. Shareholders related through the family attribution rules (sec. 318(a)(1)) will be permitted to combine their holdings for purposes of the 10 percent rule if the shareholders do not file a waiver of those family attribution rules (under sec. 302(c)(2)). It is not intended, however, that shareholders who redeem their stock and who file a waiver of the family attribution rules will be allowed to attribute to themselves the stock of any other family shareholder if that stock is not redeemed as part of the same plan.

This amendment is to apply with respect to distributions made after the date of enactment.

The amendment is expected to have a negligible effect on revenues.

G. Taxation and Regulation on the Manufacture and Sale of Filled Cheese

Under present law an excise tax is imposed on the sale of filled cheese at a rate of one cent per pound for domestically manufactured cheese and at a rate of eight cents per pound on imported cheese. In addition, an occupational tax of $100 per year is imposed on each factory of a manufacturer of filled cheese, a $250 annual tax is imposed on each wholesale distributor and a $12 annual tax is imposed on each retail dealer. The code also provides certain other requirements as to the packaging, labeling and the posting of signs with respect to the marketing of filled cheese. Criminal penalties are provided for failure to pay these taxes or for violation of the stamping and labeling requirements.

Filled cheese is defined in the Internal Revenue Code (sec. 4846) to include "all substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese."

The filled cheese taxes and regulatory requirements were originally enacted in 1896. That legislation was one of a number of provisions enacted to insure purity and to inhibit the sale of factory-prepared foods in competition with natural foods.

Since the taxes imposed on filled cheese are relatively low, the taxes alone have not inhibited the production of filled cheese. It is the packaging and labeling requirements which in the past have had the effect of preventing all but a small amount of filled cheese from being sold, although there is presently an increasing interest in its marketability.

The committee believes that one of the original purposes of the filled cheese laws—to inhibit competition of factory-prepared foods with natural foods—is no longer appropriate. The second of the original purposes—to insure food purity—is no longer an appropriate activity to be carried on by the Internal Revenue Service. Any require-

ments as to the quality and labeling of cheese products fall clearly within the jurisdiction of the Food and Drug Administration and can be administered by that agency separate from the tax laws. Furthermore, the committee understands that the Food and Drug Administration presently has the authority to regulate the marketability of filled cheese. Since the provisions in the Internal Revenue Code serve no internal revenue purposes and since appropriate regulation as to the wholesomeness and purity of products falling in the filled cheese category are enforced by the Food and Drug Administration outside of the provisions of the Internal Revenue Code, the committee believes that these provisions are no longer needed as part of the Internal Revenue Code and should be repealed.

This amendment is to become effective after the date of enactment.

Since the filled cheese provisions were not intended for revenue raising purposes and actually only resulted in approximately $10,000 in revenues in 1973 fiscal year, the enactment of this amendment will result in a negligible effect on revenues.

H. Accrued Vacation Pay

Under the 1939 Code, deductions for vacation pay could be taken when these expenses were paid or accrued, or paid or incurred, depending upon the method of accounting, "unless in order to clearly reflect income the deductions should be taken as of a different period." Under the above quoted portion of this provision, it was held by the Internal Revenue Service that vacation pay for the next year could be accrued as of the close of the year in which qualifying services were rendered, provided all of the events necessary to fix the liability of the taxpayer for the vacation pay under the employment contract have occurred by the close of the current year. In determining whether the events necessary to fix the liability of the taxpayer for vacation pay had occurred, the fact that the employee's rights to a vacation (or payment in lieu of vacation) in the following year might be terminated if his employment ended before the scheduled period was not regarded as making the liability a contingent one instead of a fixed one. It was held that the liability in such a case was not contingent since the employer could expect the employees as a group to receive the vacation pay; only the specific amount of the liability with respect to individuals remained uncertain at the close of the year.[1]

In 1954, Congress enacted a provision (sec. 462) which provided for the deduction of additions to reserves for certain estimated expenses. Reserves for vacation pay, including accrual on a completion of qualifying service basis, would have been deductible under this provision and as a result it was concluded that it was no longer necessary to maintain the administrative position described above with respect to vacation pay. As a result, in Revenue Ruling 54–608 (C.B. 1954–2, 8), the Internal Revenue Service revised its position on the deductibility of vacation pay. In this ruling, it held that no accrual of vacation pay could occur until the fact of liability with respect to specific employees was clearly established and the amount of the liability to each individual employee was capable of computation with reasonable accuracy. It was thought that taxpayers accruing vacation pay under plans which did not meet the requirements of the strict

[1] GCM 25261, C.B. 1947-2, 44; L.T. 3956, C.B. 1949-1, 73.

accrual rule set forth in this ruling would utilize this new provision (sec. 462) providing for the deduction of additions to reserves for estimated expenses. This ruling was initially made applicable to taxable years ending on or after June 30, 1955.

Because the provision relating to the reserve for estimated expenses was later repealed, the Treasury Department in a series of actions postponed the effective date of Revenue Ruling 54–608 until January 1, 1959.[2] These actions rendered Revenue Ruling 54–608 inapplicable to taxable years ending before January 1, 1959.

Congress, in the Technical Amendments Act of 1958 (sec. 97), further postponed the effective date of Revenue Ruling 54–608 for two more years, making it inapplicable to taxable years ending before January 1, 1961. Subsequently, Congress in six actions (P.L. 86–496, P.L. 88–153, P.L. 88–554, P.L. 89–692, P.L. 91–172, and P.L. 92–580) further postponed the effective date of Revenue Ruling 54–608. The sixth of these laws postponed the application of the ruling until January 1, 1973.

The application of Revenue Ruling 54–608 results in the denial of a deduction in a year where the accrual of vacation pay has not been clearly fixed with respect to specific employees. With the provisions for reserves for estimated expenses no longer a part of the law, this creates hardships for taxpayers who have been accruing vacation pay under plans which do not meet the requirements of the strict accrual rules set forth in this ruling. For such taxpayers if this ruling were to go into effect, they would have one year in which they would receive no deduction for vacation pay. This would occur since the current year's vacation pay deductions would have been accrued in the prior year and the next year's vacation pay does not meet the tests of accrual of this ruling.

Since the repeal of the provision relating to the reserve for estimated expenses in 1955, the House and Senate committees have indicated that this problem needed to be studied before permanent legislation could be prepared. This problem has been studied and it is anticipated that a permanent solution can be considered next year. In the meantime, it is necessary to continue the existing rules until next year. Accordingly, this amendment postpones for one more year the effective date of Revenue Ruling 54–608. As a result, deductions for accrued vacation pay, if computed by an accounting method consistently followed by the taxpayer since 1958, will not be denied for any taxable year ending before January 1, 1974, solely because the liability to a specific person for vacation pay has not been clearly established or because the amount of the liability to each individual cannot be computed with reasonable accuracy.

This postponement will not reduce revenues from present levels since it continues existing rules.

I. Treatment of Certain Disaster Losses

Under present law (sec. 165), taxpayers generally are allowed to deduct their losses sustained during the year and not compensated for by insurance or other means. Individuals generally are allowed to deduct their losses of property (not connected with their business) only to the extent the amount of the loss exceeds $100; losses attribu-

[2] The last of these postponements was made in Revenue Ruling 57-325, C.B. 1957-2, 302, July 8, 1957.

table to an individual's business are fully deductible. In the case of any loss attributable to a major disaster which occurred in an area authorized by the President to receive disaster relief a special rule allows the loss, at the election of the taxpayer, to be deducted on the return for the year immediately preceding the year of the disaster (that is, the return generally filed in the year of the disaster). If the disaster loss would have generated a refund for the prior year and the taxpayer has already filed his return for that year he could then file an amended return which would allow him to receive the refund in the year of the disaster. This provision was designed to provide immediate tax relief in the case of these major disasters.

Cases have come to the attention of the committee, however, where taxpayers who have claimed refunds arising by reason of deductible disaster losses, have been reimbursed for these losses in later years where this was not anticipated in advance. (Tax deductions may not be taken to the extent losses are compensated for by insurance or other means.) In this case, the taxpayer is generally required to include the reimbursements in income for the year in which the reimbursement is received. This procedure must generally be followed in lieu of recomputing the tax for the year in which the deduction was originally taken.

Recently, the tax treatment of disaster losses resulting from floods has produced severe hardships on the part of the people affected by them. In these cases the taxpayers often were either not covered by insurance or their losses were in excess of their coverage and they claimed their disaster losses, with the result that they usually received tax refunds. Subsequently, these taxpayers in many cases were compensated for their losses based upon claims of tort. In cases of this type, where compensation for losses occurs shortly after the disaster but in a different year from the one in which the deduction was taken, the taxpayers often are still in a severe hardship situation. Moreover, in the cases called to the committee's attention many of the taxpayers had spent both the tax refunds and the reimbursements before they were aware of the tax consequences. As a result, the committee believes it is appropriate not to require the immediate inclusion of the compensation in their income.

The committee amendment provides that the taxpayer may elect to exclude from his income the amount of any compensation which he properly did not take into account in computing the disaster loss deduction (that is, the payment of the compensation was unexpected at the close of the taxable year in which the disaster occurred or at the time of making the election to claim the deduction in the year immediately preceding the year of the disaster). However, if the taxpayer makes this election, he must enter into an agreement with the Treasury Department to reduce the basis of the repaired or replacement property by the compensation he received. This basis adjustment with respect to the repaired or replacement property is to be made to the extent of the compensation received first by reducing the basis of any repaired or replacement property which is depreciable, then to reduce the basis of any such trade or business property (other than depreciable property), and finally to any other such affected property.[1]

[1] In the case of replacement property, the basis adjustment is to apply only to property which is like the kind of property originally destroyed and only if the replacement property is acquired within 3 years of the disaster. If replacement property is not acquired within 3 years of the disaster (apart from the adjustments made to any damaged property), then no other tax consequences are to arise with respect to this part of the tax benefit.

The committee believes, however, that this tax deferment procedure should be available only for the first $5,000 of tax benefit. Thus, a taxpayer may elect this treatment for the first $5,000 of tax benefits and must make the corresponding basis adjustment to reflect the compensation received up to but not in excess of $5,000 of tax benefits. If the compensation received resulted in a tax benefit in excess of $5,000, the amount of compensation representing the excess is to be included in the income of the taxpayer. (There is no basis adjustment for this excess amount.) The committee believes, however, that since these taxpayers may also still be suffering from hardships, it would not be appropriate to require the inclusion of this excess compensation in income in one year. Consequently, the committee has provided that the excess compensation is to be included in the taxpayer's income in equal installments over a 5-year period, commencing with the year in which it was received.

In order for the taxpayer to elect the benefits of this provision, he must originally have been allowed to claim a loss attributable to a disaster occurring during calendar year 1972, although he need not have made the election to take the loss in the year immediately preceding the year in which the disaster occurred. In addition, he must have received the compensation (which was not taken into account when computing the amount of the loss deduction attributable to the disaster) in settlement of his claim against another person for that other person's liability in tort for the damage or destruction of his property in connection with the disaster.

This amendment applies to compensation received in calendar year 1972 or later if the taxpayer deducted the disaster loss on his return either for the tax year immediately preceding the tax year in which the disaster occurred or for a later year.

The decrease in tax liability resulting from this amendment would be small for each of the income years 1972–1974.

J. Exclusion From Unemployment Compensation Coverage of Students Employed by Nonprofit Organizations Auxiliary to Schools, Colleges and Universities

Under present law, services of a student or the spouse of a student performed in the employ of a private nonprofit organization which is auxiliary to a school, college, or university at which the student is enrolled and in regular attendance must generally be covered under the State unemployment compensation program. These auxiliary nonprofit organizations may operate such enterprises as bookstores, housing, publishing, or food service.

When a similar situation under the social security program was brought to the attention of Congress last year, the Social Security Act was amended to exclude these services from coverage. The Committee bill provides for the exclusion from unemployment compensation coverage of the services of a student or the spouse of a student performed in the employ of an auxiliary nonprofit organization which is organized and operated exclusively for the benefit of and supervised or controlled by the school, college, or university.

The exclusion would be effective with respect to services performed after December, 1972.

It is estimated that this provision would decrease annual tax liability by less than $5 million.

K. Exception to the Charitable Distribution Requirements for Certain Private Foundations

Present law limits the involvement of private foundations in business enterprises by requiring divestiture of business holdings in excess of certain prescribed percentages. An exception to this rule was provided in the Tax Reform Act of 1969 (sec. 101(1) (4)). That exception permitted the retention of 51 percent of a business' stock in the case of any foundation incorporated before January 1, 1951, where substantially all of its assets on May 26, 1969, consisted of more than 90 percent of the stock of an incorporated business enterprise which is licensed and regulated, the sales and contracts of which are regulated, and professional representatives of which are licensed, by State regulatory agencies in at least 10 States. In addition, in order to qualify for the provision the foundation must have received its stock solely by gift, devise or bequest.[1]

Under this exception, the Herndon Foundation is permitted to retain up to 51 percent of the stock in the Atlanta Life Insurance Company. However, it has come to the committee's attention that the charitable distribution provisions, which require a private foundation to distribute currently the greater of its adjusted net income, or a stated percentage of its investment assets (the minimum investment return), are forcing divestiture of the stock that Congress determined the Herndon Foundation should be permitted to keep.

As a result, the intent of Congress in 1969, that foundations like the Herndon Foundation should be able to retain 51 percent of the stock of a company, is being frustrated because of the operation of the minimum investment return provision. To overcome this result, the committee has provided that in the case of a private foundation of the type referred to above (described in sec. 101(l)(4) of the Tax Reform Act of 1969) the minimum investment return and the adjusted net income are to be determined without regard to the foundation's stock holdings (or divided income on such holdings) in the company in question. The dividend income derived from such stock, however, is to be added to the amount that the private foundation is otherwise required to distribute currently.

This amendment shall apply with respect to taxable years beginning after December 31, 1971.

This amendment will not have any effect on the revenues to the Treasury.

L. Tax Treatment of Tuition and Educational Expenses Paid on Behalf of Members of the Uniformed Services

Present law (sec. 117 of the code) provides, subject to certain limitations and qualifications, that gross income of an individual does not include amounts received as a scholarship at an educational institution or as a fellowship grant. This provision, however, does not apply with respect to any amount paid or allowed on behalf of an individual if the amount represents compensation for past, present, or future employment services, or in certain other cases, such as where the studies or

[1] Stock of a company placed in trust before May 27, 1969, with provision for the remainder to go to the foundation also is treated as coming under this provision if the foundation held on May 26, 1969, without regard to such trust, more than 20 percent of the stock of enterprise.

research are primarily for the benefit of the grantor. In these types of cases, the amounts are considered as compensation designed for services or designed to accomplish an objective of the grantor and are not excludable from gross income; and consequently, these amounts are subject to tax to the individual.

The Internal Revenue Service notified the Department of Defense in response to its request for a ruling that the tuition and other educational expenses paid to or on behalf of participants in the recently instituted Armed Forces Health Professions Scholarship Program are not excludable from the individual's gross income, and, therefore, are subject to tax and withholding. It was noted that under this scholarship program the student was required to serve a prescribed period of active duty with the Armed Forces in return for payment by the Government of certain educational expenses, such as tuition and fees, books, and other related expenses.

The Department of Defense has raised a question about the effect of this ruling on the students under the Armed Forces Health Professions Scholarship Program. In addition, although the ruling only specifically applies to this program, the Department of Defense has expressed a concern with respect to its other educational programs where there are requirements of a prescribed period of active military duty or some other service or obligation in return for the payments. The Department of Defense has submitted a legislative proposal dealing with the application of the "scholarship" exclusion provision with respect to the payments by the Government for the tuition and other educational expenses of a member of the uniformed services attending an educational institution.

The Committee believes that the Defense Department's proposal deserves detailed consideration. To permit the time for this consideration, the committee has decided to postpone the application of the effect of the ruling until January 1, 1975, not only with respect to the Armed Forces Health Professions Scholarship Program but also to other substantially similar educational programs of the uniformed services (as determined by the Secretary of the Treasury), pending a study by the staff of the effect of the application of the proposal to members of the uniformed services. Accordingly, the committee amendment provides that a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program which is determined by the Secretary of the Treasury to have substantially similar objectives) from an educational institution will not be subject to tax on any payment from the Government with respect to his tuition and certain other educational expenses, including contributed services, accommodations and books. (The committee intends that the phrase "substantially similar objectives" is to include any undergraduate or graduate programs paid for by appropriated funds.) This is applicable whether the member is receiving the educational training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required as a condition of receiving the educational payments.

The amendment applies with respect to amounts received in calendar years 1973 and 1974.

It is estimated that this amendment will reduce annual Federal individual income tax liability by less than $10 million at 1973 levels.

M. Transfers of Accounts Receivable to Related DISCs

Under present law, the profits of a Domestic International Sales Corporation (DISC) are not to be taxed to the DISC but instead are to be taxed to the shareholders subsequently when distributed to them. To qualify as a DISC, at least 95 percent of a corporation's gross receipts must arise from export sale or lease transactions and other export-related investments or activities. In addition, at least 95 percent of the corporation's assets must be export-related. Included in export-related assets are accounts receivable and evidences of indebtedness of the corporation (or if the corporation acts as agent, the principal) held by the corporation which arose in connection with qualified export sale, lease, or rental transactions (including related and subsidiary services) of the corporation or the performance of managerial, engineering, or architectural services producing qualified export receipts by the corporation.

Accounts receivable and evidences of indebtedness can only be treated as qualified export assets if they arise by reason of the transactions of the corporation itself, and a corporation can qualify as a DISC if these accounts receivable are its only assets. However, if these accounts receivable and evidences of indebtedness are transferred to another related corporation, they would not be treated as qualified export assets in the hands of that transferee corporation. Therefore, if these were the only assets held by the transferee corporation, it could not qualify as a DISC.

It has come to the attention of the committee that a corporation may want to have its sales operations in one DISC and its financing operations in another DISC. A corporation might adopt this corporate structure because it believes it eases its ability to receive outside financing. In view of this, the committee has adopted an amendment which enables a DISC to treat as qualified export assets the accounts receivable and evidences of indebtedness acquired as a result of the export related transactions (whether as principal or agent) of a related DISC.

This amendment applies with respect to taxable years beginning after 1973, and at the election of the taxpayer (if the election is made within 90 days after the date of the enactment of this amendment) to any taxable year beginning after 1971 and before 1974.

This amendment will have no direct effect on revenues to the Treasury.

III. EFFECT ON REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statements are made relative to the effect on the revenues of this bill. From the standpoint of the level of revenues with respect to present law as it operated on June 30, 1973, the provisions of the House bill relating in general to the tax treatment of members of the armed forces and civilian employees who are prisoners of war or missing in action are expected to result in a decrease in receipts of approximately $4 million spread over the next several fiscal years. However, the fact that the "induction period" (a requirement for certain benefits) has been allowed to lapse as of June 30,

means that there would have been an increase in receipts of approximately $12.5 million, primarily in fiscal year 1974. With the changes made in this bill, this increase in revenue will not occur. The Department of Treasury agrees with these statements.

The committee amendments either have no effect, or a small or negligible effect, on existing revenues (as described in each case in the explanation of the provisions above), except in the case of the amendment dealing with the exclusion from the unemployment compensation program (less than $5 million), the amendment dealing with the tax treatment of tuition and educational expenses paid on behalf of members of the uniformed services (less than $10 million), and the amendment dealing with the treatment process of trona. Based upon the Treasury Department regulations this amendment is estimated to reduce revenues by about $2 million. However, the committee believes the treatment provided is a clarification of present law and therefore that this provision should not be viewed as resulting in a revenue loss.

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported unanimously by voice vote.

IV. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).

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Calendar No. 949

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-987

TAX TREATMENT OF MEMBERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES WHO ARE PRISONERS OF WAR OR MISSING IN ACTION AND CERTAIN OTHER AMENDMENTS ADDED BY THE COMMITTEE

JULY 8, 1974.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 8214]

The Committee on Finance, to which was referred the bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

H.R. 8214, as passed by the House, amends present law in several respects to provide relief for military and civilian personnel returning from the Vietnam conflict, and for the families of those individuals who are listed as missing in action and are subsequently determined to have died at an earlier time. With minor technical changes, the committee agrees with the bill as passed by the House. However, in addition, the committee has added an amendment containing a series of provisions. The House-passed provisions and the committee provisions are summarized below.

House provisions.—First, the bill extends the provision under present law, which permits military personnel who are hospitalized as a result of service in a combat zone to exclude military pay they receive during the period of hospitalization, to cover for a period of time the pay they receive while hospitalized after all combatant activities have terminated. Since the exclusion under present law only applies during the period in which there are combatant activities in a combat zone,

the bill extends this exclusion for a period of time to cover a member of the Armed Forces who was hospitalized for an injury incurred in a combat zone in the waning days of the Vietnam conflict.

Second, the House bill extends the provision which forgives Federal income taxes on income other than combat pay, which is presently excludable under another provision, in the case of a member of the Armed Forces who dies while serving in a combat zone (or as a result of an injury incurred while serving in a combat zone) to cover the period he is in a missing status even though it is subsequently determined that he actually died at an earlier time. Present law forgives income taxes through the year of a serviceman's actual death. The committee agrees with the House that it is appropriate to prevent any additional hardship to his family which could result from the collection of taxes for years following his actual death and, therefore, is in accord with the House treatment extending this forgiveness to cover the years a serviceman is in missing status until his status is changed.

With respect to the first two changes, the committee agreed with the House that these special benefits should not extend longer than a reasonable period after the termination of combatant activities and, accordingly, is in agreement with the House bill which provided in general, that these benefits are not to apply for more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, the benefits provided under the provisions described above will be available, in general, for a 2-year period after the bill is enacted.

Third, the House bill deals with the question of when the special tax rates available to a surviving spouse should be available for a spouse whose husband was reported in missing status and is subsequently determined to have died at an earlier time. The bill provides that the widow is to be eligible for surviving spouse tax treatment for the 2 years following the year in which her husband's missing status is changed rather than the 2 years following the year of actual death.

The House bill also clarifies existing law in two respects. First, present law provides an extension of time for performing various acts such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax in the case of an individual serving in the Armed Forces of the United States (or serving in support of the Armed Forces in a combat zone). Since it is common for these individuals and their spouses to file joint returns, the question has arisen as to whether their spouse is entitled to the benefit of these extensions. The bill clarifies this by providing that the spouse of a serviceman (or the spouse of an individual serving in support of the Armed Forces) in a combat zone is to have the same extension of benefits as is available to her husband. Second, the bill also makes it clear that the spouse of an individual in missing status may file a joint return during the period he is in missing status even if it is subsequently determined that he had been killed in action in a prior year. In each of these two changes, the House bill also provides a similar 2-year limitation after the termination of combatant activities and with respect to the Vietnam conflict as described above.

The House bill also deals with the tax treatment of certain individuals who were illegally detained when the *U.S.S. Pueblo* was seized in 1968 by North Korea. In this regard, the bill provides an exclusion from income with respect to compensation received by the members of

the crew to conform to the treatment available for prisoners of war in a combat zone.

Finally, the House bill removes the requirement that a serviceman must be serving during an "induction period" in order to be eligible for certain benefits otherwise accorded. This change is necessary since the Military Selective Service Act of 1967 has expired and there is no longer an induction period.

Provisions of committee amendment.—The first committee provision extends to distilled spirits brought into the United States from Puerto Rico and the Virgin Islands the same abatement or refund provisions in the case of loss or destruction that are presently applicable to imported or domestic spirits.

The second committee provision continues for one more year (until January 1, 1974) the treatment which has been available for taxable years ending before January 1, 1973, with respect to the deduction for accrued vacation pay.

The third committee provision deals with the tax treatment of tuition and educational expenses paid on behalf of members of the uniformed services. The exclusion from gross income for certain amounts received as a scholarship at an educational institution or as a fellowship grant generally does not apply if the amounts received represent compensation for past, present, or future employment services. The Internal Revenue Service has notified the Department of Defense in response to its request for a ruling that certain amounts received by students toward their educational expenses while participating in the recently instituted Armed Forces Health Professions Scholarship Program are not excludable from their gross income because of the individual's commitment to future service with the Armed Forces; thus, under this position the individuals are subject to tax on the amounts received. The committee amendment provides that the exclusion for scholarship and fellowship grants is to apply to payments made by the Government for the tuition and certain other educational expenses of a member of the uniformed services attending an educational institution under the Armed Forces Health Professions Scholarship Program (or substantially similar programs) until January 1, 1975, pending a review by the staff of the effect of application of this provision.

The fourth committee provision deals with the award of court costs, including reasonable attorney fees, to a taxpayer who is the prevailing party in a court proceeding. Under present law, a taxpayer cannot recover attorney's fees incurred in connection with a court proceeding. The amendment would authorize the award of a judgment for such costs if, in the opinion of the court, the litigating position taken by the Secretary of the Treasury or his delegate is clearly unreasonable. Further, the amendment would clarify the authority of the Tax Court to award a decision or order for certain court fees to a petitioner who is the prevailing party in a proceeding.

The fifth committee provision provides that the 8-percent manufacturer's excise tax on truck parts and accessories is not to apply in the case of any part or accessory sold on or in connection with the first retail sale of a light-duty truck (which is not subject to the truck tax). A refund or credit is allowed where the parts and accessories tax has been paid by the manufacturer and it is thereafter determined that the sale of the part or accessory is tax free.

II. GENERAL STATEMENT

A. Tax Treatment of Members of the Armed Forces and Civilian Employees Who Are Prisoners of War or Missing in Action

Congress has enacted several special rules for members of the Armed Forces and civilian employees to cover certain hardships with respect to the filing of income tax returns and the payment of tax during the period they are in a combat zone [1] and for certain subsequent periods. The committee has been informed that certain problems have arisen as a result of the Vietnam conflict. These are discussed below.

1. Military pay during hospitalization after termination of combatant activities.

Under present law (sec. 112), an exclusion is provided for pay received for active service by a member of the Armed Forces for any month during which he either served in a combat zone or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone.[2] In the case of enlisted personnel, the exclusion applies to all of their pay. In the case of commissioned officers, the exclusion applies to the first $500 per month of their pay. In addition, military personnel and civilian employees who were serving in the Vietnam conflict and who are listed in a missing status [3] are entitled to the income tax exclusion for all compensation (without the $500 per month limitation in the case of commissioned officers) received for active service during the period they are in a missing status.

The exclusion for compensation received while hospitalized applied only to a month during which there are combatant activities in a combat zone. As a result, a member of the Armed Forces who is hospitalized for an injury incurred in a combat zone in the waning days of the Vietnam conflict will not get the benefit of this exclusion for any month following the month of his injury if all combatant activities have been terminated. However, a serviceman injured at an earlier date whose period of hospitalization was entirely within the period of combatant activities would be able to treat his military compensation as combat pay and therefore exclude it from gross income. For this reason, the bill extends the exclusion to cover military pay received by a serviceman through the month his hospitalization ends even if all combatant activities have been terminated.

The committee has been informed that a serviceman who has been hospitalized as a result of wounds, disease or injury incurred while serving in a combat zone, as a general rule, either recovers and is returned to active duty, or is discharged and brought under the care of the Veterans' Administration, within 2 years from the date of hospitalization. Accordingly, the exclusion applies for any month beginning not more than 2 years after the termination of combatant activities. This will insure that a serviceman who is hospitalized at a

[1] The term "combat zone" means any area which the President of the United States designates as an area in which Armed Forces of the United States are or have engaged in combat. The President designated Vietnam and the waters adjacent thereto as a combat zone as of January 1, 1964. See Executive Order 11216, 1965-1 C.B. 62.

[2] Members of the Armed Forces who are serving in direct support of military operations in a combat zone and who qualify for Hostile Fire Pay (as authorized under section 9(a) of the Uniformed Services Pay Act of 1963 (37 U.S.C. 310)) are treated as serving in a combat zone. Accordingly, an individual who is serving in Cambodia, Laos, or Thailand may be eligible for this exclusion.

[3] The term "missing status" means the status of a member of a uniformed service who 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 will (37 U.S.C. 551 (2)).

time which is near the end of the combatant activities, will be able to exclude his military pay for up to 2 years and at the same time prevent the exclusion from continuing indefinitely. In the case of the Vietnam conflict, however, it is uncertain when the combatant activities will be officially terminated, but in view of the fact that a truce agreement has been signed, the bill provides that the exclusion for a serviceman who is hospitalized is to apply to any month beginning not more than 2 years after the date of enactment of this bill. In addition, the exclusion for those servicemen in a missing status is to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

2. Tax forgiveness in the case of missing servicemen subsequently determined to have died

Under present law (sec. 692), Federal income taxes are forgiven in the case of a member of the Armed Forces who dies while serving in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone. This forgiveness of tax applies to the taxable year in which the death occurs and also to any prior year ending after the member of the Armed Forces first served in a combat zone.[4]

Congress enacted this provision to alleviate some of the hardships borne by survivors of servicemen dying as a result of service in a combat zone. However, where a serviceman is reported in a missing status for a number of years and it is subsequently determined that he actually died at an earlier time, his income (other than his combat pay excluded under sec. 112) for taxable years after the year of his actual death is subject to tax.

The committee agrees with the House that the uncertainty as to a serviceman's status (when he is classified as missing) creates unusual difficulties in the case of the families of these servicemen. The imposition of a back tax liability resulting from a determination that a serviceman listed as missing died at an earlier date could have the effect of imposing a severe hardship on the surviving family at a most inopportune time. With respect to the survivors in these cases, the date of death of the serviceman is not as significant as the date his missing status is changed. The military pay his family had been receiving during the period he was in missing status is not required to be returned on account of a subsequent determination that he died at an earlier date. In addition, death benefits are made available to survivors at the time a serviceman's name is removed from missing status and a finding of death (or presumptive death) is made. Consistent with this policy and in order to alleviate any additional hardship that could result from imposing a tax on the serviceman's income from the date of his death (or presumptive death) until the date that his status is changed from missing, the bill extends the benefits of current law by forgiving the income taxes on his income other than combat pay, which is excluded under section 112, through the taxable year in which his missing status is changed rather than just through the year of his actual death.

The committee agrees with the House that it is not appropriate to continue the forgiveness of Federal income taxes indefinitely, but

[4] This provision, however, only applies to taxable years ending on or after June 24, 1950.

that after the termination of combatant activities a reasonable period should be provided while the status of those servicemen who are missing is determined. Accordingly, the bill provides that, as a general rule, Federal income taxes will not be forgiven in the case of any taxable year beginning more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, it is uncertain when the combatant activities will be officially terminated, but in view of the fact that a truce agreement has been signed, the bill provides that with respect to the Vietnam conflict, Federal income taxes will not be forgiven in the case of any taxable year beginning more than 2 years after the date of enactment of the bill. In the case of those servicemen in a missing status, the taxes will be forgiven even though Vietnam is no longer designated as a combat zone if the date his missing status is changed is within any taxable year beginning not later than 2 years after the date of enactment of the bill.[5]

3. Filing of joint return by spouse during period her husband is in missing status

There has been some question during the Vietnam conflict with respect to the filing of joint returns in the case of spouses of servicemen in the combat zone, especially where the serviceman was listed in a missing status. Initially, there were varying practices; in some cases the spouse filed a separate return, others a joint return, and still others no return at all. As a result of this uncertainty, in 1966 the Internal Revenue Service announced that the spouse may file a joint return and need only indicate in the space provided for her husband's signature that he is in fact in Vietnam. In the case of those in missing status, it has been the administrative practice of the Internal Revenue Service to consider such a return as a valid joint return even if it is subsequently determined that the serviceman had been killed in action in a prior year. The bill clarifies existing law in this regard by providing that where the spouse of a missing serviceman or civilian elected to file a joint return, the election is valid even though it is subsequently determined that her husband died at an earlier time. In addition, the bill provides that where the spouse did not file a joint return in this case, she may elect to file one for those years he was in a missing status. Furthermore, any income tax liability of the serviceman or civilian (including his spouse and estate), except for purposes of the income tax forgiveness provisions, will be determined as if he were alive for the entire year during each of the years she elected to file a joint return.

If the spouse elects to file a joint return while her husband is in missing status, the election may be revoked by either the spouse or the returning serviceman prior to the due date for the taxable year involved (including extensions). In the case where it is determined that a serviceman listed in missing status has died, if an executor or administrator is appointed after the surviving spouse has filed a joint return, the executor or administrator may revoke the election by making, within one year after the last day (including extensions) prescribed by law for filing the return of the surviving spouse, a separate return for the deceased serviceman.

[5] The bill also provides that in those cases where a return has been filed for any taxable year ending on or after February 28, 1961, without claiming any income tax forgiveness and a claim would otherwise have been allowed if the claim for forgiveness had been filed on the due date for the final return, a claim for refund or credit will be permitted to be filed if the claim is filed within one year from the date of enactment of this bill.

The bill provides that a spouse whose husband is listed in missing status may file a joint return only for any taxable year beginning not more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, the bill provides that a joint return may not be filed for any taxable year beginning more than 2 years after the date of enactment. In addition, the filing of joint returns in the case of those servicemen in a missing status is to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

4. Surviving spouse tax rates after change of missing status of previously deceased servicemen

Under present law, a surviving spouse (as defined in sec. 2(a)) is accorded a special status for the 2 taxable years following the year of her spouse's death. The surviving spouse provisions (which are available to a widow with a dependent child) are intended to give the survivor a 2-year transitional period at the lower surviving spouse tax rates (which are the same as the joint return income tax rates) following the death of the spouse and before the single or head-of-household tax rates would apply.

The committee agrees with the House that there is an unusual problem in the case of a spouse whose husband was reported in a missing status for a number of years, and where it is subsequently determined that he died at an earlier time than the date on which his missing status is changed. The committee, like the House, believes that in this case, a transitional period is most needed by the widow after the date on which her husband's status is changed. For this reason, the bill provides that the widow is eligible for surviving spouse tax treatment for the 2 years following the year in which her husband's status as missing is changed rather than the 2 years following the year of actual death. However, as indicated above, the bill also permits the widow to file a joint return for the years her husband is in a missing status (but not for any taxable year beginning more than 2 years from the date of enactment in the case of the Vietnam conflict or more than 2 years from the termination of combatant activities in the case of any future conflict). The effect of these two changes is to allow the widow not only to file a joint return during the period her husband is in missing status (subject to the limitations discussed above with respect to the period after the termination of combatant activities) even though it is subsequently determined that he was already dead during that period, but also to file a return as a surviving spouse for the 2 years after it has been determined that he was killed and his status is changed.

5. Extension of time for performing certain acts in the case of the spouse of an individual serving in a combat zone

Under present law (sec. 7508), an extension of time is provided for performing various acts, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax. The extension of time applies to any individual who is serving in the Armed Forces of the United States or serving in support of such Armed Forces in a combat zone. Present law also provides for the extension of these benefits to the executor, administrator, or conservator of the estate of an indi-

vidual entitled to them. The period of service in the combat zone (and the period of continuous hospitalization outside the United States, as a result of injury received in a combat zone) plus the next 180 days thereafter may be disregarded in determining whether the individual performed the various specified acts on time.

Although it is common for these individuals and their spouses to file joint returns, it was somewhat unclear at the beginning of the Vietnam conflict as to whether the spouse was entitled to this extension. The administrative practice of the Internal Revenue Service (announced April 8, 1968) has been to allow the spouse of a serviceman entitled to this extension of time to defer the filing of a joint return or payment of tax until the date the serviceman is required to file and pay the tax. The bill clarifies existing law by providing that the spouse of an individual serving in a combat zone is entitled to the benefits of this provision.

The bill provides, as a general rule, that this provision will apply to the spouse for any taxable year beginning not more than 2 years after the termination of combatant activities in a combat zone. In the case of the Vietnam conflict, however, the bill provides that the spouse will be entitled to the benefits of this provision for any taxable year beginning not more than 2 years after the date of enactment of the bill. In addition, in the case of those servicemen in a missing status these benefits are to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

6. Tax treatment of certain individuals serving on U.S.S. "Pueblo"

In 1970 Congress enacted P.L. 91–235 which dealt with the members of the crew of the *U.S.S. Pueblo* who were illegally detained by North Korea in 1968. The Act provided that the members of the crew were to be treated for purposes of the tax laws in the same manner as if they had served in a presidentially designated combat zone during the period of their detention by North Korea. This meant that for the period of their detention, members of this crew received an exclusion from income tax for their pay for service in the Armed Forces; for the member of the crew who was killed during this period there was a forgiveness of unpaid income taxes and a reduction of Federal estate taxes; and for all personnel on the ship there was an extension of time for filing tax returns, paying taxes, etc.

The exclusion from income tax provided in P.L. 91–235 for the crew aboard the *Pueblo* did not apply to the pay of any civilian employee and was limited to $500 per month in the case of a commissioned officer. This was because when Congress enacted P.L. 91–235, the exclusion of compensation received by individuals serving in a combat zone was not available to any civilian government employee and the exclusion for compensation in the case of a commissioned officer serving in a combat zone was limited to the first $500 per month. Subsequently, in 1972, Congress enacted P.L. 92–279 which extended the exclusion to compensation received by civilian employees and removed the $500 per month limitation for commissioned officers in any case where these individuals were in a missing status as a result of the Vietnam conflict. However, no corresponding amendment was made for those aboard the *Pueblo* who were illegally detained in North Korea.

The committee agrees with the House that it is appropriate to provide the same treatment for the crew of the *Pueblo* (both military and civilian crew members) as was made available under P.L. 92-279 to those listed in a missing status as a result of the Vietnam conflict. Accordingly, the bill extends the exclusion to compensation received by those civilian government employees aboard the *Pueblo* and removes the $500 monthly limitation in the case of commissioned officers. Under the bill, those benefited by these changes will be permitted to file a claim for refund or credit if such claim is filed within one year from the date of the enactment of the bill.

7. Induction period requirement

Under present law an individual must be serving during an induction period in order to be eligible for the combat pay exclusion as well as certain other benefits. Since the Military Selective Service Act of 1967, as amended, expired on June 30, 1973, there is no longer an induction period so that the special provisions are not operative. Accordingly, the bill removes the requirement that there be an induction period in order for a serviceman to be entitled to these benefits. This change is effective on July 1, 1973, so that there will be no lapse of benefits on account of the expiration of the Military Selective Service Act.

B. Treatment of Distilled Spirits Brought Into the United States From Puerto Rico and the Virgin Islands

Present law (sec. 5001(a)) imposes an excise tax both on distilled spirits imported into, and spirits produced in, the United States. A separate provision (sec. 7652) also applies a tax to spirits brought into the United States from Puerto Rico and the Virgin Islands. This provision states that goods from Puerto Rico and the Virgin Islands are to be taxed at a rate equal to the tax upon like articles of U.S. domestic goods.

Domestically produced spirits are not subject to tax until they are withdrawn from bonded premises. Similarly, when imported spirits or spirits brought into the United States from Puerto Rico or the Virgin Islands in bulk containers are transferred to bonded premises upon arrival, the payment of the excise tax may be deferred (although liability is established) until the spirits are removed from these premises (sec. 5232). Another provision of present law (sec. 5008) provides that the distilled spirits tax is to be abated if spirits are lost or destroyed while on bonded premises and that a tax refund is to be made if, in certain circumstances, spirits removed from the bonded premises (after the payment of tax) are lost or destroyed.

The loss and refund provisions apply only to those spirits referred to in the provision (sec. 5001) that imposes the tax on imported and domestically produced spirits. However, as indicated above, in the case of spirits from Puerto Rico and the Virgin Islands, the tax is imposed by a separate provision (sec. 7652) and the loss refund provision is not made applicable in this case. The result is that even though spirits coming into the United States from Puerto Rico and the Virgin Islands are granted deferral of tax if placed on bonded premises in the same manner as spirits produced elsewhere, neverthe-

less they are not eligible for the decreased liability or refund treatment available to other imported or domestically produced spirits if the spirits are lost or destroyed.

The committee believes that this distinction in treatment is inadvertent, arising from the fact that a tax is imposed by a separate provision in the case of goods brought into the United States from Puerto Rico and the Virgin Islands. Since the committee sees no reason why spirits from Puerto Rico and the Virgin Islands should be treated differently in this respect than imported or domestically produced spirits, it has extended the loss and refund treatment referred to above to spirits from Puerto Rico and the Virgin Islands.

This provision is to apply to spirits lost or destroyed after the date of enactment of this bill.

There will be no revenue loss to the United States because of this change in the law since the revenue from this tax is covered into the treasuries of Puerto Rico—or the Virgin Islands in the case of distilled spirits coming from these locations. Moreover, the revenue loss for Puerto Rico and the Virgin Islands from the enactment of this provision will be negligible and the committee has been informed that they have no objection to the enactment of this provision.

C. Accrued Vacation Pay

Under the 1939 Code, deductions for vacation pay could be taken when these expenses were paid or accrued, or paid or incurred, depending upon the method of accounting, "unless in order to clearly reflect income the deductions should be taken as of a different period." Under the above quoted portion of this provision, it was held by the Internal Revenue Service that vacation pay for the next year could be accrued as of the close of the year in which qualifying services were rendered, provided all of the events necessary to fix the liability of the taxpayer for the vacation pay under the employment contract have occurred by the close of the current year. In determining whether the events necessary to fix the liability of the taxpayer for vacation pay had occurred, the fact that the employee's rights to a vacation (or payment in lieu of vacation) in the following year might be terminated if his employment ended before the scheduled period was not regarded as making the liability a contingent one instead of a fixed one. It was held that the liability in such a case was not contingent since the employer could expect the employees as a group to receive the vacation pay; only the specific amount of the liability with respect to individuals remained uncertain at the close of the year.[1]

In 1954, Congress enacted a provision (sec. 462) which provided for the deduction of additions to reserves for certain estimated expenses. Reserves for vacation pay, including accrual on a completion of qualifying service basis, would have been deductible under this provision and as a result it was concluded that it was no longer necessary to maintain the administrative position described above with respect to vacation pay. As a result, in Revenue Ruling 54–608 (.CB. 1954–2, 8), the Internal Revenue Service revised its position on the deductibility of vacation pay. In this ruling, it held that no accrual

[1] GCM 25261, C.B. 1947–2, 44; L.T. 3956, C.B. 1949–1, 73.

of vacation pay could occur until the fact of liability with respect to specific employees was clearly established and the amount of the liability to each individual employee was capable of computation with reasonable accuracy. It was thought that taxpayers accruing vacation pay under plans which did not meet the requirements of the strict accrual rule set forth in this ruling would utilize this new provision (sec. 462) providing for the deduction of additions to reserves for estimated expenses. This ruling was initially made applicable to taxable years ending on or after June 30, 1955.

Because the provision relating to the reserve for estimated expenses was later repealed, the Treasury Department in a series of actions postponed the effective date of Revenue Ruling 54–608 until January 1, 1959.[2] These actions rendered Revenue Ruling 54–608 inapplicable to taxable years ending before January 1, 1959.

Congress, in the Technical Amendments Act of 1958 (sec. 97), further postponed the effective date of Revenue Ruling 54–608 for two more years, making it inapplicable to taxable years ending before January 1, 1961. Subsequently, Congress in six actions (P.L. 86–496, P.L. 88–153, P.L. 88–554, P.L. 89–692, P.L. 91–172, and P.L. 92–580) further postponed the effective date of Revenue Ruling 54–608. The sixth of these laws postponed the application of the ruling until January 1, 1973.

The application of Revenue Ruling 54–608 results in the denial of a deduction in a year where the accrual of vacation pay has not been clearly fixed with respect to specific employees. With the provisions for reserves for estimated expenses no longer a part of the law, this creates hardships for taxpayers who have been accruing vacation pay under plans which do not meet the requirements of the strict accrual rules set forth in this ruling. For such taxpayers if this ruling were to go into effect, they would have one year in which they would receive no deduction for vacation pay. This would occur since the current year's vacation pay deductions would have been accrued in the prior year and the next year's vacation pay does not meet the tests of accrual of this ruling.

Since the repeal of the provision relating to the reserve for estimated expenses in 1955, the House and Senate committees have indicated that this problem needed to be studied before permanent legislation could be prepared. This problem has been studied and it is anticipated that a permanent solution can be considered next year. In the meantime, it is necessary to continue the existing rules until next year. Accordingly, this provision postpones for one year the effective date of Revenue Ruling 54–608. As a result, deductions for accrued vacation pay, if computed by an accounting method consistently followed by the taxpayer since 1958, will not be denied for any taxable year ending before January 1, 1974, solely because the liability to a specific person for vacation pay has not been clearly established or because the amount of the liability to each individual cannot be computed with reasonable accuracy.

This postponement will not reduce revenues from present levels since it continues existing rules.

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[2] The last of these postponements was made in Revenue Ruling 57-325, C.B. 1957—2, 302, July 8, 1957

D. Tax Treatment of Tuition and Educational Expenses Paid on Behalf of Members of the Uniformed Services

Present law (sec. 117 of the code) provides, subject to certain limitations and qualifications, that gross income of an individual does not include amounts received as a scholarship at an educational institution or as a fellowship grant. This provision, however, does not apply with respect to any amount paid or allowed on behalf of an individual if the amount represents compensation for past, present, or future employment services, or in certain other cases, such as where the studies or research are primarily for the benefit of the grantor. In these types of cases, the amounts are considered as compensation designed for services or designed to accomplish an objective of the grantor and are not excludable from gross income; and consequently, these amounts are subject to tax to the individual.

The Internal Revenue Service notified the Department of Defense in response to its request for a ruling that the tuition and other educational expenses paid to or on behalf of participants in the recently instituted Armed Forces Health Professions Scholarship Program are not excludable from the individual's gross income, and, therefore, are subject to tax and withholding. It was noted that under this scholarship program the student was required to serve a prescribed period of active duty with the Armed Forces in return for payment by the Government of certain educational expenses, such as tuition and fees, books, and other related expenses.

The Department of Defense has raised a question about the effect of this ruling on the students under the Armed Forces Health Professions Scholarship Program. In addition, although the ruling only specifically applies to this program, the Department of Defense has expressed a concern with respect to its other educational progams where there are requirements of a prescribed period of active military duty or some other service or obligation in return for the payments. The Department of Defense has submitted a legislative proposal dealing with the application of the "scholarship" exclusion provision with respect to the payments by the Government for the tuition and other educational expenses of a member of the uniformed services attending an educational institution.

The Committee believes that the Defense Department's proposal deserves detailed consideration. To permit the time for this consideration, the committee has decided to postpone the application of the effect of the ruling until January 1, 1975, not only with respect to the Armed Forces Health Professions Scholarship Program but also to other substantially similar educational programs of the uniformed services (as determined by the Secretary of the Treasury), pending a study by the staff of the effect of the application of the proposal to members of the uniformed services. Accordingly, the committee has provided that a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program which is determined by the Secretary of the Treasury to have substantially similar objectives) from an educational institution will not be subject to tax on any payment from the Government with respect to his tuition and certain other educational expenses, including contributed services, accommodations and books. (The committee intends that the phrase "sub-

stantially similar objectives" is to include any undergraduate or graduate programs paid for by appropriated funds.) This is applicable whether the member is receiving the educational training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required as a condition of receiving the educational payments.

The provision applies with respect to amounts received in calendar years 1973 and 1974.

It is estimated that this provision will reduce annual Federal individual income tax liability by less than $10 million at 1973 levels.

E. Recovery of Court Costs

Under present law (28 U.S.C. 2412), a judgment for certain costs may be awarded to the prevailing party in any civil action brought by or against the United States in any court having jurisdiction of the action. Fees and expenses of attorneys are expressly excluded from the costs for which an award may be made. Costs for which a judgment may be awarded include fees for court reporters, fees for printing and witnesses, and fees for copies of necessary papers (28 U.S.C. 1920). Further, the provisions governing the manner of payment of final judgments against the United States specifically apply to district courts, State or foreign courts, and the Court of Claims (28 U.S.C. 2414, 2517). These provisions do not expressly apply to decisions and orders rendered by the Tax Court.

Under the Internal Revenue Code of 1954, the United States Tax Court has jurisdiction to redetermine the correct amount of a deficiency (sec. 6214) and, subject to limitations, jurisdiction to determine overpayments in certain cases where a deficiency had been first determined by the Internal Revenue Service (sec. 6512(b)). The amount determined as an overpayment by the Tax Court must be credited or refunded to the petitioner when the decision becomes final. This provision does not specifically provide that costs are to be awarded if an overpayment is determined.

When differences with the Internal Revenue Service arise, many taxpayers feel compelled to obtain professional legal services because of the complexities of the tax law. Since professional services can be expensive, some taxpayers find it cheaper to pay the taxes claimed to be due by the Internal Revenue Service rather than to contest a proposed deficiency in the courts. As a result, taxpayers may on occasion be forced to pay deficiencies arising from unreasonable positions taken by the Internal Revenue Service.

In order that the cost of litigation will not operate as a barrier to court review in those instances, the committee believes that taxpayers should be entitled to recover reasonable attorney fees incurred in contesting a proposed deficiency if the litigating position taken by the Internal Revenue Service or the Department of Justice is clearly unreasonable.

The provision adds a new provision (sec. 7465(a)) to the Code which provides that in any proceeding before the Tax Court, a petitioner who is the prevailing party may be awarded a decision or order for costs to the extent provided in section 2412 of title 28 of the United States Code. If the petitioner is the prevailing party and the litigating position taken by the Internal Revenue Service is clearly unreasonable,

the Tax Court may award a decision or order for costs such as court reporter fees, printing and witness fees, fees for copies of necessary papers, and reasonable attorney fees.

The new provision (sec. 7465(b)) also provides that a Tax Court decision or order for costs is to be treated as an overpayment of tax. No interest is to be allowed or assessed with respect to any decision or order for costs.

The committee provision also makes a corresponding amendment to section 2412 of title 28, United States Code, to provide that, in any civil action brought by or against the United States for the collection or recovery of a tax or other amount imposed under the internal revenue laws, a judgment for costs may include reasonable attorney's fees. Attorney's fees are to be awarded only if the United States is not the prevailing party and the court determines that the litigating position taken by the Secretary of the Treasury or his delegate is clearly unreasonable.

The amendments are to apply only with respect to civil actions and proceedings for the redetermination of deficiencies commenced after the date of enactment of the bill.

The committee does not believe that this provision will result in any significant revenue costs. It is difficult, however, to estimate the costs because the new authority to make an award for such costs will be used in exceptional cases at the discretion of the courts.

F. Parts for Light-Duty Trucks

The Revenue Act of 1971 repealed the 10-percent tax on light-duty trucks and buses (those with gross vehicle weight of 10,000 pounds or less). As a result, truck and bus parts and accessories sold by the vehicle manufacturer as part of (or in connection with the sale thereof) a light-duty truck or bus are not subject to tax—neither the 10-percent tax that used to be imposed on the vehicle, nor the 8-percent tax on truck parts and accessories. Also, if a truck parts or accessories manufacturer sells parts or accessories to a manufacturer of light-duty trucks for use in "further manufacture" of those trucks, the parts and accessories are not subject to tax. However, if the truck parts manufacturer sells parts separately from the light-duty trucks, the manufacturer's excise tax of 8 percent applies since the installation of those parts by a retail truck dealer technically is not "further manufacture" of the trucks. This is so even though the part or accessory is sold to the retail customer at the same time he purchases the tax-exempt light-duty truck or bus.

It appeared inequitable to the committee to tax a truck part or accessory when purchased by a truck dealer as a separate item where it is sold on or in connection with the first retail sale of a light-duty truck, while exempting such parts or accessories if they were included with the truck as delivered from the manufacturer to the dealer. This amendment removes the discriminatory treatment of such parts and accessories.

The provision (amending sec. 6416(b)(2)) provides that the 8-percent manufacturer's excise tax on truck parts and accessories is to be refunded or credited to the manufacturer in the case of any part or accessory sold on or in connection with the first retail sale of a light-duty truck. Thus, those parts and accessories are to be effectively

treated the same as the parts and accessories that actually are a part of the tax-exempt truck as delivered from the manufacturer. The credit or refund is not intended to cover replacement parts even if ordered at the time of the purchase of the truck, but only those parts and accessories which are to have original use on the purchased truck.

The modifications made by this section apply to parts and accessories sold after the last day of the month in which this Act is enacted.

This provision is estimated to result in annual revenue losses of about $3 million. The Treasury Department agrees with this statement.

III. EFFECT ON REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statements are made relative to the effect on the revenues of this bill. From the standpoint of the level of revenues with respect to present law as it operated on June 30, 1973, the provisions of the House bill relating in general to the tax treatment of members of the armed forces and civilian employees who are prisoners of war or missing in action are expected to result in a decrease in receipts of approximately $4 million spread over the next several fiscal years. However, the fact that the "induction period" (a requirement for certain benefits) has been allowed to lapse as of June 30, means that there would have been an increase in receipts of approximately $12.5 million, primarily in fiscal year 1974. With the changes made in this bill, this increase in revenue will not occur. The Department of Treasury agrees with these statements.

The committee amendments either have no effect, or a small or negligible effect, on existing revenues (as described in each case in the explanation of the provisions above), except in the case of the amendment dealing with the tax treatment of tuition and educational expenses paid on behalf of members of the uniformed services (less than $10 million), and the amendment exempting certain truck parts and accessories from the manufacturer's excise tax ($3 million).

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported unanimously by voice vote.

IV. CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE

* * * * * * *

SEC. 2. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITION OF SURVIVING SPOUSE.—

* * * * * * *

(3) *SPECIAL RULE WHERE DECEASED SPOUSE WAS IN MISSING STATUS.—If an individual was in a missing status (within the meaning of section 6013(f) (3)) as a result of service in a combat zone (as determined for purposes of section 112) and if such individual remains in such status until the date referred to in subparagraph (A) or (B), then, for purposes of paragraph (1) (A), the date on which such individual died shall be treated as the earlier of the date determined under subparagraph (A) or the date determined under subparagraph (B):*

(A) the date on which the determination is made under section 555 or 556 of title 37 of the United States Code or under section 5555 or 5566 of title 5 of such Code (whichever is applicable) that such individual died while in such missing status, or

(B) the date which is 2 years after—

(i) the date of the enactment of the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(ii) the date designated under section 112 as the date of termination of combatant activities in any other combat zone.

* * * * * * *

SEC. 112. CERTAIN COMBAT PAY OF MEMBERS OF THE ARMED FORCES.

(a) ENLISTED PERSONNEL.—Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member—

(1) served in a combat zone [during an induction period], or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone [during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section.]; *but this paragraph shall not apply for any month beginning more than 2 years after—*

(A) the date of enactment of the Prisoner of War and Missing in Action Tax Act; in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(B) the date of termination of combatant activities, in the case of any other combat zone.

(b) COMMISSIONED OFFICERS.—Gross income does not include so much of the compensation as does not exceed $500 received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

(1) served in a combat zone [during an induction period], or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone [during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section.] *; but this paragraph shall not apply for any month beginning more than 2 years after—*

(A) the date of enactment of the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(B) the date of termination of combatant activities, in the case of any other combat zone.

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

(1) The term "commissioned officer" does not include a commissioned warrant officer.

(2) The term "combat zone" means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term "compensation" does not include pensions and retirement pay.

[(5) The term "induction period" means any period during which, under laws heretofore or hereafter enacted relating to the induction of individuals for training and service in the Armed Forces of the United States, individuals (other than individuals liable for induction by reason of a prior deferment) are liable for induction for such training and service.]

(d) PRISONERS OF WAR, ETC.

(1) Members of the Armed Forces.—Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status (as defined in section 551(2) of title 37, United States Code) during the vietnam conflict as a result of such conflict, other than a period with respect to which it is officially determined under section 552(c) of such title 37 that he is officially absent from his post of duty without authority.

(2) Civilian employees.—Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this paragraph, the terms "active service", "employee", and "missing status" have the respective meanings given to such terms by section 5561 of title 5 of the United States Code.

[(3) Period of conflict.—For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.]

(3) PERIOD OF CONFLICT.—For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the later of the date designated by the President by Executive order as the data of termination of combatant activities in Vietnam, or the date occurring 2 years after the date of enactment of the Prisoner of War and Missing in Action Tax Act. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.

(4) PERIOD OF SERVICE IN COMBAT ZONE.—For purposes of this section, and sections 692, 2201, and 7508, the terms "while serving in a combat zone" and "the period of service in such area" include the entire period a person designated in paragraph (1) or (2) was in a missing status during the Vietnam conflict.

* * * * * * *

SEC. 692. INCOME TAXES ON MEMBERS OF ARMED FORCES ON DEATH.

(a) *GENERAL RULE.*—In the case of any individual who dies [during an induction period (as defined in section 112(c)(5))] while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 112) or as a result of wounds, disease, or injury incurred while so serving—

(1) any tax imposed by this subtitle shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950; and

(2) any tax under this subtitle and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) INDIVIDUALS IN MISSING STATUS.—For purposes of this section, in the case of an individual who was in a missing status within the meaning of section 6013(f)(3)(A), the date of his death shall be treated as being not earlier than the date on which a determination of his death is made under section 555 or 556 of title 37 of the United States Code. The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after—

(1) the date of the enactment of this subsection, the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(2) the date designated under section 112 as the date of termination of combatant activities in any other combat zone.

(c) REFUNDS AND CREDITS RESULTING FROM SECTION 692 OF CODE.—If the refund or credit of any overpayment for any taxable year ending on or after February 28, 1961, resulting from the application of section 692 of the Internal Revenue Code of 1954 (as amended by subsection (a) of this section) is prevented at any time before the expiration of one year after the date of the enactment of this Act by the operation of any law or

rule of law, but would not have been so prevented if claim for refund or credit therefor were made on the due date for the return for the taxable year of his death (or any later year), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period.

* * * * * * *

SEC. 1034. SALE OR EXCHANGE OF RESIDENCE.

* * * * * * *

(h) MEMBERS OF ARMED FORCES.—The running of any period of time specified in subsection (a) or (c) (other than the 1 year referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence [and during an induction period (as defined in section 112(c)(5))] except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence. For purposes of this subsection, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

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SUBCHAPTER C—MISCELLANEOUS

[SEC. 2201. MEMBERS OF THE ARMED FORCES DYING DURING AN INDUCTION PERIOD.]

SEC. 2201. MEMBERS OF THE ARMED FORCES DYING IN COMBAT ZONE OR BY REASON OF COMBAT-ZONE-INCURRED WOUNDS, ETC.

The additional estate tax as defined in section 2011(d) shall not apply to the transfer of the taxable estate of a citizen or resident of the United States dying [during an induction period (as defined in sec. 112(c)(5)),] while in active service as a member of the Armed Forces of the United States, if such decedent—

(1) was killed in action while serving in a combat zone, as determined under section 112(c); or

(2) died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section

112(c)), and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

* * * * * * *

SEC. 5008. ABATEMENT, REMISSION, REFUND AND ALLOWANCE FOR LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

(a) DISTILLED SPIRITS LOST OR DESTROYED IN BOND.—

* * * * * * *

(b) VOLUNTARY DESTRUCTION.—

(1) Distilled spirits in bond.—The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter *or section 7652* with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision, and under such regulations, as the Secretary or his delegate may prescribe.

(2) Distilled spirits withdrawn for rectification or bottling.—Any distilled spirits withdrawn from bond on payment or determination of tax for rectification or bottling may, before removal from the bottling premises of the distilled spirits plant to which removed from bond or after return to such bottling premises, on application to the Secretary or his delegate, be destroyed after such gauge and under such supervision as the Secretary or his delegate may by regulations prescribe. If a claim is filed within 6 months from the date of such destruction, the Secretary or his delegate shall, under such regulations as he may prescribe, abate, remit, or, without interest, credit or refund the taxes imposed [under section 5001(a)(1) or under subpart B or this part] *under section 5001(a)(1), subpart B, this part, or section 7652* on the spirits so destroyed, to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax.

(c) LOSS OF DISTILLED SPIRITS WITHDRAWN FROM BOND FOR RECTIFICATION OR BOTTLING.—

(1) GENERAL.—Whenever any distilled spirits withdrawn from bond on payment or determination of tax for rectification or bottling are lost before removal from the premises of the distilled spirits plant to which removed from bond, the Secretary or his delegate shall, under such regulations as he may prescribe, abate, remit, or, without interest, credit or refund the tax imposed on such spirits under section 5001(a)(1) *or section 7652* to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax for removal to his bottling premises, if it is established to the satisfaction of the Secretary or his delegate that—

(A) such loss occurred (i) by reason of accident while being removed from bond to bottling premises, or (ii) by reason of flood, fire, or other disaster; or (iii) by reason of accident while on the distilled spirits plant premises and amounts to 10 proof gallons or more in respect of any one accident; or

(B) such loss occurred (i) before the completion of the bottling and casing or other packaging of such spirits for

removal from the bottling premises and (ii) by reason of, and was incident to, authorized rectifying, packaging, bottling, or casing operations (including losses by leakage or evaporation occurring during removal from bond to the bottling premises and during storage on bottling premises pending rectification or bottling).

* * * * * * *

(d) DISTILLED SPIRITS RETURNED TO BONDED PREMISES.—

(1) ALLOWANCE OF TAX.—Whenever any distilled spirits withdrawn from bonded premises, on or after July 1, 1959, on payment or determination of tax are returned under section 5215 to the bonded premises of a distilled spirits plant, the Secretary or his delegate shall abate, remit, or (without interest) credit or refund the tax imposed under section 5001(a)(1) *or section 7652* on the spirits so returned.

(2) LIMITATION.—No allowance under paragraph (1) shall be made unless a claim is filed, under such regulations as the Secretary or his delegate may prescribe, by the proprietor of the distilled spirits plant to which the distilled spirits are returned, within 6 months of the date of return.

* * * * * * *

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

* * * * * * *

(f) JOINT RETURN WHERE INDIVIDUAL IS IN MISSING STATUS.—For purposes of this section and subtitle A—

(1) ELECTION BY SPOUSE.—If—

(A) an individual is in a missing status (within the meaning of paragraph (3), as a result of service in a combat zone (as determined for purposes of section 112), and

(B) the spouse of such individual is otherwise entitled to file a joint return for any taxable year which begins on or before the day which is 2 years after—

(i) the date of enactment of the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(ii) the date designated under section 112 as the date of termination of combatant activities in any other combat zone,

then such spouse may elect under subsection (a) to file a joint return for such taxable year.

* * * * * * *

(2) EFFECT OF ELECTION.—If the spouse of an individual described in paragraph (1)(A) elects to file a joint return under subsection (a) for a taxable year, then, until such election is revoked—

(A) such election shall be valid even if such individual died before the beginning of such year, and

(B) except for purposes of section 692 (relating to income taxes of members of the Armed Forces on death), the income tax liability of such individual, his spouse, and his estate shall be determined as if he were alive throughout the taxable year.

(3) MISSING STATUS.—For purposes of this subsection—

(A) UNIFORMED SERVICES.—A member of a uniformed service (within the meaning of section 101(3) of title 37 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 552 of such title 37.

(B) CIVILIAN EMPLOYEES.—An employee (within the meaning of section 5561(2) of title 5 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 5562 of such title 5.

(4) MAKING OF ELECTION; REVOCATION.—An election described in this subsection with respect to any taxable year may be made by filing a joint return in accordance with subsection (a) and under such regulations as may be prescribed by the Secretary or his delegate. Such an election may be revoked by either spouse on or before the due date (including extensions) for such taxable year, and, in the case of an executor or administrator, may be revoked by disaffirming as provided in the last sentence of subsection (a)(3).

* * * * * * *

SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

* * * * * * *

(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) PRICE READJUSTMENTS.—If the price of any article in respect of which a tax, based on such price, is imposed by chapter 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(f)(2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. The preceding sentence shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) SPECIFIED USES AND RESALES.—The tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) exported (except in any case to which subsection (g) applies);

* * * * * * *

(R) in the case of a bus chassis or body taxable under section 4061(a), sold to any person for use as described in section 4063(a)(6) or 4221(e)(5); [or]

(S) in the case of a box, container, receptacle, bin, or other similar article taxable under section 4061(a), sold to any person for use as described in section 4063(a)(7)[.] ; *or*

(T) in the case of any article taxable under section 4061(b), sold on or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), if credit or refund of such tax is not available under any other provision of law.

* * * * * * *

SUBCHAPTER C—THE TAX COURT

* * * * * * *

PART II—PROCEDURE

* * * * * * *

SEC. 7465. RECOVERY OF COSTS

(a) IN GENERAL.—In any proceeding before the Tax Court for the redetermination of a deficiency, the taxpayer may be awarded a judgment of costs to the same extent as is provided in section 2412 of title 28 for civil actions brought against the United States if the taxpayer is the prevailing party and if the Tax Court determines that the position of the Secretary or his delegate in litigating the case is clearly unreasonable.

(b) JUDGMENT.—A judgment of costs entered by the Tax Court shall be treated, for purposes of this subtitle, in the same manner as an overpayment of tax, but no interest shall be allowed with respect to any judgment of costs.

* * * * * * *

SEC. 7508. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

* * * * * * *

(b) APPLICATION TO SPOUSE.—The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning more than 2 years after—

(1) the date of the enactment of the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(2) the date designated under section 112 as the date of termination of combatant activities in any other combat zone.

(c) MISSING STATUS.—The period of service in the area referred to in subsection (a) shall include the period during which an individual

entitled to benefits under subsection (a) is in a missing status, within the meaning of section 6013(f)(3).

[(b)] *(d)* EXCEPTIONS.—

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TECHNICAL AMENDMENTS ACT OF 1958

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SEC. 97. DEDUCTIBILITY OF ACCRUED VACATION PAY

Deduction under section 162 of the Internal Revenue Code of 1954 for accrued vacation pay, computed in accordance with the method of accounting consistently followed by the taxpayer in arriving at such deduction, shall not be denied for any taxable year ending before January 1, [1973] *1974*, solely by reason of the fact that (1) the liability for the vacation pay to a specific person has not been clearly established, or (2) the amount of the liability to each individual is not capable of computation with reasonable accuracy, if at the time of the accrual the employee in respect of whom the vacation pay is accrued has performed the qualifying service necessary under a plan or policy (communicated to the employee before the beginning of the vacation year) which provides for vacations with pay to qualified employees.

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PUBLIC LAW 91-235

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SEC. 2. The provisions of this Act shall apply—

(1) for purposes of section 112 of such Code, with respect to compensation received for periods of active service after December 31, 1967, in taxable years ending after such date;

(2) for purposes of sections 692 and 2201 of such Code, with respect to decedents dying after December 31, 1967; and

(3) for purpose of section 7508 of such Code, with respect to individuals who were detained after December 31, 1967.

For purposes of section 112(a) of the Internal Revenue Code of 1954, the period during which any member of the Armed Forces of the United States or any employee was so detained shall be treated as a period in which such member or employee is in a missing status during the Vietnam conflict as a result of such conflict.

TITLE 28—UNITED STATES CODE

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CHAPTER 161.—UNITED STATES AS PARTY GENERALLY

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SEC. 2412. COSTS.

(a) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title but not including

the fees and expenses of attorneys may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or official of the United States acting in his official capacity, in any court having jurisdiction of such action. A judgment for costs when taxed against the Government shall, in an amount established by statute or court rule or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by him in the litigation. Payment of a judgment for costs shall be as provided in section 2414 and section 2517 of this title for the payment of judgments against the United States.

(*b*) *In any civil action which is brought by or against the United States for the collection or recovery of any internal revenue tax, or of any penalty or other sum under the internal revenue laws, and in which the United States is not the prevailing party, a judgment for costs may include reasonable attorney's fees if, in the opinion of the court, the position of the Secretary or his delegate in litigating the case is clearly unreasonable.*

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H. R. 8214

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF 1954 CODE.

Except as otherwise provided in this Act, whenever an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. CERTAIN COMBAT PAY OF MEMBERS OF THE ARMED FORCES.

(a) AMENDMENT OF SUBSECTIONS (a) AND (b) OF SECTION 112.—Subsections (a) and (b) of section 112 (relating to certain combat pay of members of the Armed Forces) are each amended—

(1) by striking out "during an induction period" in paragraph (1).

(2) by striking out "during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section" in paragraph (2), and inserting in lieu thereof "; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone", and

(3) by adding at the end thereof the following new sentence: "With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month beginning more than 2 years after the date of the enactment of this sentence."

(b) CONFORMING AMENDMENT.—Subsection (c) of section 112 is amended by striking out paragraph (5).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1973.

SEC. 3. JOINT RETURNS; SURVIVING SPOUSE.

(a) JOINT RETURNS.—Section 6013 (relating to joint returns of income tax by husband and wife) is amended by adding at the end thereof the following new subsection:

"(f) JOINT RETURN WHERE INDIVIDUAL IS IN MISSING STATUS.—For purposes of this section and subtitle A—

"(1) ELECTION BY SPOUSE.—If—

"(A) an individual is in a missing status (within the meaning of paragraph (3)) as a result of service in a combat zone (as determined for purposes of section 112), and

"(B) the spouse of such individual is otherwise entitled to file a joint return for any taxable year which begins on or before the day which is 2 years after the date designated under section 112 as the date of termination of combatant activities in such zone,

then such spouse may elect under subsection (a) to file a joint return for such taxable year. With respect to service in the combat zone designated for purposes of the Vietnam conflict, no such election may be made for any taxable year beginning more than 2 years after the date of the enactment of this sentence.

"(2) EFFECT OF ELECTION.—If the spouse of an individual described in paragraph (1)(A) elects to file a joint return under subsection (a) for a taxable year, then, until such election is revoked—

"(A) such election shall be valid even if such individual died before the beginning of such year, and

"(B) except for purposes of section 692 (relating to income taxes of members of the Armed Forces on death), the income tax liability of such individual, his spouse, and his estate shall be determined as if he were alive throughout the taxable year.

"(3) MISSING STATUS.—For purposes of this subsection—

"(A) UNIFORMED SERVICES.—A member of a uniformed service (within the meaning of section 101(3) of title 37 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 552 of such title 37.

"(B) CIVILIAN EMPLOYEES.—An employee (within the meaning of section 5561(2) of title 5 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 5562 of such title 5.

"(4) MAKING OF ELECTION; REVOCATION.—An election described in this subsection with respect to any taxable year may be made by filing a joint return in accordance with subsection (a) and under such regulations as may be prescribed by the Secretary or his delegate. Such an election may be revoked by either spouse on or before the due date (including extensions) for such taxable year, and, in the case of an executor or administrator, may be revoked by disaffirming as provided in the last sentence of subsection (a)(3)."

(b) SURVIVING SPOUSE.—Section 2(a) (defining surviving spouse) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE WHERE DECEASED SPOUSE WAS IN MISSING STATUS.—If an individual was in a missing status (within the meaning of section 6013(f)(3)) as a result of service in a combat zone (as determined for purposes of section 112) and if such individual remains in such status until the date referred to in subparagraph (A) or (B), then, for purposes of paragraph (1)(A), the date on which such individual died shall be treated as the earlier of the date determined under subparagraph (A) or the date determined under subparagraph (B):

"(A) the date on which the determination is made under section 556 of title 37 of the United State Code or under section 5566 of title 5 of such Code (whichever is applicable) that such individual died while in such missing status, or

"(B) the date which is 2 years after—

"(i) the date of the enactment of this paragraph, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(ii) the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in clause (i)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after February 28, 1961.

SEC. 4. INCOME TAXES OF MEMBERS OF ARMED FORCES ON DEATH.

(a) AMENDMENT OF SECTION 692.—Section 692 (relating to income taxes of members of Armed Forces on death) is amended—

(1) by striking out "In the case" and inserting in lieu thereof "(a) GENERAL RULE.—In the case";

(2) by striking out "during an induction period (as defined in section 112(c)(5))"; and

(3) by adding at the end thereof the following new subsection:

"(b) INDIVIDUALS IN MISSING STATUS.—For purposes of this section, in the case of an individual who was in a missing status within the meaning of section 6013(f)(3)(A), the date of his death shall be treated as being not earlier than the date on which a determination of his death is made under section 556 of title 37 of the United States Code. The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after—

"(1) the date of the enactment of this subsection, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(2) the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1)."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years ending on or after February 28, 1961.

(c) REFUNDS AND CREDITS RESULTING FROM SECTION 692 OF CODE.—If the refund or credit of any overpayment for any taxable year ending on or after February 28, 1961, resulting from the application of section 692 of the Internal Revenue Code of 1954 (as amended by subsection (a) of this section) is prevented at any time before the expiration of one year after the date of the enactment of this Act by the operation of any law or rule of law, but would not have been so prevented if claim for refund or credit therefor were made on the due date for the return for the taxable year of his death (or any later year), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period.

SEC. 5. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

(a) AMENDMENT OF SECTION 7508.—Section 7508 (relating to time for performing acts postponed by reason of war) is amended by redesignating subsection (b) as subsection (d) and by inserting after subsection (a) the following new subsections:

"(b) APPLICATION TO SPOUSE.—The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning more than 2 years after—

"(1) the date of the enactment of this subsection, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(2) the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1).

"(c) MISSING STATUS.—The period of service in the area referred to in subsection (a) shall include the period during which an individual entitled to benefits under subsection (a) is in a missing status, within the meaning of section 6013(f)(3)."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years ending on or after February 28, 1961.

SEC. 6. TECHNICAL AMENDMENTS SO THAT CERTAIN PROVISIONS WILL APPLY WITHOUT REGARD TO WHETHER OR NOT AN INDUCTION PERIOD EXISTS.

(a) SALE OF RESIDENCE.—Section 1034(h) (relating to sale or exchange of residence by members of the Armed Forces) is amended by striking out "and during an induction period (as defined in section 112(c)(5))".

(b) NONAPPLICATION OF ADDITIONAL ESTATE TAX.—

(1) Section 2210 (relating to members of the Armed Forces dying during induction period) is amended by striking out "during an induction period (as defined in section 112(c)(5)),".

(2) The heading for such section 2201 is amended to read as follows:

"SEC. 2201. MEMBERS OF THE ARMED FORCES DYING IN COMBAT ZONE OR BY REASON OF COMBAT-ZONE-INCURRED WOUNDS, ETC.".

(3) The table of sections for subchapter C of chapter 11 of such Code is amended by striking out the item relating to section 2201 and inserting in lieu thereof the following:

"Sec. 2201. Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1973.

SEC. 7. EXTENSION OF SECTION 112(d) OF CODE TO CERTAIN MEMBERS OF ARMED FORCES AND CIVILIANS ILLEGALLY

(a) IN GENERAL.—The first section of the Act of April 24, 1970, entitled "An Act to provide that, for purposes of the Internal Revenue Code of 1954, individuals who were illegally detained during 1968 by the Democratic People's Republic of Korea shall be treated as serving in a combat zone" (Public Law 91-235) is amended by adding at the end thereof the following new sentence: "For purposes of section 112(d) of the Internal Revenue Code of 1954, the period during which any member of the Armed Forces of the United States or any employee was so detained shall be treated as a period in which such member or employee is in a missing status during the Vietnam conflict as a result of such conflict."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to compensation received for periods of active service after December 31, 1967, in taxable years ending after such date. If refund or credit of any overpayment for any taxable year resulting

from the application of the amendment made by subsection (a) is prevented at any time before the expiration of one year after the date of the enactment of this Act by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.