

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5557

To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2002

Mr. THOMAS introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Armed Forces Tax  
5       Fairness Act of 2002”.

1 **SEC. 2. SPECIAL RULE FOR MEMBERS OF UNIFORMED**  
2 **SERVICES AND FOREIGN SERVICE IN DETER-**  
3 **MINING EXCLUSION OF GAIN FROM SALE OF**  
4 **PRINCIPAL RESIDENCE.**

5 (a) IN GENERAL.—Subsection (d) of section 121 of  
6 the Internal Revenue Code of 1986 (relating to exclusion  
7 of gain from sale of principal residence) is amended by  
8 adding at the end the following new paragraph:

9 “(10) MEMBERS OF UNIFORMED SERVICES AND  
10 FOREIGN SERVICE.—

11 “(A) IN GENERAL.—At the election of an  
12 individual with respect to a property, the run-  
13 ning of the 5-year period described in sub-  
14 section (a) with respect to such property shall  
15 be suspended during any period that such indi-  
16 vidual or such individual’s spouse is serving on  
17 qualified official extended duty as a member of  
18 the uniformed services or of the Foreign Serv-  
19 ice.

20 “(B) MAXIMUM PERIOD OF SUSPENSION.—  
21 The 5-year period described in subsection (a)  
22 shall not be extended more than 5 years by rea-  
23 son of subparagraph (A).

24 “(C) QUALIFIED OFFICIAL EXTENDED  
25 DUTY.—For purposes of this paragraph—

1           “(i) IN GENERAL.—The term ‘quali-  
2           fied official extended duty’ means any ex-  
3           tended duty while serving at a duty station  
4           which is at least 150 miles from such prop-  
5           erty or while residing under Government  
6           orders in Government quarters.

7           “(ii) UNIFORMED SERVICES.—The  
8           term ‘uniformed services’ has the meaning  
9           given such term by section 101(a)(5) of  
10          title 10, United States Code, as in effect  
11          on the date of the enactment of this para-  
12          graph.

13          “(iii) FOREIGN SERVICE.—The term  
14          ‘member of the Foreign Service’ has the  
15          meaning given the term ‘member of the  
16          Service’ by paragraph (1), (2), (3), (4), or  
17          (5) of section 103 of the Foreign Service  
18          Act of 1980, as in effect on the date of the  
19          enactment of this paragraph.

20          “(iv) EXTENDED DUTY.—The term  
21          ‘extended duty’ means any period of active  
22          duty pursuant to a call or order to such  
23          duty for a period in excess of 180 days or  
24          for an indefinite period.

1           “(D) SPECIAL RULES RELATING TO ELEC-  
2           TION.—

3                   “(i) ELECTION LIMITED TO 1 PROP-  
4                   ERTY AT A TIME.—An election under sub-  
5                   paragraph (A) with respect to any property  
6                   may not be made if such an election is in  
7                   effect with respect to any other property.

8                   “(ii) REVOCATION OF ELECTION.—An  
9                   election under subparagraph (A) may be  
10                  revoked at any time.”.

11       (b) EFFECTIVE DATE; SPECIAL RULE.—

12               (1) EFFECTIVE DATE.—The amendment made  
13               by this section shall take effect as if included in the  
14               amendments made by section 312 of the Taxpayer  
15               Relief Act of 1997.

16               (2) WAIVER OF LIMITATIONS.—If refund or  
17               credit of any overpayment of tax resulting from the  
18               amendment made by this section is prevented at any  
19               time before the close of the 1-year period beginning  
20               on the date of the enactment of this Act by the oper-  
21               ation of any law or rule of law (including res judi-  
22               cata), such refund or credit may nevertheless be  
23               made or allowed if claim therefor is filed before the  
24               close of such period.

1 **SEC. 3. RESTORATION OF FULL EXCLUSION FROM GROSS**  
2 **INCOME OF DEATH GRATUITY PAYMENT.**

3 (a) IN GENERAL.—Subsection (b)(3) of section 134  
4 of the Internal Revenue Code of 1986 (relating to certain  
5 military benefits) is amended by adding at the end the  
6 following new subparagraph:

7 “(C) EXCEPTION FOR DEATH GRATUITY  
8 ADJUSTMENTS MADE BY LAW.—Subparagraph  
9 (A) shall not apply to any adjustment to the  
10 amount of death gratuity payable under chapter  
11 75 of title 10, United States Code, which is  
12 pursuant to a provision of law enacted before  
13 December 31, 1991.”.

14 (b) CONFORMING AMENDMENT.—Subparagraph (A)  
15 of section 134(b)(3) of such Code is amended by striking  
16 “subparagraph (B)” and inserting “subparagraphs (B)  
17 and (C)”.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply with respect to deaths occurring  
20 after September 10, 2001.

21 **SEC. 4. EXCLUSION FOR AMOUNTS RECEIVED UNDER DE-**  
22 **PARTMENT OF DEFENSE HOMEOWNERS AS-**  
23 **SISTANCE PROGRAM.**

24 (a) IN GENERAL.—Section 132(a) of the Internal  
25 Revenue Code of 1986 (relating to the exclusion from  
26 gross income of certain fringe benefits) is amended by

1 striking “or” at the end of paragraph (6), by striking the  
2 period at the end of paragraph (7) and inserting “, or”  
3 and by adding at the end the following new paragraph:

4 “(8) qualified military base realignment and  
5 closure fringe.”.

6 (b) **QUALIFIED MILITARY BASE REALIGNMENT AND**  
7 **CLOSURE FRINGE.**—Section 132 of such Code is amended  
8 by redesignating subsection (n) as subsection (o) and by  
9 inserting after subsection (m) the following new sub-  
10 section:

11 “(n) **QUALIFIED MILITARY BASE REALIGNMENT AND**  
12 **CLOSURE FRINGE.**—For purposes of this section, the  
13 term ‘qualified military base realignment and closure  
14 fringe’ means 1 or more payments under the authority of  
15 section 1013 of the Demonstration Cities and Metropoli-  
16 tan Development Act of 1966 (42 U.S.C. 3374) to offset  
17 the adverse effects on housing values as a result of a mili-  
18 tary base realignment or closure.”.

19 (c) **EFFECTIVE DATE.**—The amendments made by  
20 this section shall apply to payments made after the date  
21 of the enactment of this Act.

22 **SEC. 5. EXPANSION OF COMBAT ZONE FILING RULES TO**  
23 **CONTINGENCY OPERATIONS.**

24 (a) **IN GENERAL.**—Section 7508(a) of the Internal  
25 Revenue Code of 1986 (relating to time for performing

1 certain acts postponed by reason of service in combat  
2 zone) is amended—

3 (1) by inserting “or when deployed outside the  
4 United States away from the individual’s permanent  
5 duty station while participating in an operation des-  
6 ignated by the Secretary of Defense as a contin-  
7 gency operation (as defined in section 101(a)(13) of  
8 title 10, United States Code) or which became such  
9 a contingency operation by operation of law” after  
10 “section 112”,

11 (2) by inserting in the first sentence “or at any  
12 time during the period of such contingency oper-  
13 ation” after “for purposes of such section”,

14 (3) by inserting “or operation” after “such an  
15 area”, and

16 (4) by inserting “or operation” after “such  
17 area”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Section 7508(d) of such Code is amended  
20 by inserting “or contingency operation” after  
21 “area”.

22 (2) The heading for section 7508 of such Code  
23 is amended by inserting “**OR CONTINGENCY OP-**  
24 **ERATION**” after “**COMBAT ZONE**”.

1           (3) The item relating to section 7508 of such  
2 Code in the table of sections for chapter 77 is  
3 amended by inserting “or contingency operation”  
4 after “combat zone”.

5           (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to any period for performing an  
7 act which has not expired before the date of the enactment  
8 of this Act.

9 **SEC. 6. MODIFICATION OF MEMBERSHIP REQUIREMENT**  
10 **FOR EXEMPTION FROM TAX FOR CERTAIN**  
11 **VETERANS’ ORGANIZATIONS.**

12           (a) IN GENERAL.—Subparagraph (B) of section  
13 501(c)(19) of the Internal Revenue Code of 1986 (relating  
14 to list of exempt organizations) is amended by striking “or  
15 widowers” and inserting “, widowers, or ancestors or lineal  
16 descendants”.

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

20 **SEC. 7. CLARIFICATION OF THE TREATMENT OF CERTAIN**  
21 **DEPENDENT CARE ASSISTANCE PROGRAMS.**

22           (a) IN GENERAL.—Section 134(b) of the Internal  
23 Revenue Code of 1986 (defining qualified military benefit)  
24 is amended by adding at the end the following new para-  
25 graph:

1           “(4) CLARIFICATION OF CERTAIN BENEFITS.—  
2           For purposes of paragraph (1), such term includes  
3           any dependent care assistance program (as in effect  
4           on the date of the enactment of this paragraph) for  
5           any individual described in paragraph (1)(A).”.

6           (b) CONFORMING AMENDMENTS.—

7           (1) Section 134(b)(3)(A) of such Code (as  
8           amended by section 3) is further amended by insert-  
9           ing “and paragraph (4)” after “subparagraphs (B)  
10          and (C)”.

11          (2) Section 3121(a)(18) of such Code is amend-  
12          ed by striking “or 129” and inserting “, 129, or  
13          134(b)(4)”.

14          (3) Section 3306(b)(13) of such Code is amend-  
15          ed by striking “or 129” and inserting “, 129, or  
16          134(b)(4)”.

17          (4) Section 3401(a)(18) of such Code is amend-  
18          ed by striking “or 129” and inserting “, 129, or  
19          134(b)(4)”.

20          (c) EFFECTIVE DATE.—The amendments made by  
21          this section shall apply to taxable years beginning after  
22          December 31, 2001.

23          (d) NO INFERENCE.—No inference may be drawn  
24          from the amendments made by this section with respect  
25          to the tax treatment of any amounts under the program

1 described in section 134(b)(4) of the Internal Revenue  
2 Code of 1986 (as added by this section) for any taxable  
3 year beginning before January 1, 2002.

4 **SEC. 8. PROTECTION OF SOCIAL SECURITY.**

5       The amounts transferred to any trust fund under  
6 title II of the Social Security Act shall be determined as  
7 if this Act had not been enacted.

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