

INFORMATION PAPER

SUBJECT: INCOME TAXES OF SOLDIERS AND VICTIMS OF CERTAIN TERRORIST ATTACKS ON DEATH

1. **PURPOSE.** To provide information on the income tax benefit afforded to soldiers and certain civilian employees who die while serving in a combat zone, in an area “in direct support” of a combat zone, from wounds, disease, or other injury received in a combat zone or in an area “in direct support of” a combat zone, or as a result of terrorist activity or military action regardless of where the terrorist or military action occurred.

2. FACTS.

a. Internal Revenue Code (IRC) § 692(a):

i) A soldier’s income for the year of death will not be subject to income tax if the soldier dies: while serving in a combat zone; as a result of wounds, disease, or injury incurred while serving in a combat zone; or if serving outside the combat zone in direct support of military operations in the zone and eligible for hostile fire or imminent danger pay.

ii) Any income tax liability for the soldier is forgiven for the tax year in which death occurred and for any earlier tax year ending after the soldier entered a combat zone. (In other words, if the soldier deployed to the combat zone in December 2002 and died in the combat zone in 2003 – his tax liability for 2002 and 2003 is forgiven. Additionally, if the soldier deployed to a combat zone earlier and then deploys to a combat zone in 2003 and is killed, his tax liability is forgiven for 2003 and for any open tax year after the initial deployment to a combat zone. An open tax year means the statute of limitations for filing a claim for refund has not expired.)

b. IRC § 692(c):

i) Extends the above benefit to a U.S. military or government civilian employee that dies as a result of wounds or injury incurred in a terrorist or military action.

ii) Section 692(c) provides that any income tax liability for this individual is forgiven for the tax year death occurred and for any earlier tax year beginning with the year before the year in which the wounds or injury occurred. (For example, Jane Doe died in 2002 of wounds incurred in a terrorist attack in 2001. Her income tax liability is forgiven for all tax years from 2000 through 2002.)

c. Any forgiven tax that has already been paid will be refunded if the period for filing a refund claim has not ended. If any tax is still due, it will be canceled. Generally,

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the period for filing a claim for credit or refund of income tax is 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever is later. This period is extended if death occurred in a combat zone by the normal combat zone extension rules found in IRC §7508.

d. Definitions Necessary to Determine Eligibility

i) Combat Zone (CZ) is defined as an area that the President of the United States has designated by Executive Order as an area where US forces are engaged in combat. A combat zone remains in effect until terminated by Executive Order. An updated list of current combat zones is available on JAGCNET.

ii) Areas designated by the Secretary of Defense as “In direct support of” or qualified hazardous duty area must meet the following criteria:

1. Their service directly (as opposed to remotely or indirectly) supports military operations in the combat zone;

2. Their service qualifies them for hostile fire pay or imminent danger under 37 U.S.C. § 310; and

3. The reason for paying imminent danger/hostile fire pay is based on risks/dangers related to the QHDA or CZ.

iii) Terrorist or military action means any terrorist activity which a preponderance of the evidence indicates was directed against the United States or any of its allies, and any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies.

3. Procedures for Claiming Tax Forgiveness:

a. File a tax return if a tax return has not been filed for the tax year. Attach a Form W-2. File an amended return if a tax return has been filed. A separate amended return must be filed for each year in question.

b. Identify the operation (For example, OPERATION IRAQI FREEDOM – KIA) or if killed in a terrorist action (KITA) in bold letters on the top of page 1 of the return or claim. Additionally, if filing Form 1040 or 1040X you must also write this information on the line for total tax.

c. A computation of the decedent’s tax liability before any amount is forgiven and the amount that is to be forgiven should accompany any return or claim. Note: only the decedent’s tax liability is forgiven. If the decedent filed a joint return you must provide the following calculation:

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i) Figure the income tax for which the decedent would have been liable as if a separate return had been filed.

ii) Figure the income tax for which the spouse would have been liable as if a separate return had been filed, and

iii) Multiply the joint tax liability by a fraction. The top number of the fraction is the amount in (i) above. The bottom number of the fraction is the total of (i) and (ii).

The amount in (iii) is the decedent's tax liability that is eligible for the refund or tax forgiveness. If you are unable to complete this process, you should attach a statement of all income and deductions, indicating the part that belongs to each spouse and the IRS will make the proper allocation. If the decedent was domiciled in a community property state, contact my office or the IRS for guidance.

d. Attach Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer

e. Attach a certification from the Department of Defense or the Department of State that includes the deceased individual's name and social security number, the date of injury, the date of death, and a statement that the individual died in a combat zone or from a terrorist or military action. If death resulted from a terrorist or military action, the statement must also include the fact that the individual was a U.S. employee at the date of injury and at the date of death. (For soldiers, the certification must be made on Form DoD 1300, Report of Casualty).

f. Mail the return or claim for refund to Internal Revenue Service, P. O. Box 4053, Woburn, MA 01888 or deliver to Internal Revenue Service, 310 Lowell Street, Stop 661, Andover, MA 01810. A POC at the IRS for issues relating to combat deaths is Mr. Anthony Briskie. He is located at the Lowell Street Address and can be reached at (978) 474-5408.

4. Legal Assistance Offices should strive to assist Next of Kin of deceased soldiers and civilians expeditiously to alleviate any additional hardship during this most difficult time.

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