

Tax Relief for Those Affected by Operation Joint Endeavor

Notice 96-34

PURPOSE

This notice provides guidance in a question and answer format on the tax relief provided under the Act of March 20, 1996 (the "Act"), Pub. L. No. 104-117, 110 Stat. 827 (1996), for U.S. military and support personnel involved in the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia.

BACKGROUND

The Act generally provides that members of the U.S. Armed Forces performing services for the peacekeeping efforts in a "qualified hazardous duty area" are treated for tax purposes in the same manner as if the area were a combat zone (as determined under § 112 of the Internal Revenue Code). The Act defines the term "qualified hazardous duty area" to mean Bosnia and Herzegovina, Croatia, or Macedonia, if, as of the date of enactment of the Act any member of the U.S. Armed Forces is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger), for services performed in any of these countries, but only during the period the entitlement is in effect. On the date of the enactment of the Act, members of the U.S. Armed Forces were entitled to special pay for services performed in all of these countries.

A qualified hazardous duty area is treated in the same manner as a combat zone under § 112 for the purposes of the following eight Code provisions:

(1) Section 2(a)(3) (relating to the special rule where a deceased spouse was in missing status);

(2) Section 112 (relating to the exclusion from gross income of certain military pay received by members of the U.S. Armed Forces);

(3) Section 692 (relating to income taxes of members of the U.S. Armed Forces on death);

(4) Section 2201 (relating to members of the U.S. Armed Forces dying in

a combat zone or by reason of combat-zone-incurred wounds, etc.);

(5) Section 3401(a)(1) (defining wages relating to certain military pay for members of the U.S. Armed Forces);

(6) Section 4253(d) (relating to taxation of phone service originating from members of the U.S. Armed Forces in a combat zone);

(7) Section 6013(f)(1) (relating to a joint return where an individual is in missing status); and

(8) Section 7508 (relating to the time for performing certain tax actions (including filing, paying, assessing, collecting, claiming a refund, and litigating) postponed by reason of service in a combat zone).

Under the Act, the deadline extension provisions under § 7508 apply to members of the U.S. Armed Forces (and those serving in support of the U.S. Armed Forces) in the qualified hazardous duty area. In addition, during the period the special pay entitlement is in effect in Bosnia and Herzegovina, Croatia, or Macedonia, the deadline extension provisions under § 7508 also apply to an individual in other areas who (1) is performing services as part of Operation Joint Endeavor, (2) is outside the United States, and (3) is deployed away from that individual's permanent duty station.

The Act also amends § 112(b) to raise the dollar amount of the exclusion from gross income of military pay for commissioned officers from \$500 per month to the "maximum enlisted amount." New § 112(c)(5) defines the term "maximum enlisted amount" for any month as the sum of (a) the highest rate of basic pay for that month payable to any enlisted member of the U.S. Armed Forces in the highest enlisted pay grade, and (b) in the case of an officer entitled to special pay under 37 U.S.C. § 310, the amount of the special pay for that month payable to that officer.

The Act amends § 3401(a)(1) by limiting the exclusion from federal income tax withholding on military pay to the amount of military pay that is excludable from gross income under § 112.

The Act is generally effective on November 21, 1995, except for the modifications to the income tax with-

holding rules of § 3401(a)(1), which apply to amounts paid after the March 20, 1996, date of enactment.

QUESTIONS AND ANSWERS

The following questions and answers generally apply to members of the U.S. Armed Forces on active duty, and are patterned after the questions and answers in Publication 945, Tax Information for Those Affected by Operation Desert Storm. For additional information on reservists, decedents, or persons missing in action, consult Publication 945 and Publication 3, Tax Information for Military Personnel (Including Reservists Called to Active Duty).

PART 1—MILITARY PAY EXCLUSION

Q-1: Which geographic areas does the Act include in the qualified hazardous duty area?

A-1: The geographic areas included in the qualified hazardous duty area are Bosnia and Herzegovina, Croatia, and Macedonia.

Q-2: I am a member of the U.S. Armed Forces assigned to perform peacekeeping services in Bosnia and Herzegovina. Is any part of my 1996 military pay for serving in this qualified hazardous duty area excluded from gross income?

A-2: Yes. If you serve in a qualified hazardous duty area as an enlisted person for any part of a month, all your military pay received for military service that month is excluded from gross income. Commissioned officers have a similar exclusion, but it is limited to the maximum enlisted amount per month (currently \$4,254.90). Amounts excluded from gross income are not subject to federal income tax.

Q-3: Assuming the same facts as in question 2 except that my military pay was earned in 1995, is any part of my 1995 military pay for serving in this qualified hazardous duty area excluded from gross income?

A-3: Yes. Since the Act was generally effective on November 21, 1995, the same military pay exclusion rules set forth in Q & A 2 apply to military pay received by enlisted personnel or commissioned officers for services per-

formed during any part of December 1995 in the qualified hazardous duty area. The same is true for military pay they received for service in November 1995, if they served in that area on or after November 21, 1995 and before December 1, 1995. The maximum enlisted amount per month in 1995 was \$4,158.60.

Q-4: How do I exclude from gross income the military pay received for service in the qualified hazardous duty area during November and December 1995?

A-4: The U.S. Army, U.S. Navy, U.S. Air Force, and U.S. Coast Guard will issue Form W-2c, Statement of Corrected Income and Tax Amounts, to all members of the U.S. Armed Forces who served in the qualified hazardous duty area in 1995 (that is, for any period on or after November 21, 1995). Once you have received your Form W-2c, you can use it to file your 1995 federal individual income tax return if you have not yet filed. You will need to file Form 1040X, Amended U.S. Individual Income Tax Return, if you have previously filed your 1995 federal individual income tax return.

Q-5: My husband and I are both enlisted personnel serving in the U.S. Armed Forces in the qualified hazardous duty area. Are we both entitled to the income tax exclusion for military pay?

A-5: Yes. Each of you qualifies for the income tax exclusion for your military pay.

Q-6: I am a member of the U.S. Armed Forces stationed in Italy. I fly patrols over Bosnia and Herzegovina, in direct support of the military operations there, for which I receive hostile fire/imminent danger pay. Is any part of my military pay excluded from gross income?

A-6: Yes. Under the Act and regulations in effect prior to the Act, you are treated as serving in the qualified hazardous duty area because you are a member of the U.S. Armed Forces serving in direct support of military operations in the qualified hazardous duty area for which you receive hostile fire/imminent danger pay. See Q & A 2 for a discussion of the amount of your military pay that is excluded.

Q-7: If I am injured and hospitalized while serving in the U.S. Armed Forces in the qualified hazardous duty area, is

any of my military pay excluded from gross income?

A-7: Yes. Military pay received by enlisted personnel who are hospitalized as a result of injuries sustained while serving in the qualified hazardous duty area is excluded from gross income. Commissioned officers have a similar exclusion, but it is limited to the maximum enlisted amount per month. See Q & A 2. These exclusions from gross income for hospitalized enlisted personnel and commissioned officers end 2 years after the date of termination of the qualified hazardous duty area designation.

Q-8: My wife is currently serving in the U.S. Armed Forces in the qualified hazardous duty area and will be eligible for discharge when she returns home. If she is discharged upon her return, will the payment for the annual leave that she accrued during her service in the qualified hazardous duty area be excluded from gross income?

A-8: Yes. Annual leave payments made to enlisted members of the U.S. Armed Forces at the time of their discharge from the service are excluded from gross income to the extent the leave was accrued during any month in any part of which the member served in the qualified hazardous duty area. If your wife is a commissioned officer, a portion of the annual leave payment she receives for leave accrued during any month in any part of which she served in the qualified hazardous duty area may be excluded. The leave payment cannot be excluded to the extent it exceeds the maximum enlisted amount (see Q & A 2) for the month of service to which it relates less the amount of military pay already excluded for that month.

Q-9: My brother, who is a civilian in the merchant marine, is on a ship that transports military supplies between the United States and the qualified hazardous duty area. Is he entitled to the qualified hazardous duty area military pay exclusion?

A-9: No. Those serving in the merchant marine are not members of the U.S. Armed Forces. The qualified hazardous duty area military pay exclusion applies only to members of the U.S. Armed Forces. The U.S. Armed Forces include all regular and reserve components of the uniformed services that are under the control of the Secretaries of Defense, Army, Navy, and Air Force, as well as the Coast Guard.

Q-10: My husband is a member of the U.S. Armed Forces performing services as part of Operation Joint Endeavor in Germany. He is not receiving hostile fire/imminent danger pay. Is he entitled to the military pay exclusion?

A-10: No. U.S. Armed Forces personnel serving outside the qualified hazardous duty area are not entitled to the military pay exclusion, unless they are serving in direct support of military operations in the qualified hazardous duty area for which they receive hostile fire/imminent danger pay (see Q & A 6). For a more detailed discussion of the tax treatment of military personnel, see Publication 3. For a discussion of possible extension of deadlines, see Q & A's 29 and 30.

PART 2—EXTENSION OF DEADLINES

Q-11: I have been serving in Croatia since March 1, 1996. I understand that the deadline for performing certain actions required by the internal revenue laws is extended as a result of my service. On what date did these deadline extensions begin?

A-11: The deadline extension provisions apply to most tax actions required to be performed on or after November 21, 1995, or the date you began serving in the qualified hazardous duty area, whichever is later. In your case, the date that the deadline extensions began is March 1, 1996.

Q-12: My son is a member of the U.S. Armed Forces who is now serving in the qualified hazardous duty area. Is he entitled to an extension of time for filing and paying his federal income taxes? Are any assessment or collection deadlines extended?

A-12: For both questions, the answer is yes. In general, the deadlines for performing certain actions applicable to his federal taxes are extended for the period of his service in the qualified hazardous duty area on or after November 21, 1995, plus 180 days thereafter. During this extension period, assessment and collection deadlines will be extended, and interest and penalties attributable to the extension period will not be charged.

Q-13: Assuming the same facts as in question 12, would my son still have an extension for filing and paying his federal individual income taxes if he has unearned income from investments?

A-13: Yes. The extension applies without regard to the source of your son's income.

Q-14: Assuming the same facts as in question 12, will the deadline extension provisions continue to apply if my son is hospitalized as a result of an injury sustained in the qualified hazardous duty area?

A-14: Yes. The deadline extension provisions will apply for the period that your son is continuously hospitalized outside of the United States as a result of injuries sustained while serving in the qualified hazardous duty area. For hospitalization inside the United States, the extension period cannot be more than 5 years.

Q-15: Do the deadline extension provisions apply only to members of the U.S. Armed Forces serving in the qualified hazardous duty area?

A-15: No. The deadline extension provisions also apply to individuals serving in a qualified hazardous duty area in support of the U.S. Armed Forces, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the U.S. Armed Forces in support of those forces.

Q-16: My son is a civilian explosive specialist who is in Macedonia training U.S. Armed Forces personnel serving in the qualified hazardous duty area. Do the deadline extension provisions apply to my son?

A-16: Yes. The deadline extension provisions apply to your son because he is serving in the qualified hazardous duty area in support of the U.S. Armed Forces.

Q-17: My husband is a private businessman working in Bosnia and Herzegovina on nonmilitary projects. Do the deadline extension provisions apply to my husband?

A-17: No. Other than military personnel, the only individuals working in the qualified hazardous duty area that are entitled to the deadline extension provisions are those serving in support of the U.S. Armed Forces.

Q-18: I am a member of the U.S. Armed Forces serving in the qualified hazardous duty area. Do the deadline extension provisions apply to my husband who is in the United States?

A-18: Yes. The deadline extension provisions apply not only to members

serving in the U.S. Armed Forces (or individuals serving in support thereof) in the qualified hazardous duty area, but to their spouses as well, with two exceptions. First, if you are hospitalized in the United States as a result of injuries received while serving in the qualified hazardous duty area, the deadline extension provisions would not apply to your husband. Second, the deadline extension provisions for your husband do not apply for any tax year beginning more than 2 years after the date of the termination of the qualified hazardous duty area designation.

Q-19: Assuming the same facts as in question 18, will my husband have to file a joint tax return in order to benefit from the deadline extension provisions?

A-19: No. The deadline extension provisions apply to both spouses whether joint or separate returns are filed. If your husband chooses to file a separate return, he will have the same extension of time to file and pay his taxes that you have.

Q-20: My husband is serving in the U.S. Armed Forces in the qualified hazardous duty area. In 1995, our son, who is 12 years old, received \$700 of interest income. Our daughter, who is 17 years old, received \$2,000 of earned income from part-time work and \$900 of interest income. We claim both children as dependents on our federal individual income tax return. Are federal individual income tax returns required to be filed for our children while my husband is in the qualified hazardous duty area?

A-20: No. Federal individual income tax returns for your dependent children are not required to be filed while your husband is in the qualified hazardous duty area. Instead, these returns will be considered timely if filed on or before the deadline for filing your federal individual income tax return under the deadline extension provisions. The U.S. Armed Forces will provide your husband with instructions on how to notify the IRS of your children's eligibility to receive this extension of time to file. Since your older child may be entitled to a refund of tax, she may want to file her federal individual income tax return and obtain her refund.

Q-21: I am a member of the U.S. Armed Forces serving in Croatia. My spouse and our three children live in our home in the United States. During 1995, a child care provider took care of

our children in our home. We are required to file a Schedule H, Household Employment Taxes, as an attachment to our federal individual income tax return to report the federal employment taxes on wages we paid to our child care provider. Do the deadline extension provisions apply to the filing of Schedule H as an attachment to our federal individual income tax return?

A-21: Yes. The deadline extension provisions apply to all schedules and forms that are filed as attachments to the federal individual income tax return.

Q-22: I am a member of the U.S. Armed Forces who served in the qualified hazardous duty area from December 10, 1995, through May 15, 1996. When will I be required to file my federal individual income tax return for 1995?

A-22: You must file your 1995 federal individual income tax return on or before February 25, 1997, 286 days after you left the qualified hazardous duty area. The deadline extension period consists of the sum of the following:

- (1) 180 days from the date you left the area 180
- (2) The number of days remaining (as of the date you entered the area) to perform the required act (in your case, filing your 1995 federal individual income tax return, 1/1/96 to 4/15/96) 106
- Total 286

Q-23: My wife is a member of the U.S. Armed Forces serving in the qualified hazardous duty area. Can she make a timely qualified retirement contribution for 1995 to her individual retirement account (IRA) after April 15, 1996, and on or before the due date of her 1995 federal individual income tax return after applying the extension of deadline provisions?

A-23: Yes. Your wife can make a timely qualified retirement contribution for 1995 to her IRA on or before the extended deadline for filing her 1995 income tax return under the deadline extension provisions.

Q-24: My brother, who served in the U.S. Armed Forces in the qualified hazardous duty area from December 1995 through February 1996, did not make his fourth estimated tax payment for 1995. Will my brother be liable for estimated tax penalties?

A-24: No. Your brother is covered by the deadline extension provisions and

will not be liable for any penalties if he files and pays any tax due by his extended filing due date. The U.S. Armed Forces will provide your brother with instructions on how to notify the IRS of his eligibility to receive tax relief.

Q-25: My son, who is a member of the U.S. Armed Forces, was on an installment payment plan with the IRS for back taxes before he was assigned to the qualified hazardous duty area. What should be done now that he is in the qualified hazardous duty area?

A-25: The IRS office where your son was making payments should be contacted. Because your son is serving in the qualified hazardous duty area, he will not have to make payments on his past due taxes for his period of service in the qualified hazardous duty area plus 180 days. No penalties or interest will be charged during the deadline extension period.

Q-26: My son, who is a member of the U.S. Armed Forces serving in the qualified hazardous duty area, will file his federal individual income tax return for 1995 after April 15, 1996, but on or before the end of the deadline extension for filing that return. He expects to receive a refund. Will the IRS pay interest on the refund?

A-26: Yes. The IRS will pay interest from April 15, 1996, on a refund issued to your son if he files his 1995 federal individual income tax return on or before the due date of that return after applying the deadline extension provisions. The U.S. Armed Forces will provide your son with instructions on how to notify the IRS of his eligibility to receive tax relief. If his 1995 return is not timely filed on or before the due date after applying the deadline extension provisions, no interest will be paid on the refund except as provided under the normal refund rules.

Q-27: My husband and I sold our principal residence on March 1, 1994, and we have not bought a replacement residence yet. He is in the U.S. Armed Forces and reported to active duty in the qualified hazardous duty area on December 1, 1995. He is still in the qualified hazardous duty area. Do the deadline extension provisions apply to the period we have to replace our old residence to defer gain on that residence?

A-27: Yes. The deadline extension period that applies to you is the time

your husband is in the qualified hazardous duty area plus 180 days after he leaves the qualified hazardous duty area. In addition, because your husband is overseas on extended active duty (more than 90 days), you will have an additional replacement period of at least 1 year after the 180 days described above. However, that replacement period may not exceed 8 years after the date you sold your old residence plus the deadline extension period.

Q-28: Do the deadline extension provisions apply to federal tax returns other than the federal individual income tax return?

A-28: Yes. The deadline extension provisions also apply to federal estate and gift tax returns. However, the deadline extension provisions do not apply to other federal tax and information returns, such as those for corporate income tax or employment taxes.

Q-29: I am a member of the U.S. Army that was deployed to Germany to perform services as part of Operation Joint Endeavor. My permanent duty station is in the United States where my spouse resides. Do the deadline extension provisions for filing and paying our federal individual income taxes apply?

A-29: Yes. Any member of the U.S. Armed Forces who is performing services as part of Operation Joint Endeavor outside of the United States while deployed away from that individual's permanent duty station qualifies for the deadline extension for filing and paying federal individual income taxes. The deadline extension provisions also apply to that member's spouse.

Q-30: My husband, who is a member of the U.S. Armed Forces, is at his permanent duty station in Germany performing services as part of Operation Joint Endeavor. Do the deadline extension provisions apply?

A-30: No. U.S. Armed Forces personnel serving at their permanent duty station outside the qualified hazardous duty area are not entitled to the deadline extension provisions. For a more detailed discussion of the tax treatment of military personnel, see Publication 3.

Q-31: I am a Department of Defense civilian employee stationed in Hungary away from my permanent duty station in the United States. I am performing

services as part of Operation Joint Endeavor. Do the deadline extension provisions apply to me?

A-31: Yes. The deadline extension provisions apply to you. Although you are not serving in the qualified hazardous duty area, you are a Department of Defense civilian employee performing services away from your permanent duty station as part of Operation Joint Endeavor.

Q-32: My husband and I are civilian employees of defense contractors. I work in the United States and my husband temporarily works in Germany. Our jobs involve the production of equipment used by the U.S. Armed Forces for Operation Joint Endeavor. Do the deadline extension provisions apply to either of us?

A-32: No. The deadline extension provisions do not apply to civilian employees of defense contractors unless they are serving in the qualified hazardous duty area in support of the U.S. Armed Forces.

PART 3—MISCELLANEOUS PROVISIONS

Q-33: My daughter is a member of the U.S. Armed Forces serving in the qualified hazardous duty area. She makes calls to me here in the United States. Are these calls exempt from the federal excise tax on toll telephone service?

A-33: Yes. Telephone calls that originate within the qualified hazardous duty area and that are made by members of the U.S. Armed Forces serving there are exempt from the federal excise tax on toll telephone service. If a calling card or collect call is made, a certificate of exemption must be furnished to the telephone service provider receiving payment for the call. The exemption certificate (which may be obtained from the telephone service provider) should be signed and dated by the telephone subscriber and contain the following information: the amount, time, and date of the call, the name of the person who called from the qualified hazardous duty area, a statement that the person who called was a member of the U.S. Armed Forces performing service in the qualified hazardous duty area, and the name and address of the telephone subscriber.

Q-34: If the federal excise tax has already been paid on the toll telephone

service in Q & A 33, can a refund be obtained?

A-34: Yes. If the federal excise tax has already been paid on that toll telephone service, a refund may be obtained either from the telephone service provider that collected the tax, or from the IRS by filing Form 8849, Claim for Refund of Excise Taxes.

Q-35: How will my military pay for active service in the U.S. Armed Forces in the qualified hazardous duty area be reported on my 1996 Form W-2, Wage and Tax Statement?

A-35: Military pay attributable to your active service in the qualified hazardous duty area that is excluded from gross income will not be reported on your 1996 Form W-2 in the box marked "Wages, tips, other compensation." However, military pay for such service is subject to social security and medicare taxes and will be reported on your 1996 Form W-2 in the boxes marked "Social security wages" and "Medicare wages and tips."

Q-36: I'm an officer serving in the qualified hazardous duty area. I have made monthly contributions to an individual retirement account (IRA) for 1996. In view of the military pay exclusion for my service in the

qualified hazardous duty area, I may have little or no taxable compensation for 1996 and may not be eligible to make an IRA contribution for 1996. If my taxable compensation is less than \$2000, should I withdraw the portion of my contributions that exceeds my taxable compensation?

A-36: Yes. In general, any amount contributed to your IRA that is more than the smaller of (1) your taxable compensation, or (2) \$2000, is an excess contribution and must be withdrawn to avoid a 6 percent excise tax. Once you are sure that your taxable compensation will be less than \$2000, you should withdraw the portion of your contributions that exceeds your taxable compensation. You will not be taxed on the distributed amount if you receive the distribution on or before the deadline for filing your 1996 federal individual income tax return after applying the deadline extension provisions. You may not take a deduction with respect to these distributed contributions. You must also withdraw the amount of net income attributable to the distributed contributions while they were assets of the IRA. Any of that net income is includible in your gross income for 1996. For further information, see Publication 590, Individual Retirement Arrangements (IRA).

Q-37: Assuming the same facts as question 36, how will the financial institution that distributes my 1996 IRA contributions to me report this distribution?

A-37: The financial institution will report the entire amount of the distribution (1996 distributed contributions and attributable net income) on Form 1099-R, Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. However, it should report only the amount of any net income attributable to the distributed contributions as the "Taxable amount" on Form 1099-R.

PART 4—INQUIRIES

Taxpayers within the United States may seek assistance by calling the IRS at 1-800-829-1040.

The IRS offices in Rome, Italy, and Bonn, Germany, can also assist you with your federal income tax questions. You may contact the Rome office by calling [39] (6) 4674-2560, or via fax at [39] (6) 4674-2223, and the Bonn office by calling [49] (228) 339-2119, or via fax at [49] (228) 339-2810.

Taxpayers with access to E-mail may direct questions relating to the tax relief discussed in this notice to oje@ccmail.irs.gov.