SELECT TAX AND SOCIAL SECURITY BENEFIT ISSUES RELATING TO MILITARY PERSONNEL, VOLUNTEER FIREFIGHTERS, PEACE CORPS VOLUNTEERS, AND AMERICORPS VOLUNTEERS

Scheduled for a Public Hearing
Before the
SUBCOMMITTEE ON SELECT REVENUE MEASURES
and the
SUBCOMMITTEE ON INCOME SECURITY AND FAMILY SUPPORT
of the
HOUSE COMMITTEE ON WAYS AND MEANS
on October 17, 2007

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INTRODUCTION

The Subcommittee on Select Revenue Measures and the Subcommittee on Income Security and Family Support of the House Committee on Ways and Means has scheduled a joint public hearing for Wednesday, October 17, 2007, on a bill to provide tax relief to military personnel, volunteer firefighters, Peace Corps volunteers, and AmeriCorps volunteers. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of select issues in present law relating to the taxation of these groups.

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[1] This document may be cited as follows: Joint Committee on Taxation, *Select Tax and Social Security Benefit Issues Relating to Military Personnel, Volunteer Firefighters, Peace Corps Volunteers, and AmeriCorps Volunteers* (JCX-100-07), October 16, 2007. This publication is also available on the web at www.house.gov/jct.

A. Contributions of Military Death Gratuities to Tax-Favored Accounts

Death gratuities and SGLI payments

Section 1477 of Title 10 of the United States Code provides for the payment of a military death gratuity to an eligible survivor of a service member. Under Code section 134,[2] as amended by the Military Family Tax Relief Act of 2003, the full amount of the military death gratuity is excludable from gross income. Pursuant to section 1967 of Title 38 of the United States Code, certain members of the uniformed services are automatically insured against death under the Servicemembers' Group Life Insurance ("SGLI") program. In general, life insurance proceeds are excludable from gross income under Code section 101.

If the recipient of a death gratuity or an SGLI payment would like to contribute the proceeds of the gratuity or SGLI payment to a tax-favored account, such as a traditional IRA, a Roth IRA, or a Coverdell education savings account, the contribution is subject to the otherwise applicable annual contribution limits that apply to such accounts. Thus, the full amount of the proceeds can only be contributed gradually, over time.

IRAs

There are two general types of individual retirement arrangements ("IRAs"): traditional IRAs and Roth IRAs.[3] In general, contributions (other than a rollover contribution) to a traditional IRA may be deductible, and distributions from a traditional IRA are includible in gross income to the extent not attributable to a return of nondeductible contributions. Contributions to a Roth IRA are not deductible, and qualified distributions from a Roth IRA are excludable from gross income. Distributions from a Roth IRA that are not qualified distributions are includible in gross income to the extent attributable to earnings. In general, a qualified distribution is a distribution that is made on or after the individual attains age 59½, death, or disability or which is a qualified special purpose distribution. A distribution is not a qualified distribution if it is made within the five-taxable year period beginning with the taxable year for which an individual first made a contribution to a Roth IRA.

The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount ($4,000 for 2007); or (2) the amount of the individual's compensation that is includible in gross income for the year. IRA contributions in excess of the applicable limit are generally subject to an excise tax of six percent per year until withdrawn. The contribution limit is reduced to the extent an individual makes contributions to any other IRA for the same taxable year.

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[2] Except where otherwise provided, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

[3] Traditional IRAs are described in section 408 and Roth IRAs in section 408A.

As under the rules relating to traditional IRAs, a contribution of up to the dollar limit for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount. The maximum annual contribution that can be made to a Roth IRA is phased out for taxpayers with adjusted gross income for the taxable year over certain indexed levels. The adjusted gross income phase-out ranges for 2007 are: (1) for single taxpayers, $99,000 to $114,000; (2) for married taxpayers filing joint returns, $156,000 to $166,000; and (3) for married taxpayers filing separate returns, $0 to $10,000.

The foregoing contribution limitations generally do not apply in the case of a rollover contribution to an IRA. If certain requirements are satisfied, a participant in a tax-qualified retirement plan, a tax-sheltered annuity,[4] or a governmental section 457 plan may roll over distributions from the plan or annuity into a traditional IRA. For distributions after December 31, 2007, certain taxpayers are permitted to make qualified rollover contributions from such plans or annuities into a Roth IRA (subject to inclusion in gross income of any amount that would be includible were it not part of the qualified rollover contribution).

Coverdell Education Savings Accounts

Annual contributions to a Coverdell education savings account[5] may not exceed $2,000 (except in cases involving certain tax-free rollovers) and may not be made after the designated beneficiary reaches age 18. The maximum annual contribution that can be made to a Coverdell education savings account is phased out for taxpayers with adjusted gross income for the taxable year over certain indexed levels. Contributions to a Coverdell education savings account are not deductible. In general, a rollover is permitted between Coverdell education savings accounts for the benefit of the same beneficiary or member of such beneficiary's family.

In general, a distribution from a Coverdell education savings account is includible in the gross income of the distributee. However, distributions from an account are excludable from the distributee's gross income to the extent that the total distribution does not exceed the qualified education expenses incurred by the beneficiary during the year the distribution is made. Contributions to a Coverdell education savings account are treated as nontaxable investment in the contract. Thus, earnings on contributions are subject to tax if amounts withdrawn from the account exceed qualified education expenses. The portion of a distribution from a Coverdell education savings account that is includible in income (i.e., the portion allocable to earnings on contributions when a distribution exceeds qualified education expenses) is generally subject to an additional 10-percent tax.

[4] Sec. 403(b).

[5] Coverdell education savings accounts are described in section 530.

B. Retirement Plan Benefits with Respect to Qualified Military Service

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA")[6], which revised and restated the Federal law protecting veterans' reemployment rights, an employee who leaves a civilian job for qualified military service generally is entitled to be reemployed by the civilian employer if the individual returns to employment within a specified time period. In addition to reemployment rights, a returning veteran also is entitled to the restoration of certain pension, profit sharing and similar benefits that would have accrued, but for the employee's absence due to the qualified military service. The protections provided under USERRA do not apply if the veteran is not reemployed by the veteran's civilian employer.

USERRA generally provides that for a reemployed veteran, service in the uniformed services is considered service with the employer for retirement plan vesting and benefit accrual purposes. The employer that reemploys the returning veteran is liable for funding any resulting obligation. USERRA also provides that the reemployed veteran is entitled to any accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the reemployed veteran makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the reemployed veteran would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of uniformed service. Under USERRA, any such payment to the plan must be made during the period beginning with the date of reemployment and whose duration is three times the reemployed veteran's period of uniform service, not to exceed five years.

The Small Business Job Protection Act of 1996[7] added section 414(u) to the Code to provide rules regarding the interaction of the USERRA protections with generally applicable rules that govern tax qualified retirement plans. For example, section 414(u) provides that if any make-up contribution is made by an employer or employee with respect to a reemployed veteran, then such contribution is not subject to the otherwise applicable plan contribution and deduction limits for the year in which the contribution is made (such as the section 402(g) annual limit on elective deferrals, which is generally $15,500 in 2007). Such limits are instead applied for the year to which the contribution relates had the individual continued to be employed by the employer during the period of uniformed service.

Under section 414(u), a plan to which a make-up contribution is made on account of a reemployed veteran is not treated as failing to meet the qualified plan nondiscrimination, coverage, minimum participation, and top heavy rules[8] by reason of the making of such contribution. Consequently, for purposes of applying the requirements and tests associated with

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[6] Pub. L. No. 103-353.

[7] Pub. L. No. 104-188.

[8] Secs. 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b), and 416.

these rules, make-up contributions are not taken into account either for the year in which they are made or for the year to which they relate.

In addition, section 414(u) provides for a special rule in the case of make-up contributions of salary reduction, employer matching, and after-tax employee amounts. A plan that provides for elective deferrals or employee contributions is treated as meeting the requirements of USERRA if the employer permits reemployed veterans to make additional elective deferrals or employee contributions under the plan during the period which begins on the date of reemployment and has the same length as the lesser of (1) the period of the individual's absence due to uniformed service multiplied by three or (2) five years. The employer is required to match any additional elective deferrals or employee contributions at the same rate that would have been required had the deferrals or contributions actually been made during the period of uniformed service. Additional elective deferrals, employer matching contributions, and employee contributions are treated as make-up contributions for purposes of the rule exempting such contributions from qualified plan nondiscrimination, coverage, minimum participation, and top heavy rules described above.

The protections of USERRA described above do not apply if a veteran is not reemployed by the veteran's former employer. For example, the protections do not apply if the veteran is killed during active duty, or incurs a disability during active duty that prevents the veteran from becoming reemployed.

C. Tax Treatment Related to Certain Benefits Provided to Volunteer Firefighters and Emergency Medical Responders

Certain tax reductions or tax rebates provided by a State or local government

The Internal Revenue Service has provided guidance[9] that reductions or rebates of taxes by State or local governments on account of services performed by members of qualified volunteer emergency response organizations are taxable income to the taxpayers receiving these reductions or rebates of taxes.

Deduction for certain State or local taxes

For purposes of determining regular tax liability, an itemized deduction is permitted for certain State and local taxes paid, including individual income taxes, real property taxes, and personal property taxes. The itemized deduction is not permitted for purposes of determining a taxpayer's alternative minimum taxable income. For taxable years beginning before January 1, 2008, at the election of the taxpayer, an itemized deduction may be taken for State and local general sales taxes in lieu of the itemized deduction provided under present law for State and local income taxes.

The otherwise allowable itemized deduction for these State or local taxes is not reduced by the amount of any reduction or rebate on account of services performed as a member of a qualified volunteer emergency response organization.

Charitable deduction for certain expenses

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3), to a Federal, State, or local governmental entity, or to certain other organizations.[10] The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer. Within certain limitations, donors also are entitled to deduct their contributions to section 501(c)(3) organizations for Federal estate and gift tax purposes.

[9] Chief Couns. Adv. 200302045 (Jan. 10, 2002)

[10] Secs. 170 (a) (c) and (e).

D. Treatment of Distributions to Individuals Called to Active Duty for at Least 180 Days

Under present law, a taxpayer who receives a distribution from a qualified retirement plan prior to age 59½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception to the tax applies. Among other exceptions, the early distribution tax does not apply to distributions made to an employee who separates from service after age 55, or to distributions that are part of a series of substantially equal periodic payments made for the life (or life expectancy) of the employee or the joint lives (or life expectancies) of the employee and his or her beneficiary.

Certain amounts held in a qualified cash or deferred arrangement (a "section 401(k) plan") or in a tax-sheltered annuity (a "section 403(b) annuity") may not be distributed before severance from employment, age 59½, death, disability, or financial hardship of the employee.

Pursuant to amendments to section 72(t) made by the Pension Protection Act of 2006,[11] the 10-percent early withdrawal tax does not apply to a qualified reservist distribution. A qualified reservist distribution is a distribution (1) from an IRA or attributable to elective deferrals under a section 401(k) plan, section 403(b) annuity, or certain similar arrangements, (2) made to an individual who (by reason of being a member of a reserve component as defined in section 101 of title 37 of the U.S. Code) was ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and (3) that is made during the period beginning on the date of such order or call to duty and ending at the close of the active duty period. A section 401(k) plan or section 403(b) annuity does not violate the distribution restrictions applicable to such plans by reason of making a qualified reservist distribution.

An individual who receives a qualified reservist distribution may, at any time during the two-year period beginning on the day after the end of the active duty period, make one or more contributions to an IRA of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to IRAs do not apply to any contribution made pursuant to this special repayment rule. No deduction is allowed for any contribution made under the special repayment rule.

The special rules applicable to a qualified reservist distribution apply to individuals ordered or called to active duty after September 11, 2001, and before December 31, 2007. Thus, the special rules do not apply to individuals ordered or called to active duty on or after December 31, 2007.

[11] Pub. L. No. 109-280.

E. Mortgage Bond Program Rules for Veterans

In general

Private activity bonds are bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such private person. The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds"). The definition of a qualified private activity bond includes both qualified mortgage bonds and qualified veterans' mortgage bonds.

Qualified mortgage bonds

Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including income limitations for homebuyers and purchase price limitations for the home financed with bond proceeds. In addition, qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage (the "first-time homebuyer" requirement).

Under a special rule, qualified mortgage bonds may be issued to finance mortgages for veterans who served in the active military without regard to the first-time homebuyer requirement. Present-law income and purchase price limitations apply to loans to veterans financed with the proceeds of qualified mortgage bonds. Veterans are eligible for the exception from the first-time homebuyer requirement without regard to the date they last served on active duty or the date they applied for a loan after leaving active duty. However, veterans may only use the exception one time and the exception only applies to financing provided from bonds issued before January 1, 2008.

Qualified veterans mortgage bonds

Qualified veterans' mortgage bonds are private activity bonds the proceeds of which are used to make mortgage loans to certain veterans. Authority to issue qualified veterans' mortgage bonds is limited to States that had issued such bonds before June 22, 1984. Qualified veterans' mortgage bonds are not subject to the State volume limitations generally applicable to private activity bonds. Instead, annual issuance in each State is subject to a separate State volume limitation. The five States eligible to issue these bonds are Alaska, California, Oregon, Texas, and Wisconsin.

In the case of qualified veterans' mortgage bonds issued by California or Texas, mortgage loans only can be made to veterans who served on active duty before 1977 and who applied for the financing before the date 30 years after the last date on which such veteran left active service. In the case of qualified veterans' mortgage bonds issued by the States of Alaska, Oregon, and Wisconsin, mortgage loans can be made to veterans who apply for financing before the date 25 years after the last date on which such veteran left active service, without regard to the calendar year the veteran served on active duty.

The annual volume of qualified veterans' mortgage bonds that can be issued in California or Texas is based on the average amount of bonds issued in the respective State between 1979 and 1984. In Alaska, Oregon and Wisconsin, the annual limit on qualified veterans' mortgage bonds that can be issued in years after 2009 is $25 million. This $25 million per-State limit is phased-in from 2006 through 2009 by allowing the applicable percentage of the $25 million limit. The following table provides those percentages.

Calendar Year:	**Applicable Percentage is:**
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent

Unused allocation cannot be carried forward to subsequent years.

F. Election to Treat Combat Pay as Earned Income for Purposes of the Earned Income Credit

In general

Subject to certain limitations, military compensation earned by members of the Armed Forces while serving in a combat zone may be excluded from gross income. In addition, for up to two years following service in a combat zone, military personnel may also exclude compensation earned while hospitalized from wounds, disease, or injuries incurred while serving in the combat zone.

Child credit

Combat pay that is otherwise excluded from gross income under section 112 is treated as earned income which is taken into account in computing taxable income for purposes of calculating the refundable portion of the child credit.

Earned income credit

Any taxpayer may elect to treat combat pay that is otherwise excluded from gross income under section 112 as earned income for purposes of the earned income credit. This election is available with respect to any taxable year ending after the date of enactment and before January 1, 2008.

G. Differential Military Pay

In general

In the case of an employee who is called to active duty with the United States uniformed services, some employers voluntarily agree to continue paying the compensation that the service member would otherwise have received from the employer during the service member's period of active duty. Such compensation is commonly referred to as "differential pay."

Wage withholding

Differential pay is not treated as wages for purposes of the Federal income tax withholding rules that apply to an employer's payment of wages. This is because the service member terminates the employment relationship with the employer that pays the differential pay upon being called for active duty.[12] As a result, the recipient of differential pay must make arrangements to satisfy any advance Federal tax payment obligations that might arise on account of receiving such pay, such as quarterly estimated tax payments.

Retirement plans

Section 415 imposes limitations on the benefits that may be provided under a retirement plan that is qualified under Code section 401(a) (a "qualified plan"). For a defined contribution plan, section 415 limits the annual additions to a participant's account under the plan to the lesser of a dollar amount ($45,000 in 2007) or 100 percent of the participant's compensation. In the case of a defined benefit plan, section 415 generally limits the annual benefit payable under the plan to the lesser of a dollar amount ($180,000 in 2007) or 100 percent of the participant's average compensation for the participant's high three years. Final regulations issued in 2007 generally permit a plan to treat differential pay as compensation for purposes of section 415.[13] However, differential pay is not required to be treated as compensation.

The section 415 limitations also apply to tax-deferred annuities[14] and simplified employee pensions[15] ("SEPs"). The definition of compensation in section 415 is used in limiting the amount that may be deferred under an eligible deferred compensation plan (described in section 457(b)).

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[12] See Rev. Rul. 69-136, 1969-1 C.B. 252.

[13] Treas. Reg. sec. 1.415(c)-2(e)(4), 72 F.R. 16878 (April 5, 2007).

[14] Sec. 403(b).

[15] Sec. 408(k).

IRA contributions

There are two general types of individual retirement arrangements ("IRAs"): traditional IRAs and Roth IRAs.[16] Under Code section 219, the total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount ($4,000 for 2007); or (2) the amount of the individual's compensation that is includible in gross income for the year. In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses that is includible in gross income is at least equal to the contributed amount. For purposes of the IRA contribution limitations, compensation includes an individual's net earnings from self employment. The Code does not specify whether differential pay is compensation for purposes of the IRA contribution limitations.

[16] Secs. 408 and 408A.

H. Statute of Limitations to File Claims for Refunds Relating to Disability Determinations by the Department of Veterans Affairs

In general, a taxpayer must file a claim for credit or refund within three years of the filing of the tax return or within two years of the payment of the tax, whichever expires later (if no tax return is filed, the two-year limit applies). A claim for credit or refund that is not filed within these time periods is rejected as untimely.

Generally, military retirement benefits based on length of service are included in income, whereas veterans' benefits based on a service-connected disability are excluded from income. If an individual receives includible retirement benefits and is later retroactively determined to be eligible for service-connected disability benefits, the portion of the retirement benefits attributable to the disability is retroactively excluded from income. In that case, the individual may claim a refund of the tax paid on the retroactively excluded benefits, subject to the statute of limitations on filing a refund claim.

I. Disclosure of Return Information to the Department of Veterans Affairs

The Code prohibits disclosure of returns and return information, except to the extent specifically authorized by the Code.[17] Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both.[18] An action for civil damages also may be brought for unauthorized disclosure.[19] No tax information may be furnished by the Internal Revenue Service ("IRS") to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives.[20] Among the disclosures permitted under the Code is the disclosure of certain tax information to the Department of Veterans Affairs. Disclosure is permitted to assist the Department of Veterans Affairs in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension, health care, and other programs.[21] The Department of Veterans Affairs disclosure provisions do not apply after September 30, 2008.

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[17] Sec. 6103.

[18] Sec. 7213.

[19] Sec. 7431.

[20] Sec. 6103(p).

[21] Sec. 6103(1)(7)(D)(viii).

J. Exclusion of Gain on Sale of a Principal Residence

In general

Under present law, an individual taxpayer may exclude up to $250,000 ($500,000 if married filing a joint return) of gain realized on the sale or exchange of a principal residence. To be eligible for the exclusion, the taxpayer must have owned and used the residence as a principal residence for at least two of the five years ending on the sale or exchange. A taxpayer who fails to meet these requirements by reason of a change of place of employment, health, or, to the extent provided under regulations, unforeseen circumstances is able to exclude an amount equal to the fraction of the $250,000 ($500,000 if married filing a joint return) that is equal to the fraction of the two years that the ownership and use requirements are met.

Uniformed services and Foreign Service

Present law also contains special rules relating to members of the uniformed services or the Foreign Service of the United States. An individual may elect to suspend for a maximum of 10 years the five-year test period for ownership and use during certain absences due to service in the uniformed services or the Foreign Service of the United States. The uniformed services include: (1) the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service. If the election is made, the five-year period ending on the date of the sale or exchange of a principal residence does not include any period up to 10 years during which the taxpayer or the taxpayer's spouse is on qualified official extended duty as a member of the uniformed services or in the Foreign Service of the United States. For these purposes, qualified official extended duty is any period of extended duty while serving at a place of duty at least 50 miles away from the taxpayer's principal residence or under orders compelling residence in government furnished quarters. Extended duty is defined as any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period. The election may be made with respect to only one property for a suspension period.

Intelligence community

Specified employees of the intelligence community may elect to suspend the running of the five-year test period during any period in which they are serving on extended duty. The term "employee of the intelligence community" means an employee of the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Reconnaissance Office. The term also includes employment with: (1) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; (2) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, and the Coast Guard; (3) the Bureau of Intelligence and Research of the Department of State; and (4) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information. To qualify, a specified employee must move from one duty station to another and the new duty station must be located outside of the United States. The five-year period may not be extended more than 10 years. The provision relating to employees of the intelligence community is effective for sales and exchanges before January 1, 2011.

K. Taxation of Combat Pay and Other Military Compensation

Subject to certain limitations, military compensation earned by members of the Armed Forces while serving in a combat zone is excludable from gross income.[22] Military personnel may also exclude, for up to two years following service in a combat zone, compensation earned while hospitalized from wounds, disease, or injuries incurred while serving in the zone. In addition, certain qualified military benefits, including certain death gratuities and other payments, are excludable from gross income.[23] Finally, the IRS has ruled that certain bonuses paid by States to military personnel are gifts that are not includible in gross income.[24]

[22] Sec. 112.

[23] Sec. 134.

[24] Rev. Rul. 68-158, 1968-1 C.B. 47; Chief Couns. Adv. 200708003 (Feb. 23, 2007).

L. Military Income Under Supplemental Security Income (“SSI”)[25]

Section 1612(a)(2) of the Social Security Act specifies that any income not defined as earned income by Section 1612(a)(1) of the act is considered *unearned* income, which reduces SSI benefits more quickly than *earned* income.

Section SI 00830.540 of the Programs Operations Manual System (“POMS”) specifies the following regarding military compensation:

- Only military basic pay is considered earned income;
- Hostile fire pay and imminent danger pay are excluded from income;
- In deeming situations only, any other type of pay received for serving in a combat zone is excluded from income; and
- All other types of military pay are considered unearned income.

Section 1612(a)(2) of the Social Security Act specifies that in-kind support and maintenance (“ISM”) is considered unearned income by the SSI program. Section 1612(a)(2)(A) of the Social Security Act states that if a person is receiving ISM then his or her SSI benefit is reduced by one-third of the SSI federal benefit rate.

Section SI 00830.540 of the POMS specifies that payments made to or for a member of the uniformed services for housing at a military facility or for privatized military housing are considered ISM by the SSI program.

[25] This description was not prepared by the staff of the Joint Committee on Taxation. It was provided by the majority staff of the House Committee on Ways and Means, Subcommittee on Income Security and Family Support, for inclusion in this hearing pamphlet.

M. Penalties for Blind Veterans Under SSI[26]

Section 1612(b) of the Social Security Act provides a list of income exclusions and contains no reference to State annuities for blind veterans. 20 C.F.R. § 416.1121 specifies that annuities for veterans are considered unearned income by the SSI program unless excluded by law. This means such annuities count dollar-for-dollar against SSI benefits.

Section 1613(a) of the Social Security Act provides a list of resource exclusions and contains no reference to State annuities for blind veterans. 20 C.F.R § 416.1201 specifies that any cash or liquid asset or any real or personal property that a person owns and could convert into cash is considered a resource by the SSI program unless excluded by law.

[26] This description was not prepared by the staff of the Joint Committee on Taxation. It was provided by the majority staff of the House Committee on Ways and Means, Subcommittee on Income Security and Family Support, for inclusion in this hearing pamphlet.

N. AmeriCorps Volunteers Under SSI[27]

Section 1612(b) of the Social Security Act provides a list of income exclusions and contains no reference to the AmeriCorps program. 42 U.S.C. § 5044(f) specifies that payments made to volunteers in programs authorized under Chapter 66 of Title 42 of the United States Code are excluded from the SSI income calculation. The AmeriCorps*VISTA program, but not the AmeriCorps program falls under this exclusion (AmeriCorps*VISTA and AmeriCorps are different programs).

[27] This description was not prepared by the staff of the Joint Committee on Taxation. It was provided by the majority staff of the House Committee on Ways and Means, Subcommittee on Income Security and Family Support, for inclusion in this hearing pamphlet.