



Joint Committee on Taxation
July 8, 2002
JCX-72-02

**DESCRIPTION OF THE
"ARMED FORCES TAX FAIRNESS ACT OF 2002"**

**A. Exclusion of Gain on the Sale of a Principal Residence
by a Member of the Uniformed Services**

Present Law

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 prior to 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. There are no special rules relating to members of the uniformed services.

Explanation of Provision

Under the bill, an individual may elect to suspend for a maximum of five years the five-year test period for ownership and use during certain absences due to service in the uniformed services. 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 five years during which the taxpayer or the taxpayer's spouse is on qualified official extended duty as a member of the uniformed services. For these purposes, qualified official extended duty is any period of extended duty by a member of the uniformed services or the Foreign Service of the United States while serving at a place of duty at least 250 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 active duty pursuant to a call or order to such duty for a period in excess of 180 days or for an indefinite period. The election may be made with respect to only one property at a time.

Effective Date

The provision is effective for elections made after the date of enactment for periods after such date.

B. Exclusion from Gross Income of Certain Death Gratuity Payments

Present Law

Present law provides that qualified military benefits are not included in gross income. Generally, qualified military benefits are any allowance or in-kind benefit (other than personal use of a vehicle) which: (1) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services; and (2) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date. Generally, no modification or adjustment of any qualified military benefit after September 9, 1986 is taken into account for purposes of this exclusion from gross income.

Explanation of Provision

The provision extends the exclusion from gross income to any adjustment to the amount of the death gratuity payable under Chapter 75 of Title 10 of the United States Code, pursuant to a provision of law enacted before December 31, 1991 with respect to the death of certain members of the armed services on active duty, inactive duty training or engaging in authorized travel.

Effective Date

The provision is effective with respect to deaths occurring after September 10, 2001.