

TAX TREATMENT OF MEMBERS OF THE ARMED FORCES AND  
CIVILIAN EMPLOYEES WHO ARE PRISONERS OF WAR OR MISSING  
IN ACTION AND CERTAIN OTHER AMENDMENTS ADDED BY THE  
COMMITTEE

JULY 8, 1974.—Ordered to be printed

Mr. LONG, from the Committee on Finance,  
submitted the following

## REPORT

[To accompany H.R. 8214]

The Committee on Finance, to which was referred the bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

### I. SUMMARY

H.R. 8214, as passed by the House, amends present law in several respects to provide relief for military and civilian personnel returning from the Vietnam conflict, and for the families of those individuals who are listed as missing in action and are subsequently determined to have died at an earlier time. With minor technical changes, the committee agrees with the bill as passed by the House. However, in addition, the committee has added an amendment containing a series of provisions. The House-passed provisions and the committee provisions are summarized below.

*House provisions.*—First, the bill extends the provision under present law, which permits military personnel who are hospitalized as a result of service in a combat zone to exclude military pay they receive during the period of hospitalization, to cover for a period of time the pay they receive while hospitalized after all combatant activities have terminated. Since the exclusion under present law only applies during the period in which there are combatant activities in a combat zone,

the bill extends this exclusion for a period of time to cover a member of the Armed Forces who was hospitalized for an injury incurred in a combat zone in the waning days of the Vietnam conflict.

Second, the House bill extends the provision which forgives Federal income taxes on income other than combat pay, which is presently excludable under another provision, in the case of a member of the Armed Forces who dies while serving in a combat zone (or as a result of an injury incurred while serving in a combat zone) to cover the period he is in a missing status even though it is subsequently determined that he actually died at an earlier time. Present law forgives income taxes through the year of a serviceman's actual death. The committee agrees with the House that it is appropriate to prevent any additional hardship to his family which could result from the collection of taxes for years following his actual death and, therefore, is in accord with the House treatment extending this forgiveness to cover the years a serviceman is in missing status until his status is changed.

With respect to the first two changes, the committee agreed with the House that these special benefits should not extend longer than a reasonable period after the termination of combatant activities and, accordingly, is in agreement with the House bill which provided in general, that these benefits are not to apply for more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, the benefits provided under the provisions described above will be available, in general, for a 2-year period after the bill is enacted.

Third, the House bill deals with the question of when the special tax rates available to a surviving spouse should be available for a spouse whose husband was reported in missing status and is subsequently determined to have died at an earlier time. The bill provides that the widow is to be eligible for surviving spouse tax treatment for the 2 years following the year in which her husband's missing status is changed rather than the 2 years following the year of actual death.

The House bill also clarifies existing law in two respects. First, present law provides an extension of time for performing various acts such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax in the case of an individual serving in the Armed Forces of the United States (or serving in support of the Armed Forces in a combat zone). Since it is common for these individuals and their spouses to file joint returns, the question has arisen as to whether their spouse is entitled to the benefit of these extensions. The bill clarifies this by providing that the spouse of a serviceman (or the spouse of an individual serving in support of the Armed Forces) in a combat zone is to have the same extension of benefits as is available to her husband. Second, the bill also makes it clear that the spouse of an individual in missing status may file a joint return during the period he is in missing status even if it is subsequently determined that he had been killed in action in a prior year. In each of these two changes, the House bill also provides a similar 2-year limitation after the termination of combatant activities and with respect to the Vietnam conflict as described above.

The House bill also deals with the tax treatment of certain individuals who were illegally detained when the *U.S.S. Pueblo* was seized in 1968 by North Korea. In this regard, the bill provides an exclusion from income with respect to compensation received by the members of

the crew to conform to the treatment available for prisoners of war in a combat zone.

Finally, the House bill removes the requirement that a serviceman must be serving during an "induction period" in order to be eligible for certain benefits otherwise accorded. This change is necessary since the Military Selective Service Act of 1967 has expired and there is no longer an induction period.

*Provisions of committee amendment.*—The first committee provision extends to distilled spirits brought into the United States from Puerto Rico and the Virgin Islands the same abatement or refund provisions in the case of loss or destruction that are presently applicable to imported or domestic spirits.

The second committee provision continues for one more year (until January 1, 1974) the treatment which has been available for taxable years ending before January 1, 1973, with respect to the deduction for accrued vacation pay.

The third committee provision deals with the tax treatment of tuition and educational expenses paid on behalf of members of the uniformed services. The exclusion from gross income for certain amounts received as a scholarship at an educational institution or as a fellowship grant generally does not apply if the amounts received represent compensation for past, present, or future employment services. The Internal Revenue Service has notified the Department of Defense in response to its request for a ruling that certain amounts received by students toward their educational expenses while participating in the recently instituted Armed Forces Health Professions Scholarship Program are not excludable from their gross income because of the individual's commitment to future service with the Armed Forces; thus, under this position the individuals are subject to tax on the amounts received. The committee amendment provides that the exclusion for scholarship and fellowship grants is to apply to payments made by the Government for the tuition and certain other educational expenses of a member of the uniformed services attending an educational institution under the Armed Forces Health Professions Scholarship Program (or substantially similar programs) until January 1, 1975, pending a review by the staff of the effect of application of this provision.

The fourth committee provision deals with the award of court costs, including reasonable attorney fees, to a taxpayer who is the prevailing party in a court proceeding. Under present law, a taxpayer cannot recover attorney's fees incurred in connection with a court proceeding. The amendment would authorize the award of a judgment for such costs if, in the opinion of the court, the litigating position taken by the Secretary of the Treasury or his delegate is clearly unreasonable. Further, the amendment would clarify the authority of the Tax Court to award a decision or order for certain court fees to a petitioner who is the prevailing party in a proceeding.

The fifth committee provision provides that the 8-percent manufacturer's excise tax on truck parts and accessories is not to apply in the case of any part or accessory sold on or in connection with the first retail sale of a light-duty truck (which is not subject to the truck tax). A refund or credit is allowed where the parts and accessories tax has been paid by the manufacturer and it is thereafter determined that the sale of the part or accessory is tax free.

## II. GENERAL STATEMENT

### A. Tax Treatment of Members of the Armed Forces and Civilian Employees Who Are Prisoners of War or Missing in Action

Congress has enacted several special rules for members of the Armed Forces and civilian employees to cover certain hardships with respect to the filing of income tax returns and the payment of tax during the period they are in a combat zone<sup>1</sup> and for certain subsequent periods. The committee has been informed that certain problems have arisen as a result of the Vietnam conflict. These are discussed below.

#### 1. *Military pay during hospitalization after termination of combatant activities.*

Under present law (sec. 112), an exclusion is provided for pay received for active service by a member of the Armed Forces for any month during which he either served in a combat zone or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone.<sup>2</sup> In the case of enlisted personnel, the exclusion applies to all of their pay. In the case of commissioned officers, the exclusion applies to the first \$500 per month of their pay. In addition, military personnel and civilian employees who were serving in the Vietnam conflict and who are listed in a missing status<sup>3</sup> are entitled to the income tax exclusion for all compensation (without the \$500 per month limitation in the case of commissioned officers) received for active service during the period they are in a missing status.

The exclusion for compensation received while hospitalized applied only to a month during which there are combatant activities in a combat zone. As a result, a member of the Armed Forces who is hospitalized for an injury incurred in a combat zone in the waning days of the Vietnam conflict will not get the benefit of this exclusion for any month following the month of his injury if all combatant activities have been terminated. However, a serviceman injured at an earlier date whose period of hospitalization was entirely within the period of combatant activities would be able to treat his military compensation as combat pay and therefore exclude it from gross income. For this reason, the bill extends the exclusion to cover military pay received by a serviceman through the month his hospitalization ends even if all combatant activities have been terminated.

The committee has been informed that a serviceman who has been hospitalized as a result of wounds, disease or injury incurred while serving in a combat zone, as a general rule, either recovers and is returned to active duty, or is discharged and brought under the care of the Veterans' Administration, within 2 years from the date of hospitalization. Accordingly, the exclusion applies for any month beginning not more than 2 years after the termination of combatant activities. This will insure that a serviceman who is hospitalized at a

<sup>1</sup> The term "combat zone" means any area which the President of the United States designates as an area in which Armed Forces of the United States are or have engaged in combat. The President designated Vietnam and the waters adjacent thereto as a combat zone as of January 1, 1964. See Executive Order 11216, 1965-1 C. B. 62.

<sup>2</sup> Members of the Armed Forces who are serving in direct support of military operations in a combat zone and who qualify for Hostile Fire Pay (as authorized under section 9(a) of the Uniformed Services Pay Act of 1963 (37 U.S.C. 310)) are treated as serving in a combat zone. Accordingly, an individual who is serving in Cambodia, Laos, or Thailand may be eligible for this exclusion.

<sup>3</sup> The term "missing status" means the status of a member of a uniformed service who is officially carried or determined to be absent in a status of missing; missing in action; interned in a foreign country; captured and beleaguered, or besieged by a hostile force; or detained in a foreign country against his will (37 U.S.C. 551 (2)).

time which is near the end of the combatant activities, will be able to exclude his military pay for up to 2 years and at the same time prevent the exclusion from continuing indefinitely. In the case of the Vietnam conflict, however, it is uncertain when the combatant activities will be officially terminated, but in view of the fact that a truce agreement has been signed, the bill provides that the exclusion for a serviceman who is hospitalized is to apply to any month beginning not more than 2 years after the date of enactment of this bill. In addition, the exclusion for those servicemen in a missing status is to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

*2. Tax forgiveness in the case of missing servicemen subsequently determined to have died.*

Under present law (sec. 692), Federal income taxes are forgiven in the case of a member of the Armed Forces who dies while serving in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone. This forgiveness of tax applies to the taxable year in which the death occurs and also to any prior year ending after the member of the Armed Forces first served in a combat zone.<sup>4</sup>

Congress enacted this provision to alleviate some of the hardships borne by survivors of servicemen dying as a result of service in a combat zone. However, where a serviceman is reported in a missing status for a number of years and it is subsequently determined that he actually died at an earlier time, his income (other than his combat pay excluded under sec. 112) for taxable years after the year of his actual death is subject to tax.

The committee agrees with the House that the uncertainty as to a serviceman's status (when he is classified as missing) creates unusual difficulties in the case of the families of these servicemen. The imposition of a back tax liability resulting from a determination that a serviceman listed as missing died at an earlier date could have the effect of imposing a severe hardship on the surviving family at a most inopportune time. With respect to the survivors in these cases, the date of death of the serviceman is not as significant as the date his missing status is changed. The military pay his family had been receiving during the period he was in missing status is not required to be returned on account of a subsequent determination that he died at an earlier date. In addition, death benefits are made available to survivors at the time a serviceman's name is removed from missing status and a finding of death (or presumptive death) is made. Consistent with this policy and in order to alleviate any additional hardship that could result from imposing a tax on the serviceman's income from the date of his death (or presumptive death) until the date that his status is changed from missing, the bill extends the benefits of current law by forgiving the income taxes on his income other than combat pay, which is excluded under section 112, through the taxable year in which his missing status is changed rather than just through the year of his actual death.

The committee agrees with the House that it is not appropriate to continue the forgiveness of Federal income taxes indefinitely, but

<sup>4</sup> This provision, however, only applies to taxable years ending on or after June 24, 1950.

that after the termination of combatant activities a reasonable period should be provided while the status of those servicemen who are missing is determined. Accordingly, the bill provides that, as a general rule, Federal income taxes will not be forgiven in the case of any taxable year beginning more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, it is uncertain when the combatant activities will be officially terminated, but in view of the fact that a truce agreement has been signed, the bill provides that with respect to the Vietnam conflict, Federal income taxes will not be forgiven in the case of any taxable year beginning more than 2 years after the date of enactment of the bill. In the case of those servicemen in a missing status, the taxes will be forgiven even though Vietnam is no longer designated as a combat zone if the date his missing status is changed is within any taxable year beginning not later than 2 years after the date of enactment of the bill.<sup>5</sup>

*3. Filing of joint return by spouse during period her husband is in missing status*

There has been some question during the Vietnam conflict with respect to the filing of joint returns in the case of spouses of servicemen in the combat zone, especially where the serviceman was listed in a missing status. Initially, there were varying practices; in some cases the spouse filed a separate return, others a joint return, and still others no return at all. As a result of this uncertainty, in 1966 the Internal Revenue Service announced that the spouse may file a joint return and need only indicate in the space provided for her husband's signature that he is in fact in Vietnam. In the case of those in missing status, it has been the administrative practice of the Internal Revenue Service to consider such a return as a valid joint return even if it is subsequently determined that the serviceman had been killed in action in a prior year. The bill clarifies existing law in this regard by providing that where the spouse of a missing serviceman or civilian elected to file a joint return, the election is valid even though it is subsequently determined that her husband died at an earlier time. In addition, the bill provides that where the spouse did not file a joint return in this case, she may elect to file one for those years he was in a missing status. Furthermore, any income tax liability of the serviceman or civilian (including his spouse and estate), except for purposes of the income tax forgiveness provisions, will be determined as if he were alive for the entire year during each of the years she elected to file a joint return.

If the spouse elects to file a joint return while her husband is in missing status, the election may be revoked by either the spouse or the returning serviceman prior to the due date for the taxable year involved (including extensions). In the case where it is determined that a serviceman listed in missing status has died, if an executor or administrator is appointed after the surviving spouse has filed a joint return, the executor or administrator may revoke the election by making, within one year after the last day (including extensions) prescribed by law for filing the return of the surviving spouse, a separate return for the deceased serviceman.

<sup>5</sup> The bill also provides that in those cases where a return has been filed for any taxable year ending on or after February 28, 1961, without claiming any income tax forgiveness and a claim would otherwise have been allowed if the claim for forgiveness had been filed on the due date for the final return, a claim for refund or credit will be permitted to be filed if the claim is filed within one year from the date of enactment of this bill.

The bill provides that a spouse whose husband is listed in missing status may file a joint return only for any taxable year beginning not more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, the bill provides that a joint return may not be filed for any taxable year beginning more than 2 years after the date of enactment. In addition, the filing of joint returns in the case of those servicemen in a missing status is to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

4. *Surviving spouse tax rates after change of missing status of previously deceased servicemen*

Under present law, a surviving spouse (as defined in sec. 2(a)) is accorded a special status for the 2 taxable years following the year of her spouse's death. The surviving spouse provisions (which are available to a widow with a dependent child) are intended to give the survivor a 2-year transitional period at the lower surviving spouse tax rates (which are the same as the joint return income tax rates) following the death of the spouse and before the single or head-of-household tax rates would apply.

The committee agrees with the House that there is an unusual problem in the case of a spouse whose husband was reported in a missing status for a number of years, and where it is subsequently determined that he died at an earlier time than the date on which his missing status is changed. The committee, like the House, believes that in this case, a transitional period is most needed by the widow after the date on which her husband's status is changed. For this reason, the bill provides that the widow is eligible for surviving spouse tax treatment for the 2 years following the year in which her husband's status as missing is changed rather than the 2 years following the year of actual death. However, as indicated above, the bill also permits the widow to file a joint return for the years her husband is in a missing status (but not for any taxable year beginning more than 2 years from the date of enactment in the case of the Vietnam conflict or more than 2 years from the termination of combatant activities in the case of any future conflict). The effect of these two changes is to allow the widow not only to file a joint return during the period her husband is in missing status (subject to the limitations discussed above with respect to the period after the termination of combatant activities) even though it is subsequently determined that he was already dead during that period, but also to file a return as a surviving spouse for the 2 years after it has been determined that he was killed and his status is changed.

5. *Extension of time for performing certain acts in the case of the spouse of an individual serving in a combat zone*

Under present law (sec. 7508), an extension of time is provided for performing various acts, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax. The extension of time applies to any individual who is serving in the Armed Forces of the United States or serving in support of such Armed Forces in a combat zone. Present law also provides for the extension of these benefits to the executor, administrator, or conservator of the estate of an indi-

vidual entitled to them. The period of service in the combat zone (and the period of continuous hospitalization outside the United States, as a result of injury received in a combat zone) plus the next 180 days thereafter may be disregarded in determining whether the individual performed the various specified acts on time.

Although it is common for these individuals and their spouses to file joint returns, it was somewhat unclear at the beginning of the Vietnam conflict as to whether the spouse was entitled to this extension. The administrative practice of the Internal Revenue Service (announced April 8, 1968) has been to allow the spouse of a serviceman entitled to this extension of time to defer the filing of a joint return or payment of tax until the date the serviceman is required to file and pay the tax. The bill clarifies existing law by providing that the spouse of an individual serving in a combat zone is entitled to the benefits of this provision.

The bill provides, as a general rule, that this provision will apply to the spouse for any taxable year beginning not more than 2 years after the termination of combatant activities in a combat zone. In the case of the Vietnam conflict, however, the bill provides that the spouse will be entitled to the benefits of this provision for any taxable year beginning not more than 2 years after the date of enactment of the bill. In addition, in the case of those servicemen in a missing status these benefits are to apply for the 2-year period after the date of enactment even if there is a termination of the Vietnam combat zone designation by the President during that period.

#### 6. *Tax treatment of certain individuals serving on U.S.S. "Pueblo"*

In 1970 Congress enacted P.L. 91-235 which dealt with the members of the crew of the U.S.S. *Pueblo* who were illegally detained by North Korea in 1968. The Act provided that the members of the crew were to be treated for purposes of the tax laws in the same manner as if they had served in a presidentially designated combat zone during the period of their detention by North Korea. This meant that for the period of their detention, members of this crew received an exclusion from income tax for their pay for service in the Armed Forces; for the member of the crew who was killed during this period there was a forgiveness of unpaid income taxes and a reduction of Federal estate taxes; and for all personnel on the ship there was an extension of time for filing tax returns, paying taxes, etc.

The exclusion from income tax provided in P.L. 91-235 for the crew aboard the *Pueblo* did not apply to the pay of any civilian employee and was limited to \$500 per month in the case of a commissioned officer. This was because when Congress enacted P.L. 91-235, the exclusion of compensation received by individuals serving in a combat zone was not available to any civilian government employee and the exclusion for compensation in the case of a commissioned officer serving in a combat zone was limited to the first \$500 per month. Subsequently, in 1972, Congress enacted P.L. 92-279 which extended the exclusion to compensation received by civilian employees and removed the \$500 per month limitation for commissioned officers in any case where these individuals were in a missing status as a result of the Vietnam conflict. However, no corresponding amendment was made for those aboard the *Pueblo* who were illegally detained in North Korea.

The committee agrees with the House that it is appropriate to provide the same treatment for the crew of the *Pueblo* (both military and civilian crew members) as was made available under P.L. 92-279 to those listed in a missing status as a result of the Vietnam conflict. Accordingly, the bill extends the exclusion to compensation received by those civilian government employees aboard the *Pueblo* and removes the \$500 monthly limitation in the case of commissioned officers. Under the bill, those benefited by these changes will be permitted to file a claim for refund or credit if such claim is filed within one year from the date of the enactment of the bill.

#### *7. Induction period requirement*

Under present law an individual must be serving during an induction period in order to be eligible for the combat pay exclusion as well as certain other benefits. Since the Military Selective Service Act of 1967, as amended, expired on June 30, 1973, there is no longer an induction period so that the special provisions are not operative. Accordingly, the bill removes the requirement that there be an induction period in order for a serviceman to be entitled to these benefits. This change is effective on July 1, 1973, so that there will be no lapse of benefits on account of the expiration of the Military Selective Service Act.

### **B. Treatment of Distilled Spirits Brought Into the United States From Puerto Rico and the Virgin Islands**

Present law (sec. 5001(a)) imposes an excise tax both on distilled spirits imported into, and spirits produced in, the United States. A separate provision (sec. 7652) also applies a tax to spirits brought into the United States from Puerto Rico and the Virgin Islands. This provision states that goods from Puerto Rico and the Virgin Islands are to be taxed at a rate equal to the tax upon like articles of U.S. domestic goods.

Domestically produced spirits are not subject to tax until they are withdrawn from bonded premises. Similarly, when imported spirits or spirits brought into the United States from Puerto Rico or the Virgin Islands in bulk containers are transferred to bonded premises upon arrival, the payment of the excise tax may be deferred (although liability is established) until the spirits are removed from these premises (sec. 5232). Another provision of present law (sec. 5008) provides that the distilled spirits tax is to be abated if spirits are lost or destroyed while on bonded premises and that a tax refund is to be made if, in certain circumstances, spirits removed from the bonded premises (after the payment of tax) are lost or destroyed.

The loss and refund provisions apply only to those spirits referred to in the provision (sec. 5001) that imposes the tax on imported and domestically produced spirits. However, as indicated above, in the case of spirits from Puerto Rico and the Virgin Islands, the tax is imposed by a separate provision (sec. 7652) and the loss refund provision is not made applicable in this case. The result is that even though spirits coming into the United States from Puerto Rico and the Virgin Islands are granted deferral of tax if placed on bonded premises in the same manner as spirits produced elsewhere, neverthe-

less they are not eligible for the decreased liability or refund treatment available to other imported or domestically produced spirits if the spirits are lost or destroyed.

The committee believes that this distinction in treatment is inadvertent, arising from the fact that a tax is imposed by a separate provision in the case of goods brought into the United States from Puerto Rico and the Virgin Islands. Since the committee sees no reason why spirits from Puerto Rico and the Virgin Islands should be treated differently in this respect than imported or domestically produced spirits, it has extended the loss and refund treatment referred to above to spirits from Puerto Rico and the Virgin Islands.

This provision is to apply to spirits lost or destroyed after the date of enactment of this bill.

There will be no revenue loss to the United States because of this change in the law since the revenue from this tax is covered into the treasuries of Puerto Rico—or the Virgin Islands in the case of distilled spirits coming from these locations. Moreover, the revenue loss for Puerto Rico and the Virgin Islands from the enactment of this provision will be negligible and the committee has been informed that they have no objection to the enactment of this provision.

### C. Accrued Vacation Pay

Under the 1939 Code, deductions for vacation pay could be taken when these expenses were paid or accrued, or paid or incurred, depending upon the method of accounting, "unless in order to clearly reflect income the deductions should be taken as of a different period." Under the above quoted portion of this provision, it was held by the Internal Revenue Service that vacation pay for the next year could be accrued as of the close of the year in which qualifying services were rendered, provided all of the events necessary to fix the liability of the taxpayer for the vacation pay under the employment contract have occurred by the close of the current year. In determining whether the events necessary to fix the liability of the taxpayer for vacation pay had occurred, the fact that the employee's rights to a vacation (or payment in lieu of vacation) in the following year might be terminated if his employment ended before the scheduled period was not regarded as making the liability a contingent one instead of a fixed one. It was held that the liability in such a case was not contingent since the employer could expect the employees as a group to receive the vacation pay; only the specific amount of the liability with respect to individuals remained uncertain at the close of the year.<sup>1</sup>

In 1954, Congress enacted a provision (sec. 462) which provided for the deduction of additions to reserves for certain estimated expenses. Reserves for vacation pay, including accrual on a completion of qualifying service basis, would have been deductible under this provision and as a result it was concluded that it was no longer necessary to maintain the administrative position described above with respect to vacation pay. As a result, in Revenue Ruling 54-608 (C.B. 1954-2, 8), the Internal Revenue Service revised its position on the deductibility of vacation pay. In this ruling, it held that no accrual

<sup>1</sup> GCM 25261, C.B. 1947-2, 44; L.T. 3956, C.B. 1949-1, 73.

of vacation pay could occur until the fact of liability with respect to specific employees was clearly established and the amount of the liability to each individual employee was capable of computation with reasonable accuracy. It was thought that taxpayers accruing vacation pay under plans which did not meet the requirements of the strict accrual rule set forth in this ruling would utilize this new provision (sec. 462) providing for the deduction of additions to reserves for estimated expenses. This ruling was initially made applicable to taxable years ending on or after June 30, 1955.

Because the provision relating to the reserve for estimated expenses was later repealed, the Treasury Department in a series of actions postponed the effective date of Revenue Ruling 54-608 until January 1, 1959.<sup>2</sup> These actions rendered Revenue Ruling 54-608 inapplicable to taxable years ending before January 1, 1959.

Congress, in the Technical Amendments Act of 1958 (sec. 97), further postponed the effective date of Revenue Ruling 54-608 for two more years, making it inapplicable to taxable years ending before January 1, 1961. Subsequently, Congress in six actions (P.L. 86-496, P.L. 88-153, P.L. 88-554, P.L. 89-692, P.L. 91-172, and P.L. 92-580) further postponed the effective date of Revenue Ruling 54-608. The sixth of these laws postponed the application of the ruling until January 1, 1973.

The application of Revenue Ruling 54-608 results in the denial of a deduction in a year where the accrual of vacation pay has not been clearly fixed with respect to specific employees. With the provisions for reserves for estimated expenses no longer a part of the law, this creates hardships for taxpayers who have been accruing vacation pay under plans which do not meet the requirements of the strict accrual rules set forth in this ruling. For such taxpayers if this ruling were to go into effect, they would have one year in which they would receive no deduction for vacation pay. This would occur since the current year's vacation pay deductions would have been accrued in the prior year and the next year's vacation pay does not meet the tests of accrual of this ruling.

Since the repeal of the provision relating to the reserve for estimated expenses in 1955, the House and Senate committees have indicated that this problem needed to be studied before permanent legislation could be prepared. This problem has been studied and it is anticipated that a permanent solution can be considered next year. In the meantime, it is necessary to continue the existing rules until next year. Accordingly, this provision postpones for one year the effective date of Revenue Ruling 54-608. As a result, deductions for accrued vacation pay, if computed by an accounting method consistently followed by the taxpayer since 1958, will not be denied for any taxable year ending before January 1, 1974, solely because the liability to a specific person for vacation pay has not been clearly established or because the amount of the liability to each individual cannot be computed with reasonable accuracy.

This postponement will not reduce revenues from present levels since it continues existing rules.

<sup>2</sup> The last of these postponements was made in Revenue Ruling 57-325, C.B. 1957-2, 302, July 8, 1957

#### **D. Tax Treatment of Tuition and Educational Expenses Paid on Behalf of Members of the Uniformed Services**

Present law (sec. 117 of the code) provides, subject to certain limitations and qualifications, that gross income of an individual does not include amounts received as a scholarship at an educational institution or as a fellowship grant. This provision, however, does not apply with respect to any amount paid or allowed on behalf of an individual if the amount represents compensation for past, present, or future employment services, or in certain other cases, such as where the studies or research are primarily for the benefit of the grantor. In these types of cases, the amounts are considered as compensation designed for services or designed to accomplish an objective of the grantor and are not excludable from gross income; and consequently, these amounts are subject to tax to the individual.

The Internal Revenue Service notified the Department of Defense in response to its request for a ruling that the tuition and other educational expenses paid to or on behalf of participants in the recently instituted Armed Forces Health Professions Scholarship Program are not excludable from the individual's gross income, and, therefore, are subject to tax and withholding. It was noted that under this scholarship program the student was required to serve a prescribed period of active duty with the Armed Forces in return for payment by the Government of certain educational expenses, such as tuition and fees, books, and other related expenses.

The Department of Defense has raised a question about the effect of this ruling on the students under the Armed Forces Health Professions Scholarship Program. In addition, although the ruling only specifically applies to this program, the Department of Defense has expressed a concern with respect to its other educational programs where there are requirements of a prescribed period of active military duty or some other service or obligation in return for the payments. The Department of Defense has submitted a legislative proposal dealing with the application of the "scholarship" exclusion provision with respect to the payments by the Government for the tuition and other educational expenses of a member of the uniformed services attending an educational institution.

The Committee believes that the Defense Department's proposal deserves detailed consideration. To permit the time for this consideration, the committee has decided to postpone the application of the effect of the ruling until January 1, 1975, not only with respect to the Armed Forces Health Professions Scholarship Program but also to other substantially similar educational programs of the uniformed services (as determined by the Secretary of the Treasury), pending a study by the staff of the effect of the application of the proposal to members of the uniformed services. Accordingly, the committee has provided that a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program which is determined by the Secretary of the Treasury to have substantially similar objectives) from an educational institution will not be subject to tax on any payment from the Government with respect to his tuition and certain other educational expenses, including contributed services, accommodations and books. (The committee intends that the phrase "sub-

stantially similar objectives" is to include any undergraduate or graduate programs paid for by appropriated funds.) This is applicable whether the member is receiving the educational training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required as a condition of receiving the educational payments.

The provision applies with respect to amounts received in calendar years 1973 and 1974.

It is estimated that this provision will reduce annual Federal individual income tax liability by less than \$10 million at 1973 levels.

### **E. Recovery of Court Costs**

Under present law (28 U.S.C. 2412), a judgment for certain costs may be awarded to the prevailing party in any civil action brought by or against the United States in any court having jurisdiction of the action. Fees and expenses of attorneys are expressly excluded from the costs for which an award may be made. Costs for which a judgment may be awarded include fees for court reporters, fees for printing and witnesses, and fees for copies of necessary papers (28 U.S.C. 1920). Further, the provisions governing the manner of payment of final judgments against the United States specifically apply to district courts, State or foreign courts, and the Court of Claims (28 U.S.C. 2414, 2517). These provisions do not expressly apply to decisions and orders rendered by the Tax Court.

Under the Internal Revenue Code of 1954, the United States Tax Court has jurisdiction to redetermine the correct amount of a deficiency (sec. 6214) and, subject to limitations, jurisdiction to determine overpayments in certain cases where a deficiency had been first determined by the Internal Revenue Service (sec. 6512(b)). The amount determined as an overpayment by the Tax Court must be credited or refunded to the petitioner when the decision becomes final. This provision does not specifically provide that costs are to be awarded if an overpayment is determined.

When differences with the Internal Revenue Service arise, many taxpayers feel compelled to obtain professional legal services because of the complexities of the tax law. Since professional services can be expensive, some taxpayers find it cheaper to pay the taxes claimed to be due by the Internal Revenue Service rather than to contest a proposed deficiency in the courts. As a result, taxpayers may on occasion be forced to pay deficiencies arising from unreasonable positions taken by the Internal Revenue Service.

In order that the cost of litigation will not operate as a barrier to court review in those instances, the committee believes that taxpayers should be entitled to recover reasonable attorney fees incurred in contesting a proposed deficiency if the litigating position taken by the Internal Revenue Service or the Department of Justice is clearly unreasonable.

The provision adds a new provision (sec. 7465(a)) to the Code which provides that in any proceeding before the Tax Court, a petitioner who is the prevailing party may be awarded a decision or order for costs to the extent provided in section 2412 of title 28 of the United States Code. If the petitioner is the prevailing party and the litigating position taken by the Internal Revenue Service is clearly unreasonable,

the Tax Court may award a decision or order for costs such as court reporter fees, printing and witness fees, fees for copies of necessary papers, and reasonable attorney fees.

The new provision (sec. 7465(b)) also provides that a Tax Court decision or order for costs is to be treated as an overpayment of tax. No interest is to be allowed or assessed with respect to any decision or order for costs.

The committee provision also makes a corresponding amendment to section 2412 of title 28, United States Code, to provide that, in any civil action brought by or against the United States for the collection or recovery of a tax or other amount imposed under the internal revenue laws, a judgment for costs may include reasonable attorney's fees. Attorney's fees are to be awarded only if the United States is not the prevailing party and the court determines that the litigating position taken by the Secretary of the Treasury or his delegate is clearly unreasonable.

The amendments are to apply only with respect to civil actions and proceedings for the redetermination of deficiencies commenced after the date of enactment of the bill.

The committee does not believe that this provision will result in any significant revenue costs. It is difficult, however, to estimate the costs because the new authority to make an award for such costs will be used in exceptional cases at the discretion of the courts.

## F. Parts for Light-Duty Trucks

The Revenue Act of 1971 repealed the 10-percent tax on light-duty trucks and buses (those with gross vehicle weight of 10,000 pounds or less). As a result, truck and bus parts and accessories sold by the vehicle manufacturer as part of (or in connection with the sale thereof) a light-duty truck or bus are not subject to tax—neither the 10-percent tax that used to be imposed on the vehicle, nor the 8-percent tax on truck parts and accessories. Also, if a truck parts or accessories manufacturer sells parts or accessories to a manufacturer of light-duty trucks for use in "further manufacture" of those trucks, the parts and accessories are not subject to tax. However, if the truck parts manufacturer sells parts separately from the light-duty trucks, the manufacturer's excise tax of 8 percent applies since the installation of those parts by a retail truck dealer technically is not "further manufacture" of the trucks. This is so even though the part or accessory is sold to the retail customer at the same time he purchases the tax-exempt light-duty truck or bus.

It appeared inequitable to the committee to tax a truck part or accessory when purchased by a truck dealer as a separate item where it is sold on or in connection with the first retail sale of a light-duty truck, while exempting such parts or accessories if they were included with the truck as delivered from the manufacturer to the dealer. This amendment removes the discriminatory treatment of such parts and accessories.

The provision (amending sec. 6416(b)(2)) provides that the 8-percent manufacturer's excise tax on truck parts and accessories is to be refunded or credited to the manufacturer in the case of any part or accessory sold on or in connection with the first retail sale of a light-duty truck. Thus, those parts and accessories are to be effectively

treated the same as the parts and accessories that actually are a part of the tax-exempt truck as delivered from the manufacturer. The credit or refund is not intended to cover replacement parts even if ordered at the time of the purchase of the truck, but only those parts and accessories which are to have original use on the purchased truck.

The modifications made by this section apply to parts and accessories sold after the last day of the month in which this Act is enacted.

This provision is estimated to result in annual revenue losses of about \$3 million. The Treasury Department agrees with this statement.

### III. EFFECT ON REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statements are made relative to the effect on the revenues of this bill. From the standpoint of the level of revenues with respect to present law as it operated on June 30, 1973, the provisions of the House bill relating in general to the tax treatment of members of the armed forces and civilian employees who are prisoners of war or missing in action are expected to result in a decrease in receipts of approximately \$4 million spread over the next several fiscal years. However, the fact that the "induction period" (a requirement for certain benefits) has been allowed to lapse as of June 30, means that there would have been an increase in receipts of approximately \$12.5 million, primarily in fiscal year 1974. With the changes made in this bill, this increase in revenue will not occur. The Department of Treasury agrees with these statements.

The committee amendments either have no effect, or a small or negligible effect, on existing revenues (as described in each case in the explanation of the provisions above), except in the case of the amendment dealing with the tax treatment of tuition and educational expenses paid on behalf of members of the uniformed services (less than \$10 million), and the amendment exempting certain truck parts and accessories from the manufacturer's excise tax (\$3 million).

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported unanimously by voice vote.

### IV. CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### INTERNAL REVENUE CODE

\* \* \* \* \*

#### SEC. 2. DEFINITIONS AND SPECIAL RULES.

##### (a) DEFINITION OF SURVIVING SPOUSE.—

\* \* \* \* \*

(3) *SPECIAL RULE WHERE DECEASED SPOUSE WAS IN MISSING STATUS.*—If an individual was in a missing status (within the meaning of section 6013(f) (3)) as a result of service in a combat zone (as determined for purposes of section 112) and if such individual remains in such status until the date referred to in subparagraph (A) or (B), then, for purposes of paragraph (1) (A), the date on which such individual died shall be treated as the earlier of the date determined under subparagraph (A) or the date determined under subparagraph (B):

(A) the date on which the determination is made under section 555 or 556 of title 37 of the United States Code or under section 5555 or 5566 of title 5 of such Code (whichever is applicable) that such individual died while in such missing status, or

(B) the date which is 2 years after—

(i) the date of the enactment of the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(ii) the date designated under section 112 as the date of termination of combatant activities in any other combat zone.

\* \* \* \* \*

#### SEC. 112. CERTAIN COMBAT PAY OF MEMBERS OF THE ARMED FORCES.

(a) **ENLISTED PERSONNEL.**—Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member—

(1) served in a combat zone [during an induction period], or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone [during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section.]; but this paragraph shall not apply for any month beginning more than 2 years after—

(A) the date of enactment of the Prisoner of War and Missing in Action Tax Act; in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(B) the date of termination of combatant activities, in the case of any other combat zone.

(b) **COMMISSIONED OFFICERS.**—Gross income does not include so much of the compensation as does not exceed \$500 received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

(1) served in a combat zone [during an induction period], or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone [during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section.]; but this paragraph shall not apply for any month beginning more than 2 years after—

(A) *the date of enactment of the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or*

(B) *the date of termination of combatant activities, in the case of any other combat zone.*

(c) **DEFINITIONS.**—For purposes of this section—

(1) The term “commissioned officer” does not include a commissioned warrant officer.

(2) The term “combat zone” means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term “compensation” does not include pensions and retirement pay.

[(5) The term “induction period” means any period during which, under laws heretofore or hereafter enacted relating to the induction of individuals for training and service in the Armed Forces of the United States, individuals (other than individuals liable for induction by reason of a prior deferment) are liable for induction for such training and service.]

(d) **PRISONERS OF WAR, ETC.**

(1) Members of the Armed Forces.—Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status (as defined in section 551(2) of title 37, United States Code) during the Vietnam conflict as a result of such conflict, other than a period with respect to which it is officially determined under section 552(c) of such title 37 that he is officially absent from his post of duty without authority.

(2) Civilian employees.—Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this paragraph, the terms “active service”, “employee”, and “missing status” have the respective meanings given to such terms by section 5561 of title 5 of the United States Code.

[(3) Period of conflict.—For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.]

(3) *PERIOD OF CONFLICT.*—For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the later of the date designated by the President by Executive order as the date of termination of combatant activities in Vietnam, or the date occurring 2 years after the date of enactment of the Prisoner of War and Missing in Action Tax Act. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.

(4) *PERIOD OF SERVICE IN COMBAT ZONE.*—For purposes of this section, and sections 692, 2201, and 7508, the terms “while serving in a combat zone” and “the period of service in such area” include the entire period a person designated in paragraph (1) or (2) was in a missing status during the Vietnam conflict.

\* \* \* \* \*

#### SEC. 692. INCOME TAXES ON MEMBERS OF ARMED FORCES ON DEATH.

(a) *GENERAL RULE.*—In the case of any individual who dies [during an induction period (as defined in section 112(c)(5))] while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 112) or as a result of wounds, disease, or injury incurred while so serving—

(1) any tax imposed by this subtitle shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950; and

(2) any tax under this subtitle and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) *INDIVIDUALS IN MISSING STATUS.*—For purposes of this section, in the case of an individual who was in a missing status within the meaning of section 6013(f)(3)(A), the date of his death shall be treated as being not earlier than the date on which a determination of his death is made under section 555 or 556 of title 37 of the United States Code. The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after—

(1) the date of the enactment of this subsection, the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(2) the date designated under section 112 as the date of termination of combatant activities in any other combat zone.

(c) *REFUNDS AND CREDITS RESULTING FROM SECTION 692 OF CODE.*—If the refund or credit of any overpayment for any taxable year ending on or after February 28, 1961, resulting from the application of section 692 of the Internal Revenue Code of 1954 (as amended by subsection (a) of this section) is prevented at any time before the expiration of one year after the date of the enactment of this Act by the operation of any law or

*rule of law, but would not have been so prevented if claim for refund or credit therefor were made on the due date for the return for the taxable year of his death (or any later year), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period.*

\* \* \* \* \*

#### SEC. 1034. SALE OR EXCHANGE OF RESIDENCE.

\* \* \* \* \*

(h) MEMBERS OF ARMED FORCES.—The running of any period of time specified in subsection (a) or (c) (other than the 1 year referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence [and during an induction period (as defined in section 112(c)(5))] except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence. For purposes of this subsection, the term “extended active duty” means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

\* \* \* \* \*

#### SUBCHAPTER C—MISCELLANEOUS

**[Sec. 2201. Members of the Armed Forces dying during an induction period.]**

*Sec. 2201. Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.*

*Sec. 2202. Missionaries in foreign service.*

*Sec. 2203. Definition of executor.*

*Sec. 2204. Discharge of fiduciary from personal liability.*

*Sec. 2205. Reimbursement out of estate.*

*Sec. 2206. Liability of life insurance beneficiaries.*

*Sec. 2207. Liability of recipient of property over which decedent had power of appointment.*

*Sec. 2208. Certain residents of possessions considered citizens of the United States.*

*Sec. 2209. Certain residents of possessions considered nonresidents not citizens of the United States.*

**[SEC. 2201. MEMBERS OF THE ARMED FORCES DYING DURING AN INDUCTION PERIOD.]**

*SEC. 2201. MEMBERS OF THE ARMED FORCES DYING IN COMBAT ZONE OR BY REASON OF COMBAT-ZONE-INCURRED WOUNDS, ETC.*

The additional estate tax as defined in section 2011(d) shall not apply to the transfer of the taxable estate of a citizen or resident of the United States dying [during an induction period (as defined in sec. 112(c)(5)),] while in active service as a member of the Armed Forces of the United States, if such decedent—

(1) was killed in action while serving in a combat zone, as determined under section 112(c); or

(2) died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section

112(c)), and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

\* \* \* \* \*

SEC. 5008. ABATEMENT, REMISSION, REFUND AND ALLOWANCE FOR LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

(a) DISTILLED SPIRITS LOST OR DESTROYED IN BOND.—

\* \* \* \* \*

(b) VOLUNTARY DESTRUCTION.—

(1) Distilled spirits in bond.—The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter or section 7652 with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision, and under such regulations, as the Secretary or his delegate may prescribe.

(2) Distilled spirits withdrawn for rectification or bottling.—Any distilled spirits withdrawn from bond on payment or determination of tax for rectification or bottling may, before removal from the bottling premises of the distilled spirits plant to which removed from bond or after return to such bottling premises, on application to the Secretary or his delegate, be destroyed after such gauge and under such supervision as the Secretary or his delegate may by regulations prescribe. If a claim is filed within 6 months from the date of such destruction, the Secretary or his delegate shall, under such regulations as he may prescribe, abate, remit, or, without interest, credit or refund the taxes imposed [under section 5001(a)(1) or under subpart B or this part] under section 5001(a)(1), subpart B, this part, or section 7652 to the spirits so destroyed, to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax.

(c) LOSS OF DISTILLED SPIRITS WITHDRAWN FROM BOND FOR RECTIFICATION OR BOTTLING.—

(1) GENERAL.—Whenever any distilled spirits withdrawn from bond on payment or determination of tax for rectification or bottling are lost before removal from the premises of the distilled spirits plant to which removed from bond, the Secretary or his delegate shall, under such regulations as he may prescribe, abate, remit, or, without interest, credit or refund the tax imposed on such spirits under section 5001(a)(1) or section 7652 to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax for removal to his bottling premises, if it is established to the satisfaction of the Secretary or his delegate that—

(A) such loss occurred (i) by reason of accident while being removed from bond to bottling premises, or (ii) by reason of flood, fire, or other disaster; or (iii) by reason of accident while on the distilled spirits plant premises and amounts to 10 proof gallons or more in respect of any one accident; or

(B) such loss occurred (i) before the completion of the bottling and casing or other packaging of such spirits for

removal from the bottling premises and (ii) by reason of, and was incident to, authorized rectifying, packaging, bottling, or casing operations (including losses by leakage or evaporation occurring during removal from bond to the bottling premises and during storage on bottling premises pending rectification or bottling).

\* \* \* \* \*

(d) DISTILLED SPIRITS RETURNED TO BONDED PREMISES.—

(1) ALLOWANCE OF TAX.—Whenever any distilled spirits withdrawn from bonded premises, on or after July 1, 1959, on payment or determination of tax are returned under section 5215 to the bonded premises of a distilled spirits plant, the Secretary or his delegate shall abate, remit, or (without interest) credit or refund the tax imposed under section 5001(a)(1) or section 7652 on the spirits so returned.

(2) LIMITATION.—No allowance under paragraph (1) shall be made unless a claim is filed, under such regulations as the Secretary or his delegate may prescribe, by the proprietor of the distilled spirits plant to which the distilled spirits are returned, within 6 months of the date of return.

\* \* \* \* \*

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

\* \* \* \* \*

(f) JOINT RETURN WHERE INDIVIDUAL IS IN MISSING STATUS.—For purposes of this section and subtitle A—

(1) ELECTION BY SPOUSE.—If—

(A) an individual is in a missing status (within the meaning of paragraph (3), as a result of service in a combat zone (as determined for purposes of section 112), and

(B) the spouse of such individual is otherwise entitled to file a joint return for any taxable year which begins on or before the day which is 2 years after—

(i) the date of enactment of the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(ii) the date designated under section 112 as the date of termination of combatant activities in any other combat zone,

then such spouse may elect under subsection (a) to file a joint return for such taxable year.

\* \* \* \* \*

(2) EFFECT OF ELECTION.—If the spouse of an individual described in paragraph (1)(A) elects to file a joint return under subsection (a) for a taxable year, then, until such election is revoked—

(A) such election shall be valid even if such individual died before the beginning of such year, and

(B) except for purposes of section 692 (relating to income taxes of members of the Armed Forces on death), the income tax liability of such individual, his spouse, and his estate shall be determined as if he were alive throughout the taxable year.

(3) *MISSING STATUS.*—For purposes of this subsection—

(A) *UNIFORMED SERVICES.*—A member of a uniformed service (within the meaning of section 101(3) of title 37 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 552 of such title 37.

(B) *CIVILIAN EMPLOYEES.*—An employee (within the meaning of section 5561(2) of title 5 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 5562 of such title 5.

(4) *MAKING OF ELECTION; REVOCATION.*—An election described in this subsection with respect to any taxable year may be made by filing a joint return in accordance with subsection (a) and under such regulations as may be prescribed by the Secretary or his delegate. Such an election may be revoked by either spouse on or before the due date (including extensions) for such taxable year, and, in the case of an executor or administrator, may be revoked by disaffirming as provided in the last sentence of subsection (a)(3).

\* \* \* \* \*

#### SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

\* \* \* \* \*

(b) *SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.*—Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) *PRICE READJUSTMENTS.*—If the price of any article in respect of which a tax, based on such price, is imposed by chapter 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(f)(2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. The preceding sentence shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) *SPECIFIED USES AND RESALES.*—The tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) exported (except in any case to which subsection (g) applies);

\* \* \* \* \*

(R) in the case of a bus chassis or body taxable under section 4061(a), sold to any person for use as described in section 4063(a)(6) or 4221(e)(5); **[or]**

(S) in the case of a box, container, receptacle, bin, or other similar article taxable under section 4061(a), sold to any person for use as described in section 4063(a)(7) [.] ; or

(T) in the case of any article taxable under section 4061(b), sold on or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), if credit or refund of such tax is not available under any other provision of law.

\* \* \* \* \*

## SUBCHAPTER C—THE TAX COURT

\* \* \* \* \*

### PART II—PROCEDURE

- Sec. 7451. Fee for filing petition.
- Sec. 7452. Representation of parties.
- Sec. 7453. Rules of practice, procedure, and evidence.
- Sec. 7454. Burden of proof in fraud, foundation manager, and transferee cases.
- Sec. 7455. Service of process.
- Sec. 7456. Administration of oaths and procurement of testimony.
- Sec. 7457. Witness fees.
- Sec. 7458. Hearings.
- Sec. 7459. Reports and decisions.
- Sec. 7460. Provisions of special application to divisions.
- Sec. 7461. Publicity of proceedings.
- Sec. 7462. Publication of reports.
- Sec. 7463. Disputes involving \$1,500 or less.
- Sec. 7464. Provisions of special application to transferees.
- Sec. 7465. Recovery of costs.

\* \* \* \* \*

#### SEC. 7465. RECOVERY OF COSTS

(a) *IN GENERAL.*—In any proceeding before the Tax Court for the redetermination of a deficiency, the taxpayer may be awarded a judgment of costs to the same extent as is provided in section 2412 of title 28 for civil actions brought against the United States if the taxpayer is the prevailing party and if the Tax Court determines that the position of the Secretary or his delegate in litigating the case is clearly unreasonable.

(b) *JUDGMENT.*—A judgment of costs entered by the Tax Court shall be treated, for purposes of this subtitle, in the same manner as an overpayment of tax, but no interest shall be allowed with respect to any judgment of costs.

\* \* \* \* \*

#### SEC. 7508. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

\* \* \* \* \*

(b) *APPLICATION TO SPOUSE.*—The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning more than 2 years after—

(1) the date of the enactment of the Prisoner of War and Missing in Action Tax Act, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(2) the date designated under section 112 as the date of termination of combatant activities in any other combat zone.

(c) *MISSING STATUS.*—The period of service in the area referred to in subsection (a) shall include the period during which an individual

entitled to benefits under subsection (a) is in a missing status, within the meaning of section 6013(f)(3).

[(b)] (d) EXCEPTIONS.—

\* \* \* \* \*

## TECHNICAL AMENDMENTS ACT OF 1958

\* \* \* \* \*

### SEC. 97. DEDUCTIBILITY OF ACCRUED VACATION PAY

Deduction under section 162 of the Internal Revenue Code of 1954 for accrued vacation pay, computed in accordance with the method of accounting consistently followed by the taxpayer in arriving at such deduction, shall not be denied for any taxable year ending before January 1, [1973] 1974, solely by reason of the fact that (1) the liability for the vacation pay to a specific person has not been clearly established, or (2) the amount of the liability to each individual is not capable of computation with reasonable accuracy, if at the time of the accrual the employee in respect of whom the vacation pay is accrued has performed the qualifying service necessary under a plan or policy (communicated to the employee before the beginning of the vacation year) which provides for vacations with pay to qualified employees.

\* \* \* \* \*

## PUBLIC LAW 91-235

\* \* \* \* \*

### SEC. 2. The provisions of this Act shall apply—

(1) for purposes of section 112 of such Code, with respect to compensation received for periods of active service after December 31, 1967, in taxable years ending after such date;

(2) for purposes of sections 692 and 2201 of such Code, with respect to decedents dying after December 31, 1967; and

(3) for purpose of section 7508 of such Code, with respect to individuals who were detained after December 31, 1967.

*For purposes of section 112(a) of the Internal Revenue Code of 1954, the period during which any member of the Armed Forces of the United States or any employee was so detained shall be treated as a period in which such member or employee is in a missing status during the Vietnam conflict as a result of such conflict.*

## TITLE 28—UNITED STATES CODE

\* \* \* \* \*

### CHAPTER 161.—UNITED STATES AS PARTY GENERALLY

\* \* \* \* \*

### SEC. 2412. COSTS.

(a) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title but not including

the fees and expenses of attorneys may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or official of the United States acting in his official capacity, in any court having jurisdiction of such action. A judgment for costs when taxed against the Government shall, in an amount established by statute or court rule or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by him in the litigation. Payment of a judgment for costs shall be as provided in section 2414 and section 2517 of this title for the payment of judgments against the United States.

*(b) In any civil action which is brought by or against the United States for the collection or recovery of any internal revenue tax, or of any penalty or other sum under the internal revenue laws, and in which the United States is not the prevailing party, a judgment for costs may include reasonable attorney's fees if, in the opinion of the court, the position of the Secretary or his delegate in litigating the case is clearly unreasonable.*

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