

AMENDING SECTION 112 OF INTERNAL REVENUE CODE
OF 1954

APRIL 11, 1972.—Ordered to be printed

MR. TALMADGE, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 9900]

The Committee on Finance to which was referred the bill (H.R. 9900) to amend section 112 of the Internal Revenue Code of 1954 to exclude from gross income the entire amount of the compensation of members of the Armed Forces of the United States and of civilian employees who are prisoners of war, missing in action, or in a detained status during the Vietnam conflict, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

H.R. 9900 amends present law to provide an exclusion from gross income for compensation received for active service as a member of the armed forces, or for active service as a civilian governmental employee, during the period the individual is in a "missing status" (which includes a prisoner-of-war status) as a result of the Vietnam conflict. The exclusion applies to compensation received during the Vietnam conflict beginning on February 28, 1961, and ending at the time of the termination (as designated by the President) of combatant activities in Vietnam. An exclusion of this type is already available in most cases for enlisted personnel of the military services. Thus, the addition made by this bill will have its primary effect in the case of commissioned officers (who currently receive an exclusion only for the first \$500 of pay per month) and civilian Government employees.

The Treasury Department indicated it has no objection to the enactment of the legislation.

II. GENERAL STATEMENT

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.¹ 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.

The committee's bill, H.R. 9900, does not alter the general provisions contained in present law with respect to the combat pay exclusion. The bill does, however, extend in three ways the exclusion which present law affords in the case of the Vietnam conflict. First, the bill has the effect of extending the present exclusion from gross income to include compensation in excess of \$500 per month which is paid to commissioned officers who are in a missing status as a result of the Vietnam conflict. Second, the bill provides that the combat pay exclusion is also to apply to civilian employees of an executive agency or military department of the Government who are in a missing status as a result of the Vietnam conflict. Third, the bill has the effect of allowing military personnel who were in a missing status during 1961, 1962 or 1963 the opportunity to take advantage of the exclusion to the extent they are unable to do so under present law.

The first area dealt with by the committee's bill—an exclusion to commissioned officers who are in a missing status as a result of the Vietnam conflict—is provided primarily because of the impact of overhanging tax liability on returning prisoners of war. Presently, if a member of the Armed Forces is missing or held as a prisoner, the compensation paid or accumulated on his behalf is not subject to withholding tax. This presents no financial problem where the member of the Armed Forces dies, since present law (sec. 692) provides for a waiver of the income tax of a member of the Armed Forces who dies while in active service in a combat zone or as a result of wounds, disease, or injury incurred while in service in a combat zone. If, however, the individual is released or otherwise returns he would, if he were a commissioned officer, be subject to tax liability on a portion of the compensation paid or accumulated on his behalf during the time he was in a missing status. The imposition of a back tax liability at the time the former prisoner returns home can have the effect of imposing a severe hardship and at a most inopportune time. Considering therefore, the significant hardship which those missing, or held as prisoners of war, are called upon to endure, it appears appropriate to extend to commissioned officers who are in a missing status the full exclusion which is now available to enlisted men.

For the reasons indicated above, the committee's bill provides that 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 the member is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this bill, "missing status" (as defined in 37 U.S.C. sec. 551(2)) means the

¹The term "combat zone" means an 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 Jan. 1, 1964. See Executive Order 11216, 1965 1 C.B. 62.

status of a member who is officially carried or determined to be absent in a status of (1) missing; (2) missing in action; (3) interned in a foreign country; (4) captured, beleaguered, or besieged by a hostile force; or (5) detained in a foreign country against his will.² It does not include a period with respect to which it is officially determined (under 37 U.S.C. sec. 552(c)) that a member of the Armed Forces is officially absent from his post of duty without authority.

The second change made by the committee's bill relates to civilian employees who are serving in a support capacity to the military operations in Vietnam. The committee agrees with the House that it is appropriate to treat civilian employees who are in a missing status, whose support and assistance is essential to the effectiveness of military operations, in the same manner as members of the Armed Forces in that status. The bill, therefore, provides that gross income does not include compensation received for active service as an employee for any month during any part of which the employee is in a missing status as a result of such conflict. "Active service" means active Federal service by an employee.³ An individual is an employee for purposes of this provision if he is a citizen or national of the United States (or an alien admitted to the United States for permanent residence) and an employee in or under an executive agency or a military department.⁴ "Missing status" as respects a civilian employee is defined in the same manner as indicated above with respect to members of the Armed Forces.⁵

With respect to both members of the Armed Forces and the civilian employees, the bill provides that an individual is in a missing status as a result of the Vietnam conflict if immediately before the missing status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam. As a result, if a member of the Armed Forces, or a civilian employee to whom this bill applies, was performing service in Vietnam immediately before the missing status began, he is to be considered to be in a missing status as a result of the Vietnam conflict. Also, under the bill, an individual who performs service in direct support of military operations in Vietnam immediately before the missing status began is to be considered to be in a missing status as a result of the Vietnam conflict. This means that the performance of services, immediately prior to the beginning of missing status, in the geographical areas of Cambodia, Laos, Thailand, and waters adjacent thereto, if the service are in direct support of military operations in Vietnam, is to result in the individual being considered as in a missing status as a result of the Vietnam conflict. Service is in direct support of military operations in Vietnam if it has the effect of maintaining, upholding, or providing assistance for, those involved in military operations in Vietnam. For example, since the act of transporting necessary supplies is a function within the ambit of providing direct support of military operations, service rendered on a supply vessel in the Southeast Asia area is in direct support of military operations in the combat zone. In addition if an air strip in an adjacent area is used to

² 37 U.S.C. sec. 551(2).

³ 5 U.S.C. sec. 5561(4).

⁴ 5 U.S.C. sec. 5561(1), (2).

⁵ 5 U.S.C. sec. 5561(5). The exception for an individual who is officially determined to be absent from his post of duty without authority is part of the foregoing statutory provision.

transport supplies and personnel into the combat zone, individuals (whether in the Armed Forces or acting in a civilian capacity) who maintain and control the air strip (e.g., as a meteorologist or an air traffic control manager in Thailand), are performing services in direct support of military operations in the combat zone. Civilian employees in the Southeast Asia area who support and assist members of the Armed Forces who serve in direct support of other military personnel serving in Vietnam also are considered as serving in direct support of military operations in Vietnam. In determining whether an individual was performing the required service immediately before the beginning of the missing status, services performed by him at his last official post of duty are to be taken into consideration.

The third change made by the bill in the present combat pay exclusion rules relates to the period during which the exclusion is available. Under the bill, an exclusion is available if the member of the armed services or civilian employee is in a missing status during the period of the Vietnam conflict. For purposes of the bill the Vietnam conflict is considered as having begun on February 28, 1961, the approximate time when American military advisers began accompanying Vietnamese counterparts on military operations. For this purpose the Vietnam conflict is to be considered as ended on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. Because members of the Armed Forces generally are entitled to the Vietnam combat pay exclusion only for periods beginning on or after January 1, 1964 (the effective date of the designation of Vietnam as a combat zone), an individual who was in a missing status prior to that time but after February 28, 1961, may become eligible for the exclusion provided for by this bill. The exclusion from income afforded by the bill applies to taxable years ending on or after February 28, 1961.

The bill also makes two other technical changes in the statute to insure the effective operation of modifications referred to above. The first change relates to the definition of "wages" for purposes of the withholding provisions. Under present law, the term "wages" does not include remuneration paid for active service as a member of the Armed Forces of the United States performed in a month for which the member is entitled to the benefits of the combat pay exclusion (sec. 112). To insure that compensation paid to civilian employees who are eligible for the exclusion is not subject to withholding, the bill amends the withholding provision to provide that "wages" does not include remuneration paid for active service performed in a month for which the employee (a member of the Armed Forces of the United States or a civilian employee) is entitled to the benefits of the combat pay exclusion as amended. The amendment made to the withholding provisions is to apply to wages paid on or after the first day of the first calendar month which begins more than 30 days after the date of enactment.

The second technical change made by the bill relates to the period during which taxpayers who are eligible for the exclusion may file claims for refund. Present law (sec. 7508) in computing the time within which claims for refund must be filed excludes the period of service in a combat zone. As a result individuals who are prisoners of war or otherwise detained as a result of serving in a combat zone will

(by reason of this provision in present law) have at least 3 years after their release to claim relief under this bill. To give assurance that individuals who previously have been in a missing status and have already returned to the United States have adequate time in which to file claims for refund, the bill contains a separate provision extending the period during which claims of this type may be filed. If a refund or credit of any overpayment for a taxable year, resulting from the application of the amendments made by this bill, is barred by the statute of limitations at any time before the expiration of 1 year after the date of enactment of this bill, or 2 years after the date on which the taxpayer's missing status is terminated (whichever is later) a credit or refund may nevertheless be made if a timely claim is filed.

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 statement is made relative to the effect on the revenues of this bill. The committee estimates that there might be a revenue loss of \$5 million over the next 3 years as a result of the enactment of this bill. The Treasury Department agrees with this statement.

In accordance with section 133 of the Legislative Reorganization Act of 1946, it is stated that the motion to report the bill was agreed to by voice vote.

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 is 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 OF 1954

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Chapter 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

Part III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

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Sec. 112. CERTAIN COMBAT PAY OF MEMBERS OF THE ARMED FORCES

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(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 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 a combat zone in Southeast Asia or was performing service in direct support of military operations in such a combat zone.

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Chapter 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

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SEC. 3401. DEFINITIONS.

(a) **WAGES.**—For purposes of this chapter, the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service [as a member of the Armed Forces of the United States] performed in a month for which such [member] employee is entitled to the benefits of section 112 (*relating to certain combat pay of members of the Armed Forces of the United States*); or

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