H.R. 6081
Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008
May 22, 2008

General Provisions

Enable active duty military personnel to qualify for economic stimulus payments. Current law provides an economic stimulus rebate to taxpayers. The provision denies the basic credit and the qualifying child credit to individuals if the tax return does not include valid identification numbers for all persons listed on the return. A valid identification number is a Social Security Number issued by the Social Security Administration, and does not include a Taxpayer Identification Number issued by the Internal Revenue Service. The bill would clarify that active military who file a joint tax return would be eligible for the stimulus rebate payment. This proposal is effective as if included in the Economic Stimulus Act of 2008. *The proposal is estimated to cost $14 million over five and ten years.*

Extension of the statute of limitations when uniformed services retired pay is reduced as a result of award of disability compensation. Most VA disability claims filed by military retirees are resolved in less than a year. But lost paperwork, administrative errors, and appeals of rejected claims delay thousands of disability awards for years. A VA disability award determination retroactively makes a portion of previously-taxed military retirement pay tax-free from the date of the application. But to claim a tax refund, disabled retirees must file an amended tax return for each applicable year. The statute of limitations for filing a tax refund expires generally after three years from the date of filing the tax return. As a result, disabled retirees are barred from receiving tax refunds through no fault of their own. The proposal extends the statute of limitations until the end of the 1-year period beginning on the date of the VA disability determination. The proposal is effective for claims for credit or refund filed after date of enactment. *The proposal is estimated to cost $5 million over five years and $10 million over ten years.*

Contributions of military death gratuities to tax-favored accounts. The Department of Defense provides a payment of $100,000 to the survivors of a soldier killed in the line of duty. However, income limits and contribution restrictions exist limiting a survivor’s ability to contribute his or her gratuity payment to tax favored Roth IRA accounts. The proposal would allow survivors to contribute any amount up to the sum of the gratuity payment into a Roth IRA. The proposal is generally effective with respect to deaths from injuries occurring on or after the date of enactment and deaths from injuries occurring on or after October 7, 2001 and before the date of enactment if such contribution is made not later than one-year after the date of enactment. *The proposal is estimated to cost $2 million over five years and $4 million over ten years.*

Differential pay for Reservists treated as payment of wages. When a National Guardsman or Reservist is called up to active duty, their civilian job and civilian salary are placed on hiatus and they begin receiving military pay - an amount which is often significantly less than their civilian salary. There are currently many employers who voluntarily eliminate any pay gap of employees called up to active duty by paying the difference. Currently the IRS treats differential pay as benefits requiring reporting on the Form 1099. This is a burden for both the servicemember and the employer. The proposal would treat the differential pay as wages requiring the information reporting on the more easily accessible Form W2 and subject the differential pay to backup withholding. Treating differential pay as wages would also make it easier for employers to contribute to their activated employee's retirement plans while the employees are serving on active duty. The proposal is effective for remunerations paid after December 31, 2008 and years beginning after December 31, 2008. *The proposal is estimated to cost $3 million over five years and $7 million over ten years.*

Tax credit for small employers of Reservists called to active duty. This proposal provides an incentive for small employers to eliminate any pay gap between civilian and military pay existing for reservist/employees. The proposal would provide small businesses consisting of less than 50 employees with a tax credit of 20% of the differential pay (a maximum credit of $4,000). The proposal is effective amount paid after date of enactment and before January 1, 2010. *The proposal is estimated to cost $8 million over five years and $9 million over ten years.*

Treat State payments to service members as nontaxable gifts. States often pay excess state revenue to service members in recognition for their war service. The IRS currently treats payments made by a state to or on behalf of veterans who served in war as nontaxable gifts but the IRS lacks statutory authority for this treatment. This provision would codify IRS practice. The proposal is effective for payments made before or after date of enactment. *The proposal has negligible revenue effect.*

Survivor and disability payments with respect to qualified military service. The proposal would treat the death of a Reservist killed during military service as if employment terminated due to death for purposes of the employer's life insurance, accelerated vesting, and other survivor benefits. For benefit accrual purposes, a Reservist killed during military service is treated as if re-hired one day before death. The proposal is effective for deaths and disabilities occurring on or after January 1, 2007. *The proposal is estimated to cost $1 million over five years and $2 million over ten years.*

Suspension of 5-year period during Peace Corps Service. Similar to Intelligence service employees, this provision allows Peace Corps members to suspend the 5-year period for exclusion of gain on the sale of a principal residence for up to an additional 10 years while they work overseas. The proposal is effective for taxable years beginning after December 31, 2007. *The proposal is estimated to cost less than $500,000 over five years and $1 million over ten years.*

Special distribution rules for Reservists' unused health benefits. Currently, if a Reservist is called up for active duty, any unused funds in a health flexible spending account or benefits in a civilian employer's cafeteria plan must be lost. This provision allows a Reservist called up for active duty for at least 180 days to withdraw these funds without the health flexible spending account or cafeteria plan losing its status as such. *The proposal has a negligible revenue effect.*

Special distribution rules for Reservists' unused health benefits. Currently, if a Reservist is called up for active duty, any unused funds in a health flexible spending account or benefits in a civilian employer's cafeteria plan are lost. This provision allows a Reservist called up for active duty for at least 180 days to withdraw these funds without the health flexible spending account or cafeteria plan losing its status as such. The proposal is effective for distributions made after date of enactment. *The proposal has a negligible revenue effect.*

Volunteer firefighters and emergency medical responders. Current law provides an exclusion from gross income to members of qualified volunteer emergency response organizations. This technical correction clarifies that the exclusion of these payments also applies to payroll taxes. The proposal is effective as if it included in section 5 of The Mortgage Forgiveness Debt Relief Act of 2007. *The proposal has no revenue effect.*

Extenders

Permanent extension of election to include combat pay as earned income for EITC. Combat pay is not subject to income tax. However, this provision can lead to lost tax benefits for lower-income service people because the earned income tax credit (EITC) requires some taxable income in order to qualify. Current law allows servicemembers to elect to include their combat pay as earned income for purposes of EITC. This provision expires on December 31, 2007. The proposal would make this election permanent. The proposal is effective for taxable years beginning after December 31, 2007. *The proposal is estimated to cost $55 million over five years and $70 million over ten years.*

Make Permanent qualified mortgage bond program to veterans. Qualified mortgage bonds may be issued to finance mortgages for veterans who served in the active military without regard to the first-time homebuyer requirement. This provision expired on December 31, 2007. The proposal would make this provision permanent. *This portion of the proposal costs $208 million over five years and $776 million over ten years.* The proposal also increases the veteran mortgage bond volume limitation and eliminates the definition of a qualified veteran. *The proposal is estimated to cost $102 million over five years and $362 million over ten years.* The proposal is effective for taxable years beginning after December 31, 2007.

Penalty-free withdrawals from retirement plans for individuals called to active duty. Generally, a taxpayer who receives a distribution from a qualified retirement plan prior to age 59 ½ is subject to a 10-percent early withdrawal tax. In 2006, an exception to this 10-percent early withdrawal tax was provided for qualified reservists called to active duty for at least 179 days. Under this exception, the reservist may make an early withdrawal from a 401(k) plan, 403(b) annuity or similar arrangements without triggering the 10-percent tax and the reservist has two-years from the last day of the active duty period to contribute distributions to an IRA. This exception expired on December 31, 2007. The proposal would make this exception permanent. The proposal is effective December 31, 2007. *The proposal is estimated to cost $3 million over five years and $7 million over ten years.*

Permanent exclusion of gain from sale of principal residence for intelligence community employee. Current law provides an exclusion from capital gains tax of $250,000 ($500,000 for married couples) from the sale of a primary residence if the taxpayer owned and lived in the residence for at least 2 of the 5 years. Military service personnel, foreign service members, and intelligence community employees experience frequent changes in their duty stations and consequently cannot always meet the 2-year residency requirement to avoid the capital gains tax. In 2003, Congress changed the law to permit military service personnel and foreign service members to suspend the 5-year period for up to 10 years while stationed overseas. The intelligence community provision expires on December 31, 2010. The proposal would make this exception permanent. The proposal is effective for sales of principal residences occurring on or after the date of enactment and sales of principal residences occurring on or before December 31, 2010. *The proposal is estimated to cost $1 million over five years and $3 million over ten years.*

Permanent extension of disclosure authority to the Department of Veterans Affairs. Current law allows the Social Security Administration to disclose tax return information regarding net earnings for purposes of verifying any needs-based pension, dependency and indemnity compensation to parents of a deceased veteran, hospice care, or certain unemployment compensation. This provision expires on September 30, 2008. The proposal is effective October 1, 2008. *The proposal is has no revenue effect.*

Mental health parity. Current law requires certain group health plans to provide the same coverage for mental health benefits that they provide for medical and surgical health benefits. This provision expired on December 31, 2007. This proposal is a one-year extension of parity in the application of certain limits to mental health benefits parity. *The proposal is estimated to cost $25 million over five and ten years.*

Improvements in Supplemental Security Income

Treatment of uniformed service cash remuneration as earned income. Allow most military cash allowances beyond basic pay to be treated as earned income for purposes of determining Supplemental Security Income (SSI) eligibility and benefit amounts for military families, and treat certain housing payments as in-kind support and maintenance. The proposal is effective for benefits payable for months beginning 60 days after date of enactment. *The proposal is estimated to cost $11 million over five years and $26 million over ten years.*

State annuities for certain veterans to be disregarded for SSI Benefits. Disregard state annuity payments paid to blind, disabled, and aged veterans when determining SSI eligibility and benefits. The proposal is effective for benefits payable for months beginning 60 days after date of enactment. *The proposal is estimated to cost less than $500,000 over five years and $1 million over ten years.*

Exclusion of AmeriCorps benefits for SSI Eligibility. Disregard allowances paid to all Americorps volunteers for the purpose of determining SSI eligibility and benefit amounts. The proposal is effective on the date of enactment. *The proposal is estimated to cost $4 million over five years and $9 million over ten years.*

Offsets

Individual expatriation. U.S. citizens and long-term U.S. residents are subject to tax on their worldwide income. Under current law, taxpayers can avoid taxes by renouncing their U.S. citizenship or terminating their residence. The *Heart Act* would tighten current law rules to ensure that certain high net-worth taxpayers cannot renounce their U.S. citizenship or terminate their U.S. residence in order to avoid U.S. taxes. Under this provision, high net-worth individuals would be treated as if they sold all of their property for its fair market value on the day before such individual expatriates or their residency would be terminated. The gain would be recognized to the extent that the aggregate gain recognized exceeds $600,000 (which will be adjusted for cost of living in the future). The proposal is generally effective for expatriations on or after the date of enactment. The tax on covered gifts and bequests is effective for gifts and bequests received on or after the date of enactment from expatriates whose expatriation date is on or after the date of enactment. *The proposal is estimated to raise $249 million over five years and $411 million over ten years.*

Offshore contractors. The provision imposes employment tax for wages paid for services performed by employees of foreign subsidiaries of U.S. parent companies under U.S. government contract. The proposal is effective for services performed in calendar months beginning more than 30 days after date of enactment. *The proposal is estimated to raise $412 million over five years and $838 million over ten years.*

Increase the minimum penalty for failure to file from $100 to $125. The proposal increases the minimum penalty for a failure to file a tax return within 60 days of the due date to the lesser of $125 or 100 percent of the amount of tax required to be shown on the return. The proposal is effective for returns required to be filed after December 31, 2008. *The proposal is estimated to raise $37 million over five years and $83 million over ten years.*