

Public Law 108–121  
108th Congress

An Act

To amend title 10, United States Code, and the Internal Revenue Code of 1986 to increase the death gratuity payable with respect to deceased members of the Armed Forces and to exclude such gratuity from gross income, to provide additional tax relief for members of the Armed Forces and their families, and for other purposes.

Nov. 11, 2003

[H.R. 3365]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE, ETC.**

(a) **SHORT TITLE.**—This Act may be cited as the “Military Family Tax Relief Act of 2003”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

**TITLE I—IMPROVING TAX EQUITY FOR MILITARY PERSONNEL**

Sec. 101. Exclusion of gain from sale of a principal residence by a member of the uniformed services or the Foreign Service.

Sec. 102. Treatment of death gratuities payable with respect to deceased members of the Armed Forces.

Sec. 103. Exclusion for amounts received under Department of Defense homeowners assistance program.

Sec. 104. Expansion of combat zone filing rules to contingency operations.

Sec. 105. Modification of membership requirement for exemption from tax for certain veterans’ organizations.

Sec. 106. Clarification of the treatment of certain dependent care assistance programs.

Sec. 107. Clarification relating to exception from additional tax on certain distributions from qualified tuition programs, etc., on account of attendance at military academy.

Sec. 108. Suspension of tax-exempt status of terrorist organizations.

Sec. 109. Above-the-line deduction for overnight travel expenses of National Guard and Reserve members.

Sec. 110. Tax relief and assistance for families of Space Shuttle Columbia heroes.

**TITLE II—REVENUE PROVISION**

Sec. 201. Extension of customs user fees.

Military Family  
Tax Relief Act of  
2003.  
26 USC 1 note.

## TITLE I—IMPROVING TAX EQUITY FOR MILITARY PERSONNEL

### SEC. 101. EXCLUSION OF GAIN FROM SALE OF A PRINCIPAL RESIDENCE BY A MEMBER OF THE UNIFORMED SERVICES OR THE FOREIGN SERVICE.

26 USC 121.

(a) IN GENERAL.—Subsection (d) of section 121 (relating to exclusion of gain from sale of principal residence) is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

“(9) MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE.—

“(A) IN GENERAL.—At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual’s spouse is serving on qualified official extended duty as a member of the uniformed services or of the Foreign Service of the United States.

“(B) MAXIMUM PERIOD OF SUSPENSION.—The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

“(C) QUALIFIED OFFICIAL EXTENDED DUTY.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘qualified official extended duty’ means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

“(ii) UNIFORMED SERVICES.—The term ‘uniformed services’ has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

“(iii) FOREIGN SERVICE OF THE UNITED STATES.—The term ‘member of the Foreign Service of the United States’ has the meaning given the term ‘member of the Service’ by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

“(iv) EXTENDED DUTY.—The term ‘extended 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.

“(D) SPECIAL RULES RELATING TO ELECTION.—

“(i) ELECTION LIMITED TO 1 PROPERTY AT A TIME.—An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

“(ii) REVOCATION OF ELECTION.—An election under subparagraph (A) may be revoked at any time.”.

26 USC 121 note.

(b) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997.

(2) **WAIVER OF LIMITATIONS.**—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including *res judicata*), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

**SEC. 102. TREATMENT OF DEATH GRATUITIES PAYABLE WITH RESPECT TO DECEASED MEMBERS OF THE ARMED FORCES.**

(a) **INCREASE IN AMOUNT OF DEATH GRATUITY.**—

(1) **IN GENERAL.**—Section 1478(a) of title 10, United States Code, is amended by striking “\$6,000” and inserting “\$12,000”.

(2) **EFFECTIVE DATE.**—The amendment made by this subsection shall take effect as of September 11, 2001, and shall apply with respect to deaths occurring on or after that date.

Applicability.  
10 USC 1478  
note.

(b) **EXCLUSION FROM GROSS INCOME.**—

(1) **IN GENERAL.**—Subsection (b)(3) of section 134 (relating to certain military benefits) is amended by adding at the end the following new subparagraph:

26 USC 134.

“(C) **EXCEPTION FOR DEATH GRATUITY ADJUSTMENTS MADE BY LAW.**—Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.”.

(2) **CONFORMING AMENDMENT.**—Subparagraph (A) of section 134(b)(3) is amended by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply with respect to deaths occurring after September 10, 2001.

Applicability.  
26 USC 134 note.

**SEC. 103. EXCLUSION FOR AMOUNTS RECEIVED UNDER DEPARTMENT OF DEFENSE HOMEOWNERS ASSISTANCE PROGRAM.**

(a) **IN GENERAL.**—Section 132(a) (relating to the exclusion from gross income of certain fringe benefits) is amended by striking “or” at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting “, or”, and by adding at the end the following new paragraph:

“(8) qualified military base realignment and closure fringe.”.

(b) **QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.**—Section 132 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) **QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘qualified military base realignment and closure fringe’ means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of this subsection) to offset the adverse effects on housing values as a result of a military base realignment or closure.

“(2) **LIMITATION.**—With respect to any property, such term shall not include any payment referred to in paragraph (1)

to the extent that the sum of all of such payments related to such property exceeds the maximum amount described in clause (1) of subsection (c) of such section (as in effect on such date).”.

Applicability.  
26 USC 132 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

**SEC. 104. EXPANSION OF COMBAT ZONE FILING RULES TO CONTINGENCY OPERATIONS.**

26 USC 7508.

(a) IN GENERAL.—Section 7508(a) (relating to time for performing certain acts postponed by reason of service in combat zone) is amended—

(1) by inserting “, or when deployed outside the United States away from the individual’s permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law” after “section 112”,

(2) by inserting in the first sentence “or at any time during the period of such contingency operation” after “for purposes of such section”,

(3) by inserting “or operation” after “such an area”, and

(4) by inserting “or operation” after “such area”.

(b) CONFORMING AMENDMENTS.—

(1) Section 7508(d) is amended by inserting “or contingency operation” after “area”.

(2) The heading for section 7508 is amended by inserting “OR CONTINGENCY OPERATION” after “COMBAT ZONE”.

(3) The item relating to section 7508 in the table of sections for chapter 77 is amended by inserting “or contingency operation” after “combat zone”.

Applicability.  
26 USC 7508  
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any period for performing an act which has not expired before the date of the enactment of this Act.

**SEC. 105. MODIFICATION OF MEMBERSHIP REQUIREMENT FOR EXEMPTION FROM TAX FOR CERTAIN VETERANS’ ORGANIZATIONS.**

(a) IN GENERAL.—Subparagraph (B) of section 501(c)(19) (relating to list of exempt organizations) is amended by striking “or widowers” and inserting “, widowers, ancestors, or lineal descendants”.

Applicability.  
26 USC 501 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 106. CLARIFICATION OF THE TREATMENT OF CERTAIN DEPENDENT CARE ASSISTANCE PROGRAMS.**

(a) IN GENERAL.—Section 134(b) (defining qualified military benefit) is amended by adding at the end the following new paragraph:

“(4) CLARIFICATION OF CERTAIN BENEFITS.—For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).”.

## (b) CONFORMING AMENDMENTS.—

(1) Section 134(b)(3)(A), as amended by section 102, is amended by inserting “and paragraph (4)” after “subparagraphs (B) and (C)”. 26 USC 134.

(2) Section 3121(a)(18) is amended by striking “or 129” and inserting “, 129, or 134(b)(4)”.

(3) Section 3306(b)(13) is amended by striking “or 129” and inserting “, 129, or 134(b)(4)”.

(4) Section 3401(a)(18) is amended by striking “or 129” and inserting “, 129, or 134(b)(4)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002. Applicability. 26 USC 134 note.

(d) NO INFERENCE.—No inference may be drawn from the amendments made by this section with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2003. 26 USC 134 note.

**SEC. 107. CLARIFICATION RELATING TO EXCEPTION FROM ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS, ETC., ON ACCOUNT OF ATTENDANCE AT MILITARY ACADEMY.**

(a) IN GENERAL.—Subparagraph (B) of section 530(d)(4) (relating to exceptions from additional tax for distributions not used for educational purposes) is amended by striking “or” at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

“(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002. Applicability. 26 USC 530 note.

**SEC. 108. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.**

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.—

“(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

“(2) TERRORIST ORGANIZATIONS.—An organization is described in this paragraph if such organization is designated or otherwise individually identified—

“(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

“(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

“(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

“(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

“(ii) such Executive order refers to this subsection.

“(3) PERIOD OF SUSPENSION.—With respect to any organization described in paragraph (2), the period of suspension—

“(A) begins on the later of—

“(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

“(ii) the date of the enactment of this subsection,

and

“(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

“(4) DENIAL OF DEDUCTION.—No deduction shall be allowed under any provision of this title, including sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), and 2522, with respect to any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

“(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

“(6) ERRONEOUS DESIGNATION.—

“(A) IN GENERAL.—If—

“(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

“(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

“(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization, credit or refund (with interest) with respect to such overpayment shall be made.

“(B) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including *res judicata*), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

“(7) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.”

Publication.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to designations made before, on, or after the date of the enactment of this Act.

Applicability.  
26 USC 501 note.

**SEC. 109. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT TRAVEL EXPENSES OF NATIONAL GUARD AND RESERVE MEMBERS.**

(a) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

26 USC 162.

“(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.”

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

“(E) CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.”

Applicability.  
26 USC 62 note. (c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

**SEC. 110. TAX RELIEF AND ASSISTANCE FOR FAMILIES OF SPACE SHUTTLE COLUMBIA HEROES.**

26 USC 692. (a) **INCOME TAX RELIEF.**—  
(1) **IN GENERAL.**—Subsection (d) of section 692 (relating to income taxes of members of Armed Forces and victims of certain terrorist attacks on death) is amended by adding at the end the following new paragraph:

Applicability. “(5) **RELIEF WITH RESPECT TO ASTRONAUTS.**—The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty, except that paragraph (3)(B) shall be applied by using the date of the death of the astronaut rather than September 11, 2001.”

(2) **CONFORMING AMENDMENTS.**—

(A) Section 5(b)(1) is amended by inserting “, astronauts,” after “Forces”.

(B) Section 6013(f)(2)(B) is amended by inserting “, astronauts,” after “Forces”.

(3) **CLERICAL AMENDMENTS.**—

(A) The heading of section 692 is amended by inserting “, **ASTRONAUTS,**” after “**FORCES**”.

(B) The item relating to section 692 in the table of sections for part II of subchapter J of chapter 1 is amended by inserting “, astronauts,” after “Forces”.

Applicability.  
26 USC 5 note. (4) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply with respect to any astronaut whose death occurs after December 31, 2002.

(b) **DEATH BENEFIT RELIEF.**—

(1) **IN GENERAL.**—Subsection (i) of section 101 (relating to certain death benefits) is amended by adding at the end the following new paragraph:

Applicability. “(4) **RELIEF WITH RESPECT TO ASTRONAUTS.**—The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty.”

(2) **CLERICAL AMENDMENT.**—The heading for subsection (i) of section 101 is amended by inserting “OR **ASTRONAUTS**” after “**VICTIMS**”.

Applicability.  
26 USC 101 note. (3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to amounts paid after December 31, 2002, with respect to deaths occurring after such date.

(c) **ESTATE TAX RELIEF.**—

(1) **IN GENERAL.**—Section 2201(b) (defining qualified decedent) is amended by striking “and” at the end of paragraph (1)(B), by striking the period at the end of paragraph (2) and inserting “, and”, and by adding at the end the following new paragraph:

“(3) any astronaut whose death occurs in the line of duty.”

(2) **CLERICAL AMENDMENTS.**—

(A) The heading of section 2201 is amended by inserting “, **DEATHS OF ASTRONAUTS,**” after “**FORCES**”.

(B) The item relating to section 2201 in the table of sections for subchapter C of chapter 11 is amended by inserting “, deaths of astronauts,” after “Forces”.



(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to estates of decedents dying after December 31, 2002.

Applicability.  
26 USC 2201  
note.

## **TITLE II—REVENUE PROVISION**

### **SEC. 201. EXTENSION OF CUSTOMS USER FEES.**

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking “March 31, 2004” and inserting “March 1, 2005”.

Approved November 11, 2003.

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#### **LEGISLATIVE HISTORY—H.R. 3365:**

##### **CONGRESSIONAL RECORD, Vol. 149 (2003):**

- Oct. 29, considered and passed House.
- Nov. 3, considered and passed Senate, amended.
- Nov. 4, further amended in Senate.
- Nov. 5, House concurred in Senate amendments.