



ASSISTANT SECRETARY

THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

TREA has not reviewed. Processed IAW
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Dear Mr. Chairman:

This is in response to your request for the views and recommendations of the Treasury Department with respect to S. 2944, entitled "A Bill 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."

Section 112 of the Internal Revenue Code of 1954 provides for the exemption from taxation of all compensation received for active service, as a commissioned warrant officer, warrant officer, or enlisted member, and up to \$500 of compensation received as a commissioned officer, for any month during any part of which such member served in a combat zone. Vietnam, the only present combat zone, was designated as such by Executive Order 11216 on January 1, 1964.

The effects of the proposed legislation on existing law are twofold. First, the proposed bill would remove the \$500 per month limitation with respect to commissioned officers who are, during any month, in a missing status (as defined in Title 37, U.S.C. §551(2)) during the Vietnam conflict. Second, the proposed bill would extend a new exclusion to civilian employees of any branch of the executive department who are, during any month, in a missing status during the Vietnam conflict. For purposes of this latter provision, the terms "employee" and "missing status" have the respective meanings given to such terms by Title 5, U.S.C. §5561(2) and (5). The new exclusions under the proposed bill would apply, for officers, warrant officers, enlisted men and civilian employees, without regard to whether the individual served in a combat zone. The amendment would be effective with respect to taxable years ending on and after February 28, 1961.

The Treasury Department does not normally support legislation favoring taxpayers in a special class. Generally speaking the tax laws are an inappropriate vehicle for accomplishing such specific goals. The Department is, however, in total sympathy with the view that deep-felt national concern should be expressed for the well-being of imprisoned or missing servicemen and civilians serving in the Vietnam conflict. Accordingly, we believe that the extension of section 112 is justified under the extraordinary circumstances involved here, although this action should not be considered as a precedent for extending the provisions of section 112 in future cases.

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While the Treasury Department will not object to the passage of a bill which extends the benefits of section 112 to members of the Armed Forces and civilian employees who are prisoners of war or in a missing status because of their active service with respect to the Vietnam conflict, the Department is seriously concerned that the language of the proposed bill will carry its benefits further than this intended objective. In addition, the Department feels that there are a number of technical difficulties involved in the language of the bill as proposed.

The initial bills (H.R. 517, H.R. 6833, S. 2168) proposing amendments to section 112 would have covered only members of the Armed Forces. However, it was pointed out by the Department of the Navy that there are civilian employees of the Navy Department who are in precisely the same position as members of the Armed Forces who are prisoners of war or in a missing status. It was felt by the Department of Defense and agreed to by the Treasury Department that there is no reason for not extending the same benefits to civilian employees as those extended to members of the Armed Forces, as long as both are in precisely the same position. At the time this matter was discussed, there were only two civilian employees in this position, an employee relations specialist who had been in charge of the Vietnamese employee relations program for employees involved in construction and support, and a fire protection specialist. To the extent of presently available information, these are the only two civilian employees who have become prisoners of war or are in a missing status due to the Vietnam conflict.

Under the language of S. 2944, the exclusion from gross income would be extended to all civilian employees of any executive department, regardless of where their missing status might occur. Thus, for example, an FBI agent who disappeared while investigating a case in Harlem would be covered by the language of the proposed bill. Likewise, a CIA agent who disappeared in Berlin while in active service would also be covered.

The bill would have these results because of the definitions of the terms "employee" and "missing status" contained in 5 U.S.C. §5561. An "employee" is defined by 5 U.S.C. §5561(2) as any employee in or under an executive agency or a military department. The definition of "missing status" contained in 5 U.S.C. §5561(5) includes the simple status of "missing", as well as "missing in action, interned in a foreign country, captured, beleaguered, or besieged by a hostile force, or detained in a foreign country against his will."

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In short, under the statutory definition, any civilian employee of an executive or military department who disappears while in active service for that department, and is classified by that department as in an official "missing" status, will be eligible for the exclusionary benefits of section 112, as amended by the proposed bill. It is felt that because of this definitional problem, the scope of the proposed bill is far too wide, being much greater than was originally intended.

It is the view of the Treasury Department that the benefits of section 112 should be extended exclusively to those civilian employees who are prisoners of war or in a missing status, the same as active members of the Armed Forces, due solely to the Vietnam conflict. The Treasury Department does not oppose such an extension of the benefits of section 112, but does oppose any further extension. Thus, in order for the Treasury Department to approve the proposed bill, it would be necessary to amend the proposed language of new subsection (d)(2), contained on page 2 of S. 2944.

In addition, it is respectfully submitted by the Treasury Department that there are two areas of technical difficulty with the language of S. 2944. These areas include the matter of withholding on remuneration subject to the benefits of section 112, and the matter of the statute of limitations prescribing the time within which a qualifying individual may make claim for refund of taxes paid on remuneration subject to the benefits of section 112, as amended by the bill.

With respect to the matter of withholding, section 3401(a)(1) of the Internal Revenue Code of 1954 presently provides an exclusion from withholding for remuneration paid "for active service as a member of the Armed Forces of the United States performed in a month for which such member is entitled to the benefits of section 112." With the extension of the benefits of section 112 to civilian employees, it would be necessary and appropriate to amend section 3401(a)(1). Because of problems encountered by the Government with respect to the use of automatic data processing equipment for payrolls, it is suggested that the amendment to section 3401(a)(1) be made effective 45 days after enactment.

The statute of limitations problem is more complex. Under S. 2944 a claim for refund or credit for overpayment of tax resulting from this bill is to be permitted if filed within "the one-year period which begins on the date designated by the President by executive order as the date of the termination of combatant activities in Vietnam." Section 7508 of the Internal Revenue Code now provides that in computing the time within which claims for refunds must be filed, the period of service in a combat zone is disregarded. Thus persons who are still in a missing status as a result of serving in a combat zone will,

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by reason of section 7508, have at least 3 years after their release to claim relief under the proposed bill. However, an amendment is necessary for individuals who have been in a missing status and have now returned to the United States, and also for those individuals who have not served in a combat zone, and thus are not covered by section 7508, but who are nevertheless entitled to relief under the bill (which does not require service in a combat zone).

Thus we suggest it would be appropriate to provide that a refund or credit would be allowable to an individual with respect to any compensation for which the benefits of these amendments to section 112 are available, where the claim is filed within (1) one year after the date of enactment, or (2) two years after the individual's missing status for purposes of section 112 is terminated, whichever is later. The one-year provision would cover those persons whose missing status has already terminated, and the two-year provision would cover those persons whose missing status will be terminated in the future.

With the changes suggested above, and particularly those with respect to the benefits granted certain employees under the bill, the Treasury Department will have no objection to the enactment of this bill.

The Office of Management and Budget has advised the Treasury Department that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Very truly yours,

Edwin S. Cohen
Assistant Secretary

The Honorable
Russell B. Long, Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

STATINTL



Attached is copy of proposed
Treasury comments on S2944...
(companion bill to H.R. 9900)

Bob L.

From Commander Robert Lappin, Navy
Legislative Liaison Office.