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Taxes and Assessments

Provisions for tax relief for members of the military and naval forces of the United States are found not only in the Soldiers' and Sailors' Relief Act, but also in three other important federal statutes, namely, the Internal Revenue Code, the War Pay and Allotments Act of 1942, and the Current Tax Payment Act of 1943. Relief measures fall into three classes: (1) those granting postponement of taxes and tax proceedings, (2) those providing reduction of the tax burden, and (3) those providing abatement of taxes in the event of death in military service. Those provisions will be discussed in the order indicated.

(1) *Postponement.* All taxes and assessments other than taxes on income may be postponed under the provisions of section 500 of the Soldiers' and Sailors' Relief Act of 1940, as amended by the Act of 1942.⁵⁵ This act is applicable to all such taxes whether general or special, and whether falling due prior to or during the period of military service. It includes taxes on personal property, on money and credits, and on real property owned and occupied for dwelling, professional, business, or agricultural purposes by persons in military service or their dependents. The act provides that no sale of such property shall be made to enforce the collection of such taxes or assessments, nor shall any proceeding or action for such purpose be commenced except upon leave of court granted upon application made therefor by the tax collector. If such application is made, the court, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of military service, may stay such proceedings or sale for a period extending not more than six months beyond the termination of the military service of the taxpayer. It is also provided that the taxpayer shall enjoy the right to redeem or to com-

⁵⁵ 54 Stat. L. 1186, 50 U. S. C. A. App. § 560, as amended October 6, 1942, 77th Cong., 2d sess., c. 581, § 14, 56 Stat. L. 776, 50 U. S. C. A. § ———.

mence an action to redeem property sold at tax sale at any time not later than six months after termination of military service. Finally, the interest rate on past due taxes and assessments is set at six percent per annum, and all penalties are prohibited.

Most of the foregoing provisions have been in effect since the adoption of the Soldiers' and Sailors' Relief Act in 1940. However, the amendments of 1942 made two important modifications of the original act: (1) The privileges of the act were extended to taxes falling due *prior to* military service as well as to those accruing *during* the period of service, and (2) the burden was placed upon the tax collector to seek leave of court, whereas the original act placed upon the taxpayer the burden of filing an affidavit of hardship requesting the court to stay the proceedings.

The postponement of income taxes, both federal and state, of persons in military service (such taxes not being included under section 500) is specifically covered by section 513 of the Soldiers' and Sailors' Relief Act.⁵⁶ Pursuant to the provisions of this section, income taxes due from any person in military service, whether they become due prior to or during the taxpayer's period of military service, are deferred for collection for a period extending not more than six months beyond the termination of his period of service, if his ability to pay the tax is materially impaired by reason of his membership in the armed forces. No interest or penalties may be collected on taxes deferred under this provision, but, on the other hand, the statute of limitations against the collection of such taxes is suspended for the period of military service and for an additional period of nine months thereafter. In order to take advantage of the provisions of this section, the taxpayer must file an application with his collector of internal revenue, which application must be accompanied by an affidavit of hardship.

In addition to the foregoing provisions for deferment, which depend upon a showing of hardship, other federal statutes have set up even more generous protection for the income taxpayer who is serving in the armed forces of the United States outside the continental borders. There are two such statutes, neither of which requires any showing of hardship. The Internal Revenue Code, section 53 (a) (2),⁵⁷ gives to the Commissioner of Internal Revenue the power to grant limited extensions of time for the filing of returns "under such rules and regulations as he shall prescribe, with the approval of the Secretary of the Treasury." Pursuant to the power thus granted, the Commissioner of Internal Revenue has issued a regulation granting an extension of time for the filing of federal income tax returns up "to and including the fif-

⁵⁶ 54 Stat. L. 1190, 50 U. S. C. A. App. § 573.

⁵⁷ 52 Stat. L. 477, 26 U. S. C. A. § 53.

teenth day of the sixth month following the close of the taxable year" for "all American citizens residing or traveling abroad, including persons in the military or naval service on duty outside the United States."⁵⁸

Although the foregoing provisions for the postponement of the filing of returns and the paying of taxes are helpful as far as they go, they are, for obvious reasons, inadequate to serve the needs of troops in the field. The marines on Guadalcanal cannot take time out to file affidavits of hardship, nor will a three-months extension under the Income Tax Regulations be of serious benefit. As a consequence, Congress has gone further, and, in adopting the War Pay and Allotments Act of 1942, has provided in section 13 thereof⁵⁹ that, notwithstanding any other provisions of the law, no individual in the military or naval forces of the United States on duty outside the continental United States shall be obliged to file federal income tax returns or pay federal income taxes until the fifteenth day of the third month following his return to this country, or until the fifteenth day of the third month following the termination of the war, in the event the latter date is the earlier of the two. This provision, applicable to 1941 and subsequent years, furnishes substantial protection so far as income taxes are concerned to members of the armed forces in foreign service.

(2) *Reduction of the Tax Burden.* Certain other statutory provisions serve to reduce the tax liability of members of the armed forces, an end even more acceptable than postponement. The principal provision of this character is found in the Internal Revenue Code, section 22 (b) (13).⁶⁰ As last amended by the Current Tax Payment Act of 1943, this section authorizes each member of the armed forces, regardless of rank, to "exclude" from his gross income, as defined by the act, the amount of his service compensation, not to exceed the sum of \$1,500. This "exclusion," when added to the "personal exemption" of \$1,200 if married, or \$500 if single, virtually eliminates the federal income tax as a cause for concern to the great majority of the members of the military and naval establishments. The amendment included in the Current Tax Payment Act of 1943 became effective as of December 31, 1942, and the \$1,500 exclusion may, therefore, be taken into account for the year 1943. Prior to this amendment, the Internal Revenue Code contained a much less generous provision for exclusion from gross income. Section 117 of the Internal Revenue Act of 1942 contained, in addition to the ordinary personal exemptions, an exclusion of \$250 if single and \$300 if married, these provisions, however, being

⁵⁸ Income Tax Regulations 103, § 19.53-3.

⁵⁹ 56 Stat. L. 146, 50 U. S. C. A. App. § 1013.

⁶⁰ 56 Stat. L. 814, 26 U. S. C. A. § 22 (b) (13), as amended by the Current Tax Payment Act, 57 Stat. L. —, 78th Cong., 1st sess., c. 120, § 7 (a).

applicable only to members of the armed forces below the grade of a commissioned officer. The larger emoluments of the commissioned ranks seemingly evoked less sympathy from Congress. However, as has been stated, this discrimination against commissioned officers has now been corrected.

Another provision of the federal statutes is designed to control the tax burden by preventing unfair multiple taxation of members of the armed forces by two or more states. This is found in the 1942 amendments of the Soldiers' and Sailors' Relief Act.⁶¹ It is there provided that no member of the armed forces shall be deemed to have lost a residence in any state or territory of the United States solely by reason of being absent therefrom in compliance with military or naval orders, nor shall he be deemed to have acquired a residence within a state while there solely for such reason. Moreover, compensation received for military or naval service shall not be deemed "income for services performed within or derived from sources within the state," for the purpose of giving a state, not the residence of the soldier, jurisdiction to impose income taxes. These provisions of the Soldiers' and Sailors' Relief Act do not deny the right of the state of residence to impose income taxes, but they prevent other states from levying such taxes during the time that the taxpayer moves from state to state under military orders. The justice of such restrictions is obvious.

(3) *Abatement of Taxes.* In case of death of members of the armed forces, generous provisions are made for the abatement of unpaid taxes. These provisions are not contained in the Soldiers' and Sailors' Relief Act, but are embraced within section 8 of the Current Tax Payment Act of 1943.⁶² It is there provided that, in case of any individual who dies on or after December 7, 1941 (Pearl Harbor), while in active service as a member of the military or naval forces of the United States, or of any of the other United Nations, and prior to the termination of the present war, the federal income tax shall not apply with respect to the taxable year in which falls the date of death. It is further provided that "the tax under this chapter and under the corresponding title of each prior revenue law for preceding taxable years 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 over-payment." This last provision, unless restrictively interpreted,

⁶¹ 56 Stat. L. 777, 50 U. S. C. A. —.

⁶² 57 Stat. L. —, 78th Cong., 1st sess., c. 120, § 8, this becoming Sec. 421 of the Internal Revenue Code, and 26 U. S. C. A. 421. The wide scope of the abatement and refund provision was observed in the Senate, and that body sought to limit the relief to taxes on *earned* income accruing *after* the entry into service. The Conference Committee decided otherwise and so reported: See 431 C. C. H. ¶ 21 S.

would seem to open the door to abatements and refunds for taxes accrued *prior* to entry into the service as well as those accruing subsequently thereto. It also directs abatements and refunds for taxes on *all* income whether "earned" as defined in the act, or otherwise. It affords very generous relief indeed.

Under the foregoing provisions of the Soldiers' and Sailors' Relief Act of 1940 as amended, the Internal Revenue Code, the Current Tax Payment Act of 1943, and the War Pay and Allotments Act of 1942, ample and just tax relief is available for members of the armed forces if they are made aware and take advantage of the measures provided for their protection.

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