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The Military Family Tax Relief Act of 2003 and How It Affects You

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On 11 November 2003, after both the House and Senate unanimously passed H.R. 3365, the Military Family Tax Relief Act of 2003, President Bush signed it into law. The new law provides tax breaks to military personnel and their families in the following areas:

Travel Expenses: Retroactive to 1 January 2003, members of the Reserve and Guard are eligible to use an above-the-line deduction for the overnight transportation, meals and lodging expenses they incur when traveling more than 100 miles away from home and staying overnight to attend meetings. The deduction amount will be calculated at the maximum rate allowed for travel expenses for employees of agencies under subchapter I of chapter 57 of Title 5, United States Code. This provision will provide a substantial benefit to members of the military, regardless of whether they itemize on their income tax returns. The prior law only allowed members who itemized their expenses to deduct unreimbursed travel expenses to the extent they exceeded 2 percent of their adjusted gross income.

Exclusion from Gross Income: The law extends the gross income exclusion to include any adjustment in the amount of death gratuity payable with respect to the death of a member of the U.S. military. This provision includes a member serving on active duty, inactive duty training, or engaged in authorized travel. In addition, retroactive to 10 September 2001, the exclusion amount is increased from \$6,000 to \$12,000.

Sale of Principal Residence: Under current law, individuals who reside in their principal residence for two of the preceding five years before sale may exclude up to \$250,000 (single) or \$500,000 (married filing jointly) of gain. The new law allows military personnel to elect to disregard the time away from home on official extended duty (a period not exceeding 10 years) for purposes of determining this requirement. If the service member decides to do this, the five-year period ending on the date of the sale or exchange of a principal residence does not include any period of up to 10 years during which the taxpayer or the taxpayer's spouse served on official extended duty as a member of the uniformed services.

For definition purposes, qualified official extended duty is "any period of extended duty while serving at a duty station at least 50 miles away from the taxpayer's principal residence or under orders requiring residence in government-furnished quarters." Extended duty is any period of duty under a call or order to such duty for a period of more than 90 days or for an indefinite period.

The election may be made with respect to only one property for a suspension

period, and may be revoked at any time. The law is effective for sales or exchanges after 6 May 1997, with the statute of limitations on refund claims suspended for a one-year period.

Homeowners Assistance Program (HAP): Income received under the Department of Defense HAP will be classified as a tax-free benefit and not included as wages for federal income tax purposes. The excludable amount will be limited to the reduction in the fair market value of the property. The program was originally created to compensate members of the military for any decrease in the value of their home resulting from military base closures or realignments.

Dependent Care Assistance: The law clarifies that dependent care assistance, provided under a military dependent care assistance program, is tax free to the recipient member and not considered wages for federal income tax purposes. The law is retroactive to 1 January 2003.

Qualified Tuition Programs and Education Savings Accounts: Under current law, distributions from a qualified tuition program or a Coverdell Education Savings Account are subject to a 10 percent penalty if they are not used for qualified higher education expenses. An exception is available if the student receives a scholarship. The law clarifies this issue and provides that appointments to a military academy will be treated as scholarships for purposes of the exception to the 10 percent penalty.

Extended Tax Filing Rules: The law applies the current deadline extensions available under the Tax Code (for filing tax returns and making tax payments) for individuals serving in a combat zone to those serving in "contingency operations." Contingency operations are defined as "operations designated by the Secretary of Defense in which personnel are or may become involved in military actions during a war or national emergency declared by the President or Congress."

Terrorism: The law suspends a tax-exempt organization's status for any period during which it is identified, by U.S. federal authorities, as a terrorist organization or supporter of terrorism. The suspension period will commence on the date the organization is first classified or identified as a terrorist organization or supporter and will terminate on the date, if any, when rescinded pursuant to the law or executive order under which it was made.

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