



April 11, 2003

TAX INFORMATION RELEASE NO. 2003-2

RE: Extension of Deadlines and Other Tax Relief for Members of the Armed Forces, Reserves, and Hawaii National Guard

Members of the Armed Forces are eligible for Hawaii tax relief because of their service to our country. These include the following:

- Combat pay is excluded from Hawaii taxation;
- Tax deadlines for those serving in combat zones or in support of the Armed Forces in a combat zone are extended for a period of 180 days after the date the service member leaves the combat zone;
- Hawaii income tax can be forgiven and will not have to be paid should the service member die as a result of service in a combat zone;
- If not eligible for combat zone benefits, collection action can be deferred for up to six months after the period of military service if the service member's ability to pay is materially impaired because of the member's military service; and
- The maximum rate of interest that can be charged on outstanding tax liabilities is 6%.

The same provisions, or in some cases a similar provision, also may apply to persons serving in the reserves or in the Hawaii National Guard.

This Tax Information Release (TIR) provides detailed information about these and other relief provisions available to persons on federal or State active duty military service as part of Operation Iraqi Freedom, homeland security, and other military operations.

I. Persons Serving in Combat Zones or in Support of Operations in Combat Zones

For persons serving in an area designated by the President of the United States by Executive Order as a combat zone,¹ and in some cases persons serving in support of the Armed Forces in a combat zone, Hawaii conforms to the federal exclusion for combat pay, extends the

¹ For purposes of Hawaii law, "combat zone" is as defined for purposes of section 112 (with respect to certain combat pay of members of the Armed Forces) of the Internal Revenue Code of 1986, as amended. This definition includes certain hazardous duty areas, beginning November 21, 1995. Combat zones and hazardous duty areas are therefore the same locations designated for federal income tax purposes.

deadline for performing certain acts; and abates income taxes of members of the Armed Forces on death resulting from services in a combat zone.

A. Exclusion for Combat Pay

Section 112, Internal Revenue Code (IRC), which excludes from gross income certain compensation resulting from service in a combat zone, is operative for Hawaii. No action on the part of the member of the Armed Services is required; the excluded wages will not be included in taxable state wages on the member's Form W-2, Wage and Tax Statement.

B. Deadlines for Performing Certain Acts Postponed by Reason of Service in a Combat Zone²

Hawaii taxpayers serving in the Armed Forces³ in a combat zone⁴ (including reservists placed on active duty and National Guard personnel serving in a "federalized" status⁵) or in support of the Armed Forces in a designated combat zone⁶ are entitled to a postponement of certain tax deadlines. In general, the extension period includes the period of service in the combat zone plus 180 days after the last day the taxpayer is in the combat zone.

The actions to which this deadline extension provision applies include the following:

- Filing any tax return (except income tax withheld at source);
- Payment of any tax (except income tax withheld at source) or any installment or any other liability with respect to that tax;
- Filing a tax appeal or an action to recover amounts paid under protest;
- Allowance of a credit or refund of any tax;
- Filing a claim for credit or refund of any tax;
- Bringing a suit upon any claim for credit or refund;
- Assessment of any tax;

² This section is based upon the provisions in section 231-15.8, Hawaii Revised Statutes (HRS), which is comparable to §7508, IRC, and applies to all Hawaii state taxes.

³ "Armed Forces" is as defined in section 101(4), of Title 37 of the U.S. Code, and means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

⁴ Services outside a combat zone will be considered as if performed in a combat zone if (1) the service is in direct support of military operations in the combat zone; and (2) the service qualifies for special military pay for duty subject to hostile fire or imminent danger.

⁵ National Guard personnel must be called to active service authorized by the President of the United States or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.

⁶ "Support personnel" includes Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the Armed Forces in support of those forces.

- Giving or making any notice or demand for the payment of any tax or any liability with respect to that tax;
- Collection by levy or otherwise of any tax liability;
- Bringing suit by the State or any representative of the State on its behalf in respect of any tax liability; and
- Any other act required or permitted under the tax or revenue laws of the State pursuant to the Department's Administrative Rules.

This provision extends the deadline for performing the acts listed above, and is not to be confused with mere extensions of time to perform certain acts that do not change the actual deadline. Because the deadline itself is being extended by this provision, the extension period will be disregarded for purposes of determining any tax liability, including penalties and interest.⁷

For example, the deadline for filing Hawaii income tax returns for most individual taxpayers is April 20th. Individuals qualifying for this deadline extension, however, will have filed their Hawaii income tax return on time and will not have to pay any penalty or interest charges as long as they file their return and pay the full amount due on or before the extended deadline.

In contrast, individuals usually may only obtain an automatic 4-month extension of time to file their return until August 20th, and for a reasonable cause, an additional 2-month extension until October 20th. Because the actual deadline did not change, however, failure to pay penalties and interest may be charged on amounts paid after April 20th.

The deadline for performing the acts listed above is automatically extended for a period of 180 days after the later of:

- The last day the taxpayer is in, or serving in support of forces in, a combat zone (or the last day the area qualifies as a combat zone); or
- The last day of any continuous qualified hospitalization⁸ attributable to an injury received while serving in a combat zone.

Service in a combat zone includes the period in which the member of the Armed Services is in a missing status in a combat zone.⁹

⁷ However, if a taxpayer timely files a return within the extended filing period, interest on refunds shall be paid from the original due date of the return, regardless of when the return is actually filed.

⁸ "Qualified hospitalization" is defined as any hospitalization outside the United States and up to five years of hospitalization inside the United States.

⁹ For purposes of Hawaii law, "missing status" is as within the meaning of section 6013(f)(3), IRC, with respect to a joint return where an individual is in missing status.

The deadline is also extended by the number of days that were left for the taxpayer to take the action with the Department as of the date the taxpayer entered the combat zone. If the taxpayer entered the combat zone before the period of time to take action began, then the deadline is extended by the entire period of time allowed for taking the action.

Example 1. Lt. John Doe entered a combat zone on February 28, 2003, and left the combat zone on March 31, 2004. To figure Lt. Doe's deadline for filing his 2002 Hawaii income tax return, first determine the number of days that Lt. Doe had left to file his 2002 return (31 days in March 2003 + 21 days in April 2003)¹⁰ and add 180 days ($52 + 180 = 232$). Lt. Doe's deadline for filing his 2002 return is 232 days after his last day in the combat zone (i.e., March 31, 2004, plus 232 days).

At the time Lt. Doe entered the combat zone, the filing period for his 2003 income tax return had not begun, so Lt. Doe's deadline for filing his 2003 Hawaii income tax return will be 180 days plus the number of days between January 1 and April 20, 2004, after his last day in the combat zone.

Lt. Doe's deadline for filing his 2004 income tax return is not extended beyond April 20, 2005, because the 180-day period following March 31, 2004, ends before the start of the filing period for his 2004 income tax return (January 1, 2005).

A qualifying taxpayer's claim for any Hawaii income tax credit will be determined after the application of the deadline extension.

Example 2. Petty Officer Jane Doe entered a combat zone on January 31, 2003, and left the combat zone on March 31, 2004. She is eligible for the \$1 general income tax credit enacted for the 2002 tax year pursuant to article VII, section 6, of the state constitution. This credit must be claimed within 12 months of the close of the tax year for which the credit may be claimed. Petty Officer Doe, however, may claim the \$1 credit up to 514 days after the date she left the combat zone. The 514-day period was computed by determining the number of days that were left for her to take the action as of the date she entered the combat zone (February 1 to December 31, 2003 = 334 days) plus 180 days.

The deadline extension also applies to the qualifying taxpayer's spouse with two exceptions:

¹⁰ Although the filing deadline is April 20th, April 20, 2003 falls on a Sunday; therefore, taxpayers have until Monday, April 21, 2003, to timely file their return and pay their tax.

- The extension does not apply to a spouse for any taxable year beginning more than two years after the date the area ceases to be a combat zone; and
- The extension does not apply to a spouse for any period that the qualifying individual is hospitalized in the United States for injuries incurred in a combat zone.

Taxpayers who are claiming the deadline extension should write “Iraqi Freedom” (or other operation name, as applicable) in the upper left corner of the return or other document, and attach a letter requesting the relief to that tax return or other document. The letter should include information on the dates the taxpayer was in a combat zone or served in support of the Armed Forces in a combat zone. Appropriate documentation (e.g., a copy of their orders) also should be attached if possible.

Spouses or other family members who receive notices, bills, or other documents on behalf of a taxpayer eligible for these deadline extensions should contact the Department as soon as possible.

C. Abatement of Income Taxes of Members of the Armed Forces on Death

Section 692, IRC, which allows the abatement of income taxes of members of the Armed Forces killed in action and persons killed in a military action or terrorist attack,¹¹ is operative for Hawaii.¹²

The Department may abate the income tax of a member of the Armed Forces who dies while on active duty in an area designated by the President of the United States by Executive Order as a combat zone or as a result of wounds, diseases, or injuries incurred while serving in a combat zone.¹³ Income tax also may be abated for a military or civilian employee of the federal government who dies from wounds or injury incurred in a terrorist or military action while a U.S. employee.

The tax can be forgiven (i.e., reduced such that it does not have to be paid) for the tax year in which the death occurred and for any earlier tax year ending on or after the first day the member served in a combat zone in active service. In addition, any tax for a previous period that is unpaid as of the decedent’s date of death, including any penalties, interest, or other additions to tax, also can be forgiven.

¹¹ In addition, §235-100.5, HRS, specifically authorizes the abatement of Hawaii income tax as provided in §692, IRC.

¹² Although not specifically the subject of this TIR, it should be noted that §692(d), IRC, which also allows the abatement of income tax of individuals dying as a result of certain terrorist attacks, is also operative for Hawaii.

¹³ Services outside a combat zone will be considered as if performed in a combat zone if (1) the service is in direct support of military operations in the combat zone; and (2) the service qualifies for special military pay for duty subject to hostile fire or imminent danger.

Surviving spouses or personal representatives handling the affairs of qualifying decedents should write the name of the military operation or terrorist attack (e.g., “Iraqi Freedom”) and “KIA” or “KITA”, as applicable, in the upper left corner of the Hawaii income tax return and also on the line for total tax. Attach to the tax return a written request for the forgiveness of the tax that includes the amount of the decedent’s tax liability, before any amount is forgiven, and the amount to be forgiven.

Documentation regarding the decedent’s death also must be attached. Military and civilian employees of the Department of Defense should attach Form DoD 1300, Report of Casualty. Civilian employees of other agencies should attach a letter signed by the Director General of the Foreign Service, Department of State, or his or her delegate, providing the decedent’s name and social security number, date of injury, date of death, and a statement that the individual died in a combat zone from a military action.

For more information, see federal Publication 3, Armed Forces’ Tax Guide.

II. General Relief Provisions

Both the federal Soldiers’ and Sailors’ Civil Relief Act (SSCRA) and Hawaii tax law provide relief to active duty members of the military services, including reservists placed on active duty and National Guard personnel serving in a “federalized” status.

A. Deferral of Collection Action

Section 573, SSCRA, defers collection action on any tax on the income of any person in military service for a period extending not more than six months after the period of military service ends if that the person’s ability to pay the tax is materially impaired because of the person’s military service.¹⁴

A similar provision is contained in §235-100, HRS, with respect to Hawaii’s net income tax. However, because §573, SSCRA, applies to “any tax on the income of such person,” collection action also can be deferred with respect to the person’s Hawaii’s general excise tax, which is a tax on gross income.

This deferral is not automatic, and requires the person to show both that the person is unable to pay the tax and that this inability resulted from military service. If granted, penalty and interest charges for nonpayment of the tax during the deferral period cannot be assessed.

While this deferral grants relief from the collection of tax, it does not extend or postpone the deadline for filing tax returns. Hawaii tax returns must be filed on time unless another provision applies. For example, individual income tax returns are due on April 20, but taxpayers

¹⁴ Hawaii does not conform to Internal Revenue Service procedures limiting the deferral to the person’s “initial period of service” (Revenue Procedure 57-25).

may obtain an automatic 4-month extension of time to file their return, and in some cases an additional 2-month extension beyond the initial 4-month extension period.

To request relief under §573, SSCRA, attach a written request to a copy of the notice of tax due and submit it to the Department for consideration. The request should include your name, social security number, monthly income and source of income before military service, and date you are eligible for discharge. If possible, also attach a copy of your orders.

B. Maximum Interest Rate

Section 526, SSCRA, limits the maximum interest rate that can be charged during the period of active duty to a maximum of 6% per year for obligations and liabilities incurred before the person's entry into active service. A higher rate can be charged if a court determines that the person's ability to pay the higher rate is not materially affected as a result of the person's military service and orders that the higher rate be paid.

Hawaii imposes interest at the rate of 8% per year on outstanding tax liabilities. To request relief under §526, SSCRA, submit a written request to the Department with a copy of your orders or reporting instructions that detail the call to active duty.

III. Members of the Reserves and Hawaii National Guard

General relief also is available to members of the reserves and Hawaii National Guard.

A. Civil Remedies for State Military Forces Pursuant to Chapter 657D, HRS

Members of State military forces (i.e., the Hawaii National Guard¹⁵) are eligible for general relief similar to the SSCRA provisions that are described in Part II of this TIR.

Section 657D-43, HRS, defers collection action on any tax on the income of any person in state military service, but only for a period extending not more than 60 days after the period that state military service ends, provided that the person's ability to pay the tax is materially impaired because of the person's military service.

Section 657D-17, HRS, limits the maximum interest rate that can be charged during the period of active state duty to a maximum of 6% per year for obligations and liabilities incurred before the person's entry into active service.

B. Adjustment to Income Deduction Allowed Members of the Reserves and the Hawaii National Guard

Members of any reserve unit of the military or the Hawaii National Guard may claim an adjustment to income deduction of up to \$1,750 against their pay for such service. Amounts that

¹⁵ Section 124A-1, HRS.

are exempt from taxation (e.g., combat pay) and that are not reported as taxable State wages on Form W-2, Wage and Tax Statement, do not qualify for the deduction since these amounts already are not taxed.

IV. Where to obtain additional information and assistance

For more information and assistance, go to the Department's website at www.state.hi.us/tax, or visit or contact any district tax office. You also may call the Taxpayer Services Branch on Oahu at 808-587-4242 (toll-free from the neighbor islands and continental U.S. at 1-800-222-3229), or e-mail them at Taxpayer_Services@tax.state.hi.us.

A handwritten signature in black ink, appearing to read "Kurt Kawafuchi". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

KURT KAWAFUCHI
Director of Taxation