

PUBLIC LAW 110-245—JUNE 17, 2008

HEROES EARNINGS ASSISTANCE AND RELIEF  
TAX ACT OF 2008

Public Law 110-245  
110th Congress  
An Act

June 17, 2008  
[H.R. 6081]

Heroes Earnings Assistance and Relief Tax Act of 2008.  
26 USC 1 note.  
26 USC 1 et seq.

To amend the Internal Revenue Code of 1986 to provide benefits for military personnel, and for other purposes.

*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 “Heroes Earnings Assistance and Relief Tax Act of 2008”.

(b) **REFERENCE.**—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—BENEFITS FOR MILITARY**

- Sec. 101. Recovery rebate provided to military families.
- Sec. 102. Election to include combat pay as earned income for purposes of earned income tax credit.
- Sec. 103. Modification of mortgage revenue bonds for veterans.
- Sec. 104. Survivor and disability payments with respect to qualified military service.
- Sec. 105. Treatment of differential military pay as wages.
- Sec. 106. Special period of limitation when uniformed services retired pay is reduced as a result of award of disability compensation.
- Sec. 107. Distributions from retirement plans to individuals called to active duty.
- Sec. 108. Authority to disclose return information for certain veterans programs made permanent.
- Sec. 109. Contributions of military death gratuities to Roth IRAs and Education Savings Accounts.
- Sec. 110. Suspension of 5-year period during service with the Peace Corps.
- Sec. 111. Credit for employer differential wage payments to employees who are active duty members of the uniformed services.
- Sec. 112. State payments to service members treated as qualified military benefits.
- Sec. 113. Permanent exclusion of gain from sale of a principal residence by certain employees of the intelligence community.
- Sec. 114. Special disposition rules for unused benefits in health flexible spending arrangements of individuals called to active duty.
- Sec. 115. Technical correction related to exclusion of certain property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders.

**TITLE II—IMPROVEMENTS IN SUPPLEMENTAL SECURITY INCOME**

- Sec. 201. Treatment of uniformed service cash remuneration as earned income.
- Sec. 202. State annuities for certain veterans to be disregarded in determining supplemental security income benefits.
- Sec. 203. Exclusion of AmeriCorps benefits for purposes of determining supplemental security income eligibility and benefit amounts.

Sec. 204. Effective date.

### TITLE III—REVENUE PROVISIONS

Sec. 301. Revision of tax rules on expatriation.  
 Sec. 302. Certain domestically controlled foreign persons performing services under contract with United States Government treated as American employers.  
 Sec. 303. Increase in minimum penalty on failure to file a return of tax.

### TITLE IV—PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS

Sec. 401. Parity in the application of certain limits to mental health benefits.

## TITLE I—BENEFITS FOR MILITARY

### SEC. 101. RECOVERY REBATE PROVIDED TO MILITARY FAMILIES.

(a) IN GENERAL.—Subsection (h) of section 6428 (relating to identification number requirement) is amended by adding at the end the following new paragraph:

“(3) SPECIAL RULE FOR MEMBERS OF THE ARMED FORCES.— Paragraph (1) shall not apply to a joint return where at least 1 spouse was a member of the Armed Forces of the United States at any time during the taxable year.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 101 of the Economic Stimulus Act of 2008.

26 USC 6428.

26 USC 6428 note.

### SEC. 102. ELECTION TO INCLUDE COMBAT PAY AS EARNED INCOME FOR PURPOSES OF EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Clause (vi) of section 32(c)(2)(B) (defining earned income) is amended to read as follows:

“(vi) a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.”.

(b) CONFORMING AMENDMENT.—Paragraph (4) of section 6428(e) is amended by striking “except that—” and all that follows through “(B) such term shall” and inserting “except that such term shall”.

(c) SUNSET NOT APPLICABLE.—Section 105 of the Working Families Tax Relief Act of 2004 (relating to application of EGTRRA sunset to this title) shall not apply to section 104(b) of such Act.

26 USC 32 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2007.

26 USC 32 note.

### SEC. 103. MODIFICATION OF MORTGAGE REVENUE BONDS FOR VETERANS.

(a) QUALIFIED MORTGAGE BONDS USED TO FINANCE RESIDENCES FOR VETERANS WITHOUT REGARD TO FIRST-TIME HOMEBUYER REQUIREMENT.—Subparagraph (D) of section 143(d)(2) (relating to exceptions) is amended by striking “and before January 1, 2008”.

(b) INCREASE IN BOND LIMITATION FOR ALASKA, OREGON, AND WISCONSIN.—Clause (ii) of section 143(l)(3)(B) (relating to State veterans limit) is amended by striking “\$25,000,000” each place it appears and inserting “\$100,000,000”.

(c) DEFINITION OF QUALIFIED VETERAN.—Paragraph (4) of section 143(l) (defining qualified veteran) is amended to read as follows:

“(4) QUALIFIED VETERAN.—For purposes of this subsection, the term ‘qualified veteran’ means any veteran who—

“(A) served on active duty, and

“(B) applied for the financing before the date 25 years after the last date on which such veteran left active service.”.

26 USC 143 note.

Applicability.  
26 USC 143 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 2007.

(e) TRANSITION RULE.—In the case of any bond issued after December 31, 2007, and before the date of the enactment of this Act, subparagraph (B) of section 143(l)(4) of the Internal Revenue Code of 1986, as amended by this section, shall be applied by substituting “30 years” for “25 years”.

**SEC. 104. SURVIVOR AND DISABILITY PAYMENTS WITH RESPECT TO QUALIFIED MILITARY SERVICE.**

26 USC 401.

(a) PLAN QUALIFICATION REQUIREMENT FOR DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (36) the following new paragraph:

“(37) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.”.

(b) TREATMENT IN THE CASE OF DEATH OR DISABILITY RESULTING FROM ACTIVE MILITARY SERVICE FOR BENEFIT ACCRUAL PURPOSES.—Subsection (u) of section 414 (relating to special rules relating to veterans’ reemployment rights under USERRA) is amended by redesignating paragraphs (9) and (10) as paragraphs (10) and (11), respectively, and by inserting after paragraph (8) the following new paragraph:

“(9) TREATMENT IN THE CASE OF DEATH OR DISABILITY RESULTING FROM ACTIVE MILITARY SERVICE.—

“(A) IN GENERAL.—For benefit accrual purposes, an employer sponsoring a retirement plan may treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual’s reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

Applicability.

“(B) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to the employer maintaining the plan (as determined under subsections (b), (c), (m), and (o)) who die or became disabled as a

result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

“(C) DETERMINATION OF BENEFITS.—The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual’s average actual employee contributions or elective deferrals for the lesser of—

- “(i) the 12-month period of service with the employer immediately prior to qualified military service, or
- “(ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 404(a)(2) is amended by striking “and (31)” 26 USC 404. and inserting “(31), and (37)”.

(2) Section 403(b) is amended by adding at the end the following new paragraph:

“(14) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).”.

(3) Section 457(g) is amended by adding at the end the following new paragraph:

“(4) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A plan described in paragraph (1) shall not be treated as an eligible deferred compensation plan unless such plan meets the requirements of section 401(a)(37).”.

(d) EFFECTIVE DATE.—

26 USC 401 note.

(1) IN GENERAL.—The amendments made by this section shall apply with respect to deaths and disabilities occurring on or after January 1, 2007.

(2) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(A) IN GENERAL.—If this subparagraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(iii).

(B) AMENDMENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—

(i) IN GENERAL.—Subparagraph (A) shall apply to any amendment to any plan or annuity contract which is made—

(I) pursuant to the amendments made by subsection (a) or pursuant to any regulation issued by the Secretary of the Treasury under subsection (a), and

(II) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this clause shall be applied by substituting “2012” for “2010” in subclause (II).

(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless—

- (I) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in clause (iii), and
- (II) such plan or contract amendment applies retroactively for such period.

(iii) PERIOD DESCRIBED.—The period described in this clause is the period—

- (I) beginning on the effective date specified by the plan, and
- (II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted).

**SEC. 105. TREATMENT OF DIFFERENTIAL MILITARY PAY AS WAGES.**

(a) INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.—

26 USC 3401.

(1) IN GENERAL.—Section 3401 (relating to definitions) is amended by adding at the end the following new subsection:

“(h) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—

“(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

“(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term ‘differential wage payment’ means any payment which—

“(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and

“(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to remuneration paid after December 31, 2008.

(b) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.—

26 USC 3401  
note.

(1) PENSION PLANS.—

(A) IN GENERAL.—Section 414(u) (relating to special rules relating to veterans’ reemployment rights under USERRA), as amended by section 103(b), is amended by adding at the end the following new paragraph:

“(12) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

“(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

“(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

“(ii) the differential wage payment shall be treated as compensation, and

“(iii) the plan shall not be treated as failing to meet the requirements of any provision described in

paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

**“(B) SPECIAL RULE FOR DISTRIBUTIONS.—**

“(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

“(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

“(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (o)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

“(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term ‘differential wage payment’ has the meaning given such term by section 3401(h)(2).”

**(B) CONFORMING AMENDMENT.—**The heading for section 414(u) is amended by inserting “AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY” after “USERA”.

**(2) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—**Section 219(f)(1) (defining compensation) is amended by adding at the end the following new sentence: “The term compensation includes any differential wage payment (as defined in section 3401(h)(2)).”

**(3) EFFECTIVE DATE.—**The amendments made by this subsection shall apply to years beginning after December 31, 2008.

**(c) PROVISIONS RELATING TO PLAN AMENDMENTS.—**

**(1) IN GENERAL.—**If this subsection applies to any plan or annuity contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i).

**(2) AMENDMENTS TO WHICH SECTION APPLIES.—**

**(A) IN GENERAL.—**This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by subsection (b)(1), and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2010.

Applicability.

26 USC 414.

26 USC 219 note.

26 USC 414 note.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this subparagraph shall be applied by substituting “2012” for “2010” in clause (ii).

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

- (i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and
- (ii) such plan or contract amendment applies retroactively for such period.

**SEC. 106. SPECIAL PERIOD OF LIMITATION WHEN UNIFORMED SERVICES RETIRED PAY IS REDUCED AS A RESULT OF AWARD OF DISABILITY COMPENSATION.**

26 USC 6511.

(a) IN GENERAL.—Subsection (d) of section 6511 (relating to special rules applicable to income taxes) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RULES WHEN UNIFORMED SERVICES RETIRED PAY IS REDUCED AS A RESULT OF AWARD OF DISABILITY COMPENSATION.—

“(A) PERIOD OF LIMITATION ON FILING CLAIM.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

“(i) the reduction of uniformed services retired pay computed under section 1406 or 1407 of title 10, United States Code, or

“(ii) the waiver of such pay under section 5305 of title 38 of such Code,

as a result of an award of compensation under title 38 of such Code pursuant to a determination by the Secretary of Veterans Affairs, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund based upon the amount of such reduction or waiver, until the end of the 1-year period beginning on the date of such determination.

“(B) LIMITATION TO 5 TAXABLE YEARS.—Subparagraph (A) shall not apply with respect to any taxable year which began more than 5 years before the date of such determination.”.

26 USC 6511 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to claims for credit or refund filed after the date of the enactment of this Act note.

Applicability.  
26 USC 6511 note.

(c) TRANSITION RULES.—In the case of a determination described in paragraph (8) of section 6511(d) of the Internal Revenue Code of 1986 (as added by this section) which is made by the Secretary of Veterans Affairs after December 31, 2000, and before the date of the enactment of this Act, such paragraph—

(1) shall not apply with respect to any taxable year which began before January 1, 2001, and

(2) shall be applied by substituting for “the date of such determination” in subparagraph (A) thereof.

**SEC. 107. DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.**

(a) IN GENERAL.—Clause (iv) of section 72(t)(2)(G) is amended by striking “, and before December 31, 2007”. 26 USC 72.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals ordered or called to active duty on or after December 31, 2007. 26 USC 72 note.

**SEC. 108. AUTHORITY TO DISCLOSE RETURN INFORMATION FOR CERTAIN VETERANS PROGRAMS MADE PERMANENT.**

(a) IN GENERAL.—Paragraph (7) of section 6103(l) is amended by striking the last sentence thereof.

(b) CONFORMING AMENDMENT.—Section 6103(l)(7)(D)(viii)(III) is amended by striking “sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)” and inserting “sections 1710(a)(2)(G), 1710(a)(3), and 1710(b)”. 26 USC 6103 note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to requests made after September 30, 2008.

**SEC. 109. CONTRIBUTIONS OF MILITARY DEATH GRATUITIES TO ROTH IRAS AND EDUCATION SAVINGS ACCOUNTS.**

(a) PROVISION IN EFFECT BEFORE PENSION PROTECTION ACT.—Subsection (e) of section 408A (relating to qualified rollover contribution), as in effect before the amendments made by section 824 of the Pension Protection Act of 2006, is amended to read as follows:

“(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified rollover contribution’ means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

“(2) MILITARY DEATH GRATUITY.—

“(A) IN GENERAL.—The term ‘qualified rollover contribution’ includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

“(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

“(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

“(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by subparagraph (A).

“(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which

is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.”

**(b) PROVISION IN EFFECT AFTER PENSION PROTECTION ACT.—**

Subsection (e) of section 408A, as in effect after the amendments made by section 824 of the Pension Protection Act of 2006, is amended to read as follows:

“(e) **QUALIFIED ROLLOVER CONTRIBUTION.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘qualified rollover contribution’ means a rollover contribution—

“(A) to a Roth IRA from another such account,

“(B) from an eligible retirement plan, but only if—

“(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

“(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

“(2) **MILITARY DEATH GRATUITY.**—

“(A) **IN GENERAL.**—The term ‘qualified rollover contribution’ includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

“(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

“(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

“(B) **ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.**—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the subparagraph (A).

“(C) **APPLICATION OF SECTION 72.**—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.”.

**(c) EDUCATION SAVINGS ACCOUNTS.**—Subsection (d) of section 530 is amended by adding at the end the following new paragraph:

“(9) **MILITARY DEATH GRATUITY.**—

“(A) **IN GENERAL.**—For purposes of this section, the term ‘rollover contribution’ includes a contribution to a Coverdell education savings account made before the end of the 1-year period beginning on the date on which the contributor receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such

Code, with respect to a person, to the extent that such contribution does not exceed—

“(i) the sum of the amounts received during such period by such contributor under such sections with respect to such person, reduced by

“(ii) the amounts so received which were contributed to a Roth IRA under section 408A(e)(2) or to another Coverdell education savings account.

“(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—The last sentence of paragraph (5) shall not apply with respect to amounts treated as a rollover by the subparagraph (A).

“(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is includable in gross income under paragraph (1), the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.”

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraphs (2) and (3), the amendments made by this section shall apply with respect to deaths from injuries occurring on or after the date of the enactment of this Act.

(2) APPLICATION OF AMENDMENTS TO DEATHS FROM INJURIES OCCURRING ON OR AFTER OCTOBER 7, 2001, AND BEFORE ENACTMENT.—The amendments made by this section shall apply to any contribution made pursuant to section 408A(e)(2) or 530(d)(5) of the Internal Revenue Code of 1986, as amended by this Act, with respect to amounts received under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, for deaths from injuries occurring on or after October 7, 2001, and before the date of the enactment of this Act if such contribution is made not later than 1 year after the date of the enactment of this Act.

(3) PENSION PROTECTION ACT CHANGES.—Section 408A(e)(1) of the Internal Revenue Code of 1986 (as in effect after the amendments made by subsection (b)) shall apply to taxable years beginning after December 31, 2007.

26 USC 408A  
note.

Applicability.

**SEC. 110. SUSPENSION OF 5-YEAR PERIOD DURING SERVICE WITH THE PEACE CORPS.**

(a) IN GENERAL.—Subsection (d) of section 121 (relating to special rules) is amended by adding at the end the following new paragraph:

“(12) PEACE CORPS.—

“(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 outside the United States—

“(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

“(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

26 USC 121.

26 USC 121 note.

“(B) APPLICABLE RULES.—For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D) shall apply.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2007.

**SEC. 111. CREDIT FOR EMPLOYER DIFFERENTIAL WAGE PAYMENTS TO EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.**

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits) is amended by adding at the end the following new section:

**“SEC. 45P. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.**

“(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible small business employer, the differential wage payment credit for any taxable year is an amount equal to 20 percent of the sum of the eligible differential wage payments for each of the qualified employees of the taxpayer during such taxable year.

“(b) DEFINITIONS.—For purposes of this section—

“(1) ELIGIBLE DIFFERENTIAL WAGE PAYMENTS.—The term ‘eligible differential wage payments’ means, with respect to each qualified employee, so much of the differential wage payments (as defined in section 3401(h)(2)) paid to such employee for the taxable year as does not exceed \$20,000.

“(2) QUALIFIED EMPLOYEE.—The term ‘qualified employee’ means a person who has been an employee of the taxpayer for the 91-day period immediately preceding the period for which any differential wage payment is made.

“(3) ELIGIBLE SMALL BUSINESS EMPLOYER.—

“(A) IN GENERAL.—The term ‘eligible small business employer’ means, with respect to any taxable year, any employer which—

“(i) employed an average of less than 50 employees on business days during such taxable year, and

“(ii) under a written plan of the employer, provides eligible differential wage payments to every qualified employee of the employer.

“(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

“(c) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under this chapter with respect to compensation paid to any employee shall be reduced by the credit determined under this section with respect to such employee.

“(d) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) to a taxpayer for—

“(1) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

“(2) the 2 succeeding taxable years.

(e) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(f) TERMINATION.—This section shall not apply to any payments made after December 31, 2009.”

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to general business credit) is amended by striking “plus” at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting “, plus”, and by adding at the end of following new paragraph:

“(33) the differential wage payment credit determined under section 45P(a).”

(c) NO DEDUCTION FOR COMPENSATION TAKEN INTO ACCOUNT FOR CREDIT.—Section 280C(a) (relating to rule for employment credits) is amended by inserting “45P(a),” after “45A(a),”.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

“Sec. 45P. Employer wage credit for employees who are active duty members of the uniformed services.”

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

26 USC 38.

**SEC. 112. STATE PAYMENTS TO SERVICE MEMBERS TREATED AS QUALIFIED MILITARY BENEFITS.**

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

“(6) CERTAIN STATE PAYMENTS.—The term ‘qualified military benefit’ includes any bonus payment by a State or political subdivision thereof to any member or former member of the uniformed services of the United States or any dependent of such member only by reason of such member’s service in an combat zone (as defined in section 112(c)(2), determined without regard to the parenthetical).”

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

26 USC 134 note.

**SEC. 113. PERMANENT EXCLUSION OF GAIN FROM SALE OF A PRINCIPAL RESIDENCE BY CERTAIN EMPLOYEES OF THE INTELLIGENCE COMMUNITY.**

(a) IN GENERAL.—Paragraph (9) of section 121(d) is amended by striking subparagraph (E).

(b) DUTY STATION MAY BE INSIDE UNITED STATES.—Section 121(d)(9)(C) (defining qualified official extended duty) is amended by striking clause (vi).

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

26 USC 121 note.

**SEC. 114. SPECIAL DISPOSITION RULES FOR UNUSED BENEFITS IN HEALTH FLEXIBLE SPENDING ARRANGEMENTS OF INDIVIDUALS CALLED TO ACTIVE DUTY.**

26 USC 125.

(a) **IN GENERAL.**—Section 125 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsection (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

“(h) **SPECIAL RULE FOR UNUSED BENEFITS IN HEALTH FLEXIBLE SPENDING ARRANGEMENTS OF INDIVIDUALS CALLED TO ACTIVE DUTY.**—

“(1) **IN GENERAL.**—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan or health flexible spending arrangement merely because such arrangement provides for qualified reservist distributions.

“(2) **QUALIFIED RESERVIST DISTRIBUTION.**—For purposes of this subsection, the term ‘qualified reservist distribution’ means, any distribution to an individual of all or a portion of the balance in the employee’s account under such arrangement if—

“(A) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

“(B) such distribution is made during the period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under such arrangement for the plan year which includes the date of such order or call.”.

26 USC 125 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to distributions made after the date of the enactment of this Act.

**SEC. 115. TECHNICAL CORRECTION RELATED TO EXCLUSION OF CERTAIN PROPERTY TAX REBATES AND OTHER BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.**

(a) **SOCIAL SECURITY TAXES.**—

(1) Section 3121(a) (relating to definition of wages) is amended by striking “or” at the end of paragraph (21), by striking the period at the end of paragraph (22) and inserting “; or”, and by inserting after paragraph (22) the following new paragraph:

“(23) any benefit or payment which is excludable from the gross income of the employee under section 139B(b).”.

(2) Section 209(a) of the Social Security Act is amended by striking “or” at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting “; or”, and by inserting after paragraph (19) the following new paragraph:

“(20) Any benefit or payment which is excludable from the gross income of the employee under section 139B(b) of the Internal Revenue Code of 1986.”.

42 USC 409.

(b) **UNEMPLOYMENT TAXES.**—Section 3306(b) (relating to definition of wages) is amended by striking “or” at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting “; or”, and by inserting after paragraph (19) the following new paragraph:

26 USC 3306.

“(20) any benefit or payment which is excludable from the gross income of the employee under section 139B(b).”.

(c) WAGE WITHHOLDING.—Section 3401(a) (defining wages) is amended by striking “or” at the end of paragraph (21), by striking the period at the end of paragraph (22) and inserting “; or”, and by inserting after paragraph (22) the following new paragraph:

“(23) for any benefit or payment which is excludable from the gross income of the employee under section 139B(b).”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 5 of the Mortgage Forgiveness Debt Relief Act of 2007.

26 USC 3401.

26 USC 3121  
note.

## **TITLE II—IMPROVEMENTS IN SUPPLEMENTAL SECURITY INCOME**

### **SEC. 201. TREATMENT OF UNIFORMED SERVICE CASH REMUNERATION AS EARNED INCOME.**

(a) IN GENERAL.—Section 1612(a)(1)(A) of the Social Security Act (42 U.S.C. 1382a(a)(1)(A)) is amended by inserting “(and, in the case of cash remuneration paid for service as a member of a uniformed service (other than payments described in paragraph (2)(H) of this subsection or subsection (b)(20)), without regard to the limitations contained in section 209(d))” before the semicolon.

(b) CERTAIN HOUSING PAYMENTS TREATED AS IN-KIND SUPPORT AND MAINTENANCE.—Section 1612(a)(2) of such Act (42 U.S.C. 1382a(a)(2)) is amended—

- (1) by striking “and” at the end of subparagraph (F);
- (2) by striking the period at the end of subparagraph (G) and inserting “; and”; and
- (3) by adding at the end the following:

“(H) payments to or on behalf of a member of a uniformed service for housing of the member (and his or her dependents, if any) on a facility of a uniformed service, including payments provided under section 403 of title 37, United States Code, for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10 of such Code, or any related provision of law, and any such payments shall be treated as support and maintenance in kind subject to subparagraph (A) of this paragraph.”.

### **SEC. 202. STATE ANNUITIES FOR CERTAIN VETERANS TO BE DISREGARDED IN DETERMINING SUPPLEMENTAL SECURITY INCOME BENEFITS.**

(a) INCOME DISREGARD.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

- (1) by striking “and” at the end of paragraph (22);
- (2) by striking the period at the end of paragraph (23) and inserting “; and”; and
- (3) by adding at the end the following:

“(24) any annuity paid by a State to the individual (or such spouse) on the basis of the individual’s being a veteran (as defined in section 101 of title 38, United States Code), and blind, disabled, or aged.”.

(b) RESOURCE DISREGARD.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

- (1) by striking “and” at the end of paragraph (14);
- (2) by striking the period at the end of paragraph (15) and inserting “; and”; and
- (3) by inserting after paragraph (15) the following:
  - “(16) for the month of receipt and every month thereafter, any annuity paid by a State to the individual (or such spouse) on the basis of the individual’s being a veteran (as defined in section 101 of title 38, United States Code), and blind, disabled, or aged.”.

**SEC. 203. EXCLUSION OF AMERICORPS BENEFITS FOR PURPOSES OF DETERMINING SUPPLEMENTAL SECURITY INCOME ELIGIBILITY AND BENEFIT AMOUNTS.**

Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)), as amended by section 202(a) of this Act, is amended—

- (1) in paragraph (23), by striking “and” at the end;
- (2) in paragraph (24), by striking the period and inserting “; and”; and
- (3) by adding at the end the following:
  - “(25) any benefit (whether cash or in-kind) conferred upon (or paid on behalf of) a participant in an AmeriCorps position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).”.

42 USC 1382a  
note.

**SEC. 204. EFFECTIVE DATE.**

The amendments made by this title shall be effective with respect to benefits payable for months beginning after 60 days after the date of the enactment of this Act.

### **TITLE III—REVENUE PROVISIONS**

**SEC. 301. REVISION OF TAX RULES ON EXPATRIATION.**

(a) **IN GENERAL.**—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

**“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

“(a) **GENERAL RULES.**—For purposes of this subtitle—

“(1) **MARK TO MARKET.**—All property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value.

“(2) **RECOGNITION OF GAIN OR LOSS.**—In the case of any sale under paragraph (1)—

“(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

“(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence, determined without regard to paragraph (3).

“(3) **EXCLUSION FOR CERTAIN GAIN.**—

“(A) IN GENERAL.—The amount which would (but for this paragraph) be includable in the gross income of any individual by reason of paragraph (1) shall be reduced (but not below zero) by \$600,000.

“(B) ADJUSTMENT FOR INFLATION.—

“(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘calendar year 2007’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) ROUNDING.—If any amount as adjusted under clause (i) is not a multiple of \$1,000, such amount shall be rounded to the nearest multiple of \$1,000.

“(b) ELECTION TO DEFER TAX.—

“(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the time for payment of the additional tax attributable to such property shall be extended until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.— For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

“(3) TERMINATION OF EXTENSION.—The due date for payment of tax may not be extended under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

“(4) SECURITY.—

“(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided with respect to such property.

“(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

“(i) it is a bond which is furnished to, and accepted by, the Secretary, which is conditioned on the payment of tax (and interest thereon), and which meets the requirements of section 6325, or

“(ii) it is another form of security for such payment (including letters of credit) that meets such requirements as the Secretary may prescribe.

“(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer makes an irrevocable waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

Applicability.

“(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable.

“(7) INTEREST.—For purposes of section 6601, the last date for the payment of tax shall be determined without regard to the election under this subsection.

“(c) EXCEPTION FOR CERTAIN PROPERTY.—Subsection (a) shall not apply to—

“(1) any deferred compensation item (as defined in subsection (d)(4)),

“(2) any specified tax deferred account (as defined in subsection (e)(2)), and

“(3) any interest in a nongrantor trust (as defined in subsection (f)(3)).

“(d) TREATMENT OF DEFERRED COMPENSATION ITEMS.—

“(1) WITHHOLDING ON ELIGIBLE DEFERRED COMPENSATION ITEMS.—

“(A) IN GENERAL.—In the case of any eligible deferred compensation item, the payor shall deduct and withhold from any taxable payment to a covered expatriate with respect to such item a tax equal to 30 percent thereof.

“(B) TAXABLE PAYMENT.—For purposes of subparagraph (A), the term ‘taxable payment’ means with respect to a covered expatriate any payment to the extent it would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States. A deferred compensation item shall be taken into account as a payment under the preceding sentence when such item would be so includible.

“(2) OTHER DEFERRED COMPENSATION ITEMS.—In the case of any deferred compensation item which is not an eligible deferred compensation item—

“(A)(i) with respect to any deferred compensation item to which clause (ii) does not apply, an amount equal to the present value of the covered expatriate’s accrued benefit shall be treated as having been received by such individual on the day before the expatriation date as a distribution under the plan, and

“(ii) with respect to any deferred compensation item referred to in paragraph (4)(D), the rights of the covered expatriate to such item shall be treated as becoming transferable and not subject to a substantial risk of forfeiture on the day before the expatriation date,

“(B) no early distribution tax shall apply by reason of such treatment, and

“(C) appropriate adjustments shall be made to subsequent distributions from the plan to reflect such treatment.

“(3) ELIGIBLE DEFERRED COMPENSATION ITEMS.—For purposes of this subsection, the term ‘eligible deferred compensation item’ means any deferred compensation item with respect to which—

“(A) the payor of such item is—

“(i) a United States person, or

“(ii) a person who is not a United States person but who elects to be treated as a United States person for purposes of paragraph (1) and meets such requirements as the Secretary may provide to ensure that the payor will meet the requirements of paragraph (1), and

“(B) the covered expatriate—

“(i) notifies the payor of his status as a covered expatriate, and

“(ii) makes an irrevocable waiver of any right to claim any reduction under any treaty with the United States in withholding on such item.

“(4) DEFERRED COMPENSATION ITEM.—For purposes of this subsection, the term ‘deferred compensation item’ means—

“(A) any interest in a plan or arrangement described in section 219(g)(5),

“(B) any interest in a foreign pension plan or similar retirement arrangement or program,

“(C) any item of deferred compensation, and

“(D) any property, or right to property, which the individual is entitled to receive in connection with the performance of services to the extent not previously taken into account under section 83 or in accordance with section 83.

“(5) EXCEPTION.—Paragraphs (1) and (2) shall not apply to any deferred compensation item to the extent attributable to services performed outside the United States while the covered expatriate was not a citizen or resident of the United States.

“(6) SPECIAL RULES.—

“(A) APPLICATION OF WITHHOLDING RULES.—Rules similar to the rules of subchapter B of chapter 3 shall apply for purposes of this subsection.

“(B) APPLICATION OF TAX.—Any item subject to the withholding tax imposed under paragraph (1) shall be subject to tax under section 871.

“(C) COORDINATION WITH OTHER WITHHOLDING REQUIREMENTS.—Any item subject to withholding under paragraph (1) shall not be subject to withholding under section 1441 or chapter 24.

“(e) TREATMENT OF SPECIFIED TAX DEFERRED ACCOUNTS.—

“(1) ACCOUNT TREATED AS DISTRIBUTED.—In the case of any interest in a specified tax deferred account held by a covered expatriate on the day before the expatriation date—

“(A) the covered expatriate shall be treated as receiving a distribution of his entire interest in such account on the day before the expatriation date,

“(B) no early distribution tax shall apply by reason of such treatment, and

“(C) appropriate adjustments shall be made to subsequent distributions from the account to reflect such treatment.

“(2) SPECIFIED TAX DEFERRED ACCOUNT.—For purposes of paragraph (1), the term ‘specified tax deferred account’ means an individual retirement plan (as defined in section 7701(a)(37))

other than any arrangement described in subsection (k) or (p) of section 408, a qualified tuition program (as defined in section 529), a Coverdell education savings account (as defined in section 530), a health savings account (as defined in section 223), and an Archer MSA (as defined in section 220).

**“(f) SPECIAL RULES FOR NONGRANTOR TRUSTS.—**

“(1) IN GENERAL.—In the case of a distribution (directly or indirectly) of any property from a nongrantor trust to a covered expatriate—

“(A) the trustee shall deduct and withhold from such distribution an amount equal to 30 percent of the taxable portion of the distribution, and

“(B) if the fair market value of such property exceeds its adjusted basis in the hands of the trust, gain shall be recognized to the trust as if such property were sold to the expatriate at its fair market value.

“(2) TAXABLE PORTION.—For purposes of this subsection, the term ‘taxable portion’ means, with respect to any distribution, that portion of the distribution which would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States.

“(3) NONGRANTOR TRUST.—For purposes of this subsection, the term ‘nongrantor trust’ means the portion of any trust that the individual is not considered the owner of under subpart E of part I of subchapter J. The determination under the preceding sentence shall be made immediately before the expatriation date.

“(4) SPECIAL RULES RELATING TO WITHHOLDING.—For purposes of this subsection—

“(A) rules similar to the rules of subsection (d)(6) shall apply, and

“(B) the covered expatriate shall be treated as having waived any right to claim any reduction under any treaty with the United States in withholding on any distribution to which paragraph (1)(A) applies unless the covered expatriate agrees to such other treatment as the Secretary determines appropriate.

“(5) APPLICATION.—This subsection shall apply to a nongrantor trust only if the covered expatriate was a beneficiary of the trust on the day before the expatriation date.

“(g) DEFINITIONS AND SPECIAL RULES RELATING TO EXPATRIATION.—For purposes of this section—

**“(1) COVERED EXPATRIATE.—**

“(A) IN GENERAL.—The term ‘covered expatriate’ means an expatriate who meets the requirements of subparagraph (A), (B), or (C) of section 877(a)(2).

“(B) EXCEPTIONS.—An individual shall not be treated as meeting the requirements of subparagraph (A) or (B) of section 877(a)(2) if—

“(i) the individual—

“(I) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

Applicability.

“(II) has been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) for not more than 10 taxable years during the 15-taxable year period ending with the taxable year during which the expatriation date occurs, or

“(ii)(I) the individual’s relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(II) the individual has been a resident of the United States (as so defined) for not more than 10 taxable years before the date of relinquishment.

“(C) COVERED EXPATRIATES ALSO SUBJECT TO TAX AS CITIZENS OR RESIDENTS.—In the case of any covered expatriate who is subject to tax as a citizen or resident of the United States for any period beginning after the expatriation date, such individual shall not be treated as a covered expatriate during such period for purposes of subsections (d)(1) and (f) and section 2801.

“(2) EXPATRIATE.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes his citizenship, and

“(B) any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

“(3) EXPATRIATION DATE.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date on which the individual ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

“(4) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing his United States citizenship on the earliest of—

“(A) the date the individual renounces his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen’s certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(5) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(6) EARLY DISTRIBUTION TAX.—The term ‘early distribution tax’ means any increase in tax imposed under section 72(t), 220(e)(4), 223(f)(4), 409A(a)(1)(B), 529(c)(6), or 530(d)(4).

“(h) OTHER RULES.—

“(1) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

“(A) any time period for acquiring property which would result in the reduction in the amount of gain recognized with respect to property disposed of by the taxpayer shall terminate on the day before the expatriation date, and

“(B) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

“(2) STEP-UP IN BASIS.—Solely for purposes of determining any tax imposed by reason of subsection (a), property which was held by an individual on the date the individual first became a resident of the United States (within the meaning of section 7701(b)) shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

“(3) COORDINATION WITH SECTION 684.—If the expatriation of any individual would result in the recognition of gain under section 684, this section shall be applied after the application of section 684.

“(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.”.

(b) TAX ON GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—

(1) IN GENERAL.—Subtitle B (relating to estate and gift taxes) is amended by inserting after chapter 14 the following new chapter:

## **“CHAPTER 15—GIFTS AND BEQUESTS FROM EXPATRIATES**

“Sec. 2801. Imposition of tax.

### **“SEC. 2801. IMPOSITION OF TAX.**

“(a) IN GENERAL.—If, during any calendar year, any United States citizen or resident receives any covered gift or bequest, there is hereby imposed a tax equal to the product of—

“(1) the highest rate of tax specified in the table contained in section 2001(c) as in effect on the date of such receipt (or, if greater, the highest rate of tax specified in the table applicable under section 2502(a) as in effect on the date), and

“(2) the value of such covered gift or bequest.

“(b) TAX TO BE PAID BY RECIPIENT.—The tax imposed by subsection (a) on any covered gift or bequest shall be paid by the person receiving such gift or bequest.

Applicability.

“(c) EXCEPTION FOR CERTAIN GIFTS.—Subsection (a) shall apply only to the extent that the value of covered gifts and bequests received by any person during the calendar year exceeds the dollar amount in effect under section 2503(b) for such calendar year. Applicability.

“(d) TAX REDUCED BY FOREIGN GIFT OR ESTATE TAX.—The tax imposed by subsection (a) on any covered gift or bequest shall be reduced by the amount of any gift or estate tax paid to a foreign country with respect to such covered gift or bequest.

“(e) COVERED GIFT OR BEQUEST.—

“(1) IN GENERAL.—For purposes of this chapter, the term ‘covered gift or bequest’ means—

“(A) any property acquired by gift directly or indirectly from an individual who, at the time of such acquisition, is a covered expatriate, and

“(B) any property acquired directly or indirectly by reason of the death of an individual who, immediately before such death, was a covered expatriate.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Such term shall not include—

“(A) any property shown on a timely filed return of tax imposed by chapter 12 which is a taxable gift by the covered expatriate, and

“(B) any property included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate.

“(3) EXCEPTIONS FOR TRANSFERS TO SPOUSE OR CHARITY.— Such term shall not include any property with respect to which a deduction would be allowed under section 2055, 2056, 2522, or 2523, whichever is appropriate, if the decedent or donor were a United States person.

“(4) TRANSFERS IN TRUST.—

“(A) DOMESTIC TRUSTS.—In the case of a covered gift or bequest made to a domestic trust—

“(i) subsection (a) shall apply in the same manner as if such trust were a United States citizen, and

“(ii) the tax imposed by subsection (a) on such gift or bequest shall be paid by such trust. Applicability.

“(B) FOREIGN TRUSTS.—

“(i) IN GENERAL.—In the case of a covered gift or bequest made to a foreign trust, subsection (a) shall apply to any distribution attributable to such gift or bequest from such trust (whether from income or corpus) to a United States citizen or resident in the same manner as if such distribution were a covered gift or bequest. Applicability.

“(ii) DEDUCTION FOR TAX PAID BY RECIPIENT.— There shall be allowed as a deduction under section 164 the amount of tax imposed by this section which is paid or accrued by a United States citizen or resident by reason of a distribution from a foreign trust, but only to the extent such tax is imposed on the portion of such distribution which is included in the gross income of such citizen or resident.

“(iii) ELECTION TO BE TREATED AS DOMESTIC TRUST.—Solely for purposes of this section, a foreign trust may elect to be treated as a domestic trust.

Such an election may be revoked with the consent of the Secretary.

“(f) COVERED EXPATRIATE.—For purposes of this section, the term ‘covered expatriate’ has the meaning given to such term by section 877A(g)(1).”

(2) CLERICAL AMENDMENT.—The table of chapters for subtitle B is amended by inserting after the item relating to chapter 14 the following new item:

“CHAPTER 15. GIFTS AND BEQUESTS FROM EXPATRIATES.”

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—

26 USC 7701.

Regulations.

(1) IN GENERAL.—Section 7701(a) is amended by adding at the end the following new paragraph:

“(50) TERMINATION OF UNITED STATES CITIZENSHIP.—

“(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual’s citizenship is treated as relinquished under section 877A(g)(4).

“(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.”

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 877(e) is amended to read as follows:

“(1) IN GENERAL.—Any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.”

(B) Paragraph (6) of section 7701(b) is amended by adding at the end the following flush sentence:

“An individual shall cease to be treated as a lawful permanent resident of the United States if such individual commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country, and notifies the Secretary of the commencement of such treatment.”

(C) Section 7701 is amended by striking subsection (n) and by redesignating subsections (o) and (p) as subsections (n) and (o), respectively.

(d) TERMINATION OF SECTION 877.—Section 877 is amended by adding at the end the following new subsection:

“(h) TERMINATION.—This section shall not apply to any individual whose expatriation date (as defined in section 877A(g)(3)) is on or after the date of the enactment of this subsection.”

(e) INFORMATION RETURNS.—Section 6039G is amended—

(1) by inserting “or 877A” after “section 877(b)” in subsection (a), and

(2) by inserting “or 877A” after “section 877(a)” in subsection (d).

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

“Sec. 877A. Tax responsibilities of expatriation.”.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to any individual whose expatriation date (as so defined) is on or after the date of the enactment of this Act.

(2) GIFTS AND BEQUESTS.—Chapter 15 of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to covered gifts and bequests (as defined in section 2801 of such Code, as so added) received on or after the date of the enactment of this Act from transferors (or from the estates of transferors) whose expatriation date is on or after such date of enactment.

26 USC 2801  
note.

Applicability.

**SEC. 302. CERTAIN DOMESTICALLY CONTROLLED FOREIGN PERSONS PERFORMING SERVICES UNDER CONTRACT WITH UNITED STATES GOVERNMENT TREATED AS AMERICAN EMPLOYERS.**

(a) FICA TAXES.—Section 3121 (relating to definitions) is amended by adding at the end the following new subsection:

26 USC 3121.

“(z) TREATMENT OF CERTAIN FOREIGN PERSONS AS AMERICAN EMPLOYERS.—

“(1) IN GENERAL.—If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

“(2) DOMESTICALLY CONTROLLED GROUP OF ENTITIES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘domestically controlled group of entities’ means a controlled group of entities the common parent of which is a domestic corporation.

“(B) CONTROLLED GROUP OF ENTITIES.—The term ‘controlled group of entities’ means a controlled group of corporations as defined in section 1563(a)(1), except that—

“(i) ‘more than 50 percent’ shall be substituted for ‘at least 80 percent’ each place it appears therein, and

“(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

“(3) LIABILITY OF COMMON PARENT.—In the case of a foreign person who is a member of any domestically controlled group of entities, the common parent of such group shall be jointly and severally liable for any tax under this chapter for which such foreign person is liable by reason of this subsection, and

for any penalty imposed on such person by this title with respect to any failure to pay such tax or to file any return or statement with respect to such tax or wages subject to such tax. No deduction shall be allowed under this title for any liability imposed by the preceding sentence.

**“(4) PROVISIONS PREVENTING DOUBLE TAXATION.—**

“(A) AGREEMENTS.—Paragraph (1) shall not apply to any services which are covered by an agreement under subsection (1).

“(B) EQUIVALENT FOREIGN TAXATION.—Paragraph (1) shall not apply to any services if the employer establishes to the satisfaction of the Secretary that the remuneration paid by such employer for such services is subject to a tax imposed by a foreign country which is substantially equivalent to the taxes imposed by this chapter.

“(5) CROSS REFERENCE.—For relief from taxes in cases covered by certain international agreements, see sections 3101(c) and 3111(c).”

**(b) SOCIAL SECURITY BENEFITS.—**Subsection (e) of section 210 of the Social Security Act (42 U.S.C. 410(e)) is amended—

(1) by striking “(e) The term” and inserting “(e)(1) The term”;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively, and

(3) by adding at the end the following new paragraph:

“(2)(A) If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated as an American employer with respect to such services performed by such employee.

“(B) For purposes of this paragraph—

“(i) The term ‘domestically controlled group of entities’ means a controlled group of entities the common parent of which is a domestic corporation.

“(ii) The term ‘controlled group of entities’ means a controlled group of corporations as defined in section 1563(a)(1) of the Internal Revenue Code of 1986, except that—

“(I) ‘more than 50 percent’ shall be substituted for ‘at least 80 percent’ each place it appears therein, and

“(II) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563 of such Code.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3) of such Code) by members of such group (including any entity treated as a member of such group by reason of this sentence).

“(C) Subparagraph (A) shall not apply to any services to which paragraph (1) of section 3121(z) of the Internal Revenue Code of 1986 does not apply by reason of paragraph (4) of such section.”.

**(c) EFFECTIVE DATE.—**The amendment made by this section shall apply to services performed in calendar months beginning more than 30 days after the date of the enactment of this Act.

**SEC. 303. INCREASE IN MINIMUM PENALTY ON FAILURE TO FILE A RETURN OF TAX.**

(a) IN GENERAL.—Subsection (a) of section 6651 is amended by striking “\$100” in the last sentence and inserting “\$135”. 26 USC 6651.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns required to be filed after December 31, 2008. 26 USC 6651 note.

**TITLE IV—PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS****SEC. 401. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.**

(a) INTERNAL REVENUE CODE OF 1986.—Subsection (f) of section 9812 is amended—

(1) by striking “and” at the end of paragraph (2), and  
(2) by striking paragraph (3) and inserting the following new paragraphs:

“(3) on or after January 1, 2008, and before the date of the enactment of the Heroes Earnings Assistance and Relief Tax Act of 2008, and

“(4) after December 31, 2008.”.

(b) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subsection (f) of section 712 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a(f)) is amended by striking “services furnished after December 31, 2007” and inserting “services furnished—

“(1) on or after January 1, 2008, and before the date of the enactment of the Heroes Earnings Assistance and Relief Tax Act of 2008, and

“(2) after December 31, 2008.”.

(c) PUBLIC HEALTH SERVICE ACT.—Subsection (f) of section 2705 of the Public Health Service Act (42 U.S.C. 300gg-5(f)) is amended by striking “services furnished after December 31, 2007” and inserting “services furnished—  
“(1) on or after January 1, 2008, and before the date of the enactment of the Heroes Earnings Assistance and Relief Tax Act of 2008, and  
“(2) after December 31, 2008.”.

Approved June 17, 2008.

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LEGISLATIVE HISTORY—H.R. 6081:  
CONGRESSIONAL RECORD, Vol. 154 (2008):  
May 20, considered and passed House.  
May 22, considered and passed Senate.

