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**TECHNICAL EXPLANATION OF THE  
“VICTIMS OF TERRORISM TAX RELIEF ACT OF 2001,”  
AS PASSED BY THE HOUSE AND THE SENATE ON DECEMBER 20, 2001**

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JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, contains a technical explanation of the “Victims of Terrorism Tax Relief Act of 2001,” as passed by the House of Representatives and the Senate on December 20, 2001.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Technical Explanation of the “Victims of Terrorism Tax Relief Act of 2001,” as Passed by the House and the Senate on December 20, 2001* (JCX-93-01), December 21, 2001.

## I. BACKGROUND

Historically, the Congress has provided Federal tax relief for members of the U.S. Armed Forces who serve in combat zones. In addition, the Congress has taken action on several occasions to provide Federal tax relief for service members and other individuals whose lives have been affected by particular instances of hostile action involving the United States. In 1970, the Congress enacted legislation that provided tax relief to individuals who had been removed from a U.S. vessel and died while being illegally detained by the Democratic People's Republic of Korea during 1968.<sup>2</sup> Specifically, the legislation treated these individuals as having served in a combat zone for purposes of tax provisions that apply only to individuals serving in designated combat zones. Thus, service personnel who were crewmembers of the U.S.S. *Pueblo* (which was illegally detained in 1968 by North Korea), and who died during the detention, were eligible for the income tax exclusion (and other special tax rules) available for service personnel who die in combat zones.

In 1980, the Congress enacted legislation concerning the American hostages who were held captive in Iran between November 4, 1979, and December 31, 1981, and who died as a result of injury or disease or physical or mental disability that was incurred or aggravated while in captive status.<sup>3</sup> The legislation provided that no Federal income tax would be imposed with respect to the year in which the individual died or any prior year ending on or after the first day the individual was in captive status. This legislation applied to military and civilian personnel of the United States, as well as to certain other U.S. taxpayers taken captive outside Iran on or before December 31, 1981. Moreover, if there had been any unpaid income tax liability of such an individual from years prior to captivity, the liability was forgiven. This total income tax exemption for American hostages who died as a result of captive status was available only if death occurred within two years after the individual ceased to be in captive status.

In 1984, the Congress enacted legislation after hostile action occurred in Lebanon and Grenada involving U.S. military and civilian personnel.<sup>4</sup> This legislation provided special Federal income tax rules for certain individuals who die while in active service as a member of the Armed Forces of the United States or while in the civilian employment of the United States. Under the legislation, if death occurs as a result of wounds or injuries incurred outside the United States in a terrorist or military action, then no Federal income tax applies with respect to income of the individual for the year of death or for any earlier year in the period beginning with the last year ending before the year in which the wounds or injuries were incurred (sec. 692(c)). The legislation only applies to injuries or wounds that are incurred in a terrorist or military action. Thus, for example, the legislation would not have applied with respect to a U.S. serviceperson stationed in Lebanon who died as a result of an accidental fall because, if not caused by hostile forces, such an injury was not incurred in a terrorist or military action. In order to apply the special tax rules provided by the legislation to other hostile actions that occurred before the date

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<sup>2</sup> Pub. L. No. 91-235.

<sup>3</sup> Pub. L. No. 96-449.

<sup>4</sup> Pub. L. Nos. 98-259 and 98-369.

of enactment (such as the attempt to rescue the American hostages in Iran), the legislation was made effective with respect to all taxable years of individuals dying as a result of wounds or injuries incurred after December 31, 1979.

The 1984 legislation applies to the year preceding the year in which the wounds or injuries were incurred because the Congress determined that forgiveness of income tax only for the period from the year of the injuries or wounds to the year of death would have inequitable results in certain circumstances. Under such a limitation, a soldier who is killed in a terrorist attack on a U.S. base in a foreign country on January 31 would be exempt from income tax only on one month's income, while a soldier who is killed in an attack on December 31 would be exempt from income tax on an entire year's income. Accordingly, the Congress concluded that it is more equitable to extend the tax forgiveness under the provision to income for the year preceding the year of injury.

In 1990, the Congress enacted legislation providing limited income tax benefits to victims of the terrorist attack that resulted in the downing of Pan American Airways Flight 103 over Lockerbie, Scotland on December 21, 1988.<sup>5</sup> The legislation provided that, in the case of any individual whose death was a direct result of the terrorist attack involving Flight 103, the income tax provisions of subtitle A of the Internal Revenue Code did not apply with respect to: (1) the taxable year that included December 21, 1988; and (2) the prior taxable year. However, the income tax benefit in each taxable year was limited to an amount equal to 28 percent of the annual rate of basic pay at Level V of the U.S. Executive Schedule as of December 21, 1988. This limitation was intended to limit the amount of tax relief to that which was provided to personnel of the United States who were on Flight 103, thus providing equal relief to all of the victims who were on Flight 103. In addition, the legislation required the President to submit recommendations to Congress concerning whether future legislation should be enacted to authorize the United States to provide monetary and tax relief as compensation to U.S. citizens who are victims of terrorism. The legislation also authorized the President to establish a board to develop criteria for compensation and to recommend changes to existing laws to establish a single comprehensive approach to victim compensation for terrorist acts.

In 1991, the Congress enacted legislation extending the benefits of the suspension of time provisions under section 7508 to any individual (and the spouse of such an individual) who performed certain services that preceded the designation of a combat zone with regard to Operation Desert Shield.<sup>6</sup> The individuals eligible for such benefits included individuals who provided services in the Armed Forces of the United States (or in support of the Armed Services) if such services were performed in the area designated by the President as the "Persian Gulf Desert Shield Area" and such services were performed during the period beginning August 2, 1990, and ending on the date on which any portion of the area was designated by the President as a combat zone. After January 17, 1991 (the date on which the Persian Gulf Desert Shield Area became designated as a combat zone by the President), individuals performing such services became eligible for the benefits of the present-law tax provisions applicable to service in a

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<sup>5</sup> Pub. L. No. 101-604.

<sup>6</sup> Pub. L. No. 102-2.

designated combat zone. An Executive Order terminating the designation of the Persian Gulf Desert Shield Area as a combat zone has not been issued.

In 1996, the Congress enacted legislation concerning certain individuals serving in portions of former Yugoslavia (i.e., Bosnia and Herzegovina, Croatia, and Macedonia) as part of Operation Joint Endeavor and Operation Able Sentry.<sup>7</sup> This legislation provided that such service is treated in the same manner as if it were performed in a designated combat zone for purposes of the tax provisions applicable to service in a designated combat zone. The legislation also made the suspension of time provisions of section 7508 applicable to certain other individuals participating in Operation Joint Endeavor. In addition, the legislation increased the maximum officer combat pay exclusion from \$500 per month to the highest rate of pay applicable to enlisted personnel plus the amount of hostile fire/imminent danger pay received by the officer.

In 1997, the Congress enacted legislation authorizing procedural tax benefits with regard to Presidentially declared disasters in general.<sup>8</sup> The legislation provided that the Secretary of the Treasury may prescribe regulations under which a period of up to 90 days may be disregarded for performing various acts under the Internal Revenue Code, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, for any taxpayer determined by the Secretary to be affected by a Presidentially declared disaster (sec. 7508A). In 2001, the Congress amended section 7508A to extend from 90 to 120 the authorized period of days that may be disregarded by the Secretary.

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<sup>7</sup> Pub. L. No. 104-117.

<sup>8</sup> Pub. L. No. 105-34.

## **II. DESCRIPTION OF THE “VICTIMS OF TERRORISM TAX RELIEF ACT OF 2001”**

### **A. Relief Provisions for Victims of Specific Terrorist Attacks**

#### **1. Income taxes of victims of terrorist attacks (sec. 101 of the bill and sec. 692 of the Code)**

##### **Present Law**

An individual in active service as a member of the Armed Forces who dies while serving in a combat zone (or as a result of wounds, disease, or injury received while serving in a combat zone) is not subject to income tax or self-employment tax for the year of death (as well as for any prior taxable year ending on or after the first day the individual served in the combat zone) (sec. 692(a)(1)). Special computational rules apply in the case of joint returns. Military and civilian employees of the United States are entitled to a similar exemption if they die as a result of wounds or injury which was incurred outside the United States in terrorist or military action (sec. 692(c)).

The exemption applies not only to the tax liability of the individual attributable to income received before the date of death and reported on the decedent’s final return. The exemption applies also to the liability of another person to the extent the liability is attributable to an amount received after the individual's death which would have been includable in the individual's income for the taxable year in which the date of death falls (determined as if the individual had survived).<sup>9</sup> For example, the individual’s final wage payment, or interest or dividends payable in the year of death with respect to the individual’s assets, are exempt from income tax when paid to another person or the individual’s estate after the date of death but before the end of the taxable year of the decedent (determined without regard to the death).

This exemption is available for the year of death and for prior taxable years beginning with the taxable year prior to the taxable year in which the wounds or injury were incurred. Thus, for example, if someone is injured and dies in the year the injury occurred, the exemption applies for the year of death and the prior taxable year. Similarly, if someone is injured and dies two years later, this exemption is available for the taxable year of death as well as the three prior taxable years (i.e., the year preceding the injury, the year of the injury, and the two years following the year of the injury).

##### **Explanation of Provision**

#### **Application of relief to victims of September 11, 2001, April 19, 1995, and anthrax attacks**

The bill extends relief similar to the present-law treatment of military or civilian employees of the United States who die as a result of terrorist or military activity outside the United States to individuals who die as a result of wounds or injury which were incurred as a result of the terrorist attacks that occurred on September 11, 2001, or April 19, 1995, and

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<sup>9</sup> Treas. Reg. sec. 1.692-1(a)(2)(ii).

individuals who die as a result of illness incurred due to an attack involving anthrax that occurs on or after September 11, 2001, and before January 1, 2002. Under the bill, such individuals generally are exempt from income tax for the year of death and for prior taxable years beginning with the taxable year prior to the taxable year in which the wounds or injury occurred.<sup>10</sup> The exemption applies to these individuals whether killed in an attack (e.g., in the case of the September 11, 2001, attack in one of the four airplanes or on the ground) or in rescue or recovery operations.

The provision provides a minimum tax relief benefit of \$10,000 to each eligible individual regardless of the income tax liability of the individual for the eligible tax years. If an eligible individual's income tax for years eligible for the exclusion under the provision is less than \$10,000, the individual is treated as having made a tax payment for such individual's last taxable year in an amount equal to the excess of \$10,000 over the amount of tax not imposed under the provision.

Subject to rules prescribed by the Secretary, the exemption from tax does not apply to the tax attributable to (1) deferred compensation which would have been payable after death if the individual had died other than as a specified terrorist victim, or (2) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001. Thus, for example, the exemption does not apply to amounts payable from a qualified plan or individual retirement arrangement to the beneficiary or estate of the individual. Similarly, amounts payable only as death or survivor's benefits pursuant to deferred compensation preexisting arrangements that would have been paid if the death had occurred for another reason are not covered by the exemption. In addition, if the individual's employer makes adjustments to a plan or arrangement to accelerate the vesting of restricted property or the payment of nonqualified deferred compensation after the date of the particular attack, the exemption does not apply to income received as a result of that action.<sup>11</sup> Also, if the individual's beneficiary cashed in savings bonds of the decedent, the exemption does not apply. On the other hand, the exemption does apply, for example, to a final paycheck of the individual or dividends on stock held by the individual when paid to another person or the individual's estate after the date of death but before the end of the taxable year of the decedent (determined without regard to the death). The exemption also applies to payments of an individual's accrued vacation and accrued sick leave.

The provision does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

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<sup>10</sup> The bill does not provide relief from self-employment tax liability.

<sup>11</sup> Such amounts may, however, be excludable from gross income under the death benefit exclusion provided in section 102 of the bill.



## **Simplified refund procedures**

It is intended that the Secretary will establish procedures to simplify refunds of these amounts, including expanding the directions in Revenue Procedure 85-35 to include specific instructions for Form 1041.

### **Effective Date**

The provision is effective for taxable years ending before, on, or after September 11, 2001.

A special rule extends the period of limitations to permit the filing of a claim for refund resulting from this provision until one year after the date of enactment, if that period would otherwise have expired before that date.

## **2. Exclusion of certain death benefits (sec. 102 of the bill and sec. 101 of the Code)**

### **Present Law**

In general, gross income includes income from whatever source derived (sec. 61), including payments made as a result of the death of an individual. Certain exceptions to this general rule of inclusion may apply to such payments in certain cases.

For example, gross income generally does not include the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injury (including death) or sickness (sec. 104(a)(2)). Further, gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract if such amounts are paid by reason of the death of the insured (sec. 101(a)).

In addition, gifts are not includable in gross income (sec. 102). However, with very limited exceptions, payments made by an employer to, or for the benefit of, an employee are not excluded from gross income as gifts (sec. 102(c)). In business contexts in which section 102(c) does not apply, payments are excludable as gifts only if objective inquiry demonstrates that the payments were made out of “detached and disinterested generosity” and not in return for past or future services or from motives of anticipated benefit.<sup>12</sup>

### **Explanation of Provision**

The bill generally provides an exclusion from gross income for amounts received if such amounts are paid by an employer (whether in a single sum or otherwise<sup>13</sup>) by reason of the death of an employee who dies as a result of wounds or injury which were incurred as a result of the

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<sup>12</sup> *Comm’r v. Duberstein*, 363 U.S. 278 (1960).

<sup>13</sup> Thus, for example, payments made over a period of years could qualify for the exclusion.

terrorist attacks that occurred on September 11, 2001, or April 19, 1995, or as a result of illness incurred due to an attack involving anthrax that occurs on or after September 11, 2001, and before January 1, 2002. Subject to rules prescribed by the Secretary, the exclusion does not apply to amounts that would have been payable if the individual had died for a reason other than the attack. For example, the provision does not apply to payments by an employer under a nonqualified deferred compensation plan<sup>14</sup> to the extent that the amounts would have been payable if the death had occurred for another reason. The exclusion does apply, however, to death benefits provided under a qualified plan that satisfy the incidental benefit rule.

For purposes of the exclusion, self-employed individuals are treated as employees. Thus, for example, payments by a partnership to the surviving spouse of a partner who died as a result of the September 11, 2001, attacks may be excludable under the provision.

The provision does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

No change to present law is intended as to the deductibility of death benefits paid by the employer or otherwise merely because the payments are excludable by the recipient. Thus, it is intended that payments excludable from income under the provision are deductible to the same extent they would be if they were includable in income.

The bill is not intended to narrow the scope of any applicable exclusion under present law. Accordingly, payments that are not specifically excludable under the bill remain excludable to the same extent provided under present law.

In connection with the September 11, 2001, terrorist attacks, insurance companies may pay death benefits under a life insurance contract even if the contract terms provide for an exclusion for death occurring as a result of an act of terrorism or act of war. It is understood that such a death benefit payment would fall within the present-law exclusion (under sec. 101(a)) for payments made under the contract if it otherwise meets the requirements of the present-law exclusion.

### **Effective Date**

The provision is effective for taxable years ending before, on, or after September 11, 2001.

A special rule extends the period of limitations to permit the filing of a claim for refund resulting from this provision until one year after the date of enactment, if that period would otherwise have expired before that date.

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<sup>14</sup> The provision does not apply to amounts received under a qualified plan because such payments are not made by the employer.

### **3. Estate tax reduction (sec. 103 of the bill and sec. 2201 of the Code)**

#### **Present Law**

Present law provides a reduction in Federal estate tax for taxable estates of U.S. citizens or residents who are active members of the U.S. Armed Forces and who are killed in action while serving in a combat zone (sec. 2201). This provision also applies to active service members who die as a result of wounds, disease, or injury suffered while serving in a combat zone by reason of a hazard to which the service member was subjected as an incident of such service.

In general, the effect of section 2201 is to replace the Federal estate tax that would otherwise be imposed with a Federal estate tax equal to 125 percent of the maximum State death tax credit determined under section 2011(b). Credits against the tax, including the unified credit of section 2010 and the State death tax credit of section 2011, then apply to reduce (or eliminate) the amount of the estate tax payable.

The reduction in Federal estate taxes under section 2201 is equal in amount to the “additional estate tax” with respect to the estates of decedents dying before January 1, 2005. The additional estate tax is the difference between the Federal estate tax imposed by section 2001 and 125 percent of the maximum State death tax credit determined under section 2011(b). With respect to the estates of decedents dying after December 31, 2004, section 2201 provides that the additional estate tax is the difference between the Federal estate tax imposed by section 2001 and 125 percent of the maximum state death tax credit determined under section 2011(b) as in effect prior to its repeal by the Economic Growth and Tax Relief Reconciliation Act of 2001.

#### **Explanation of Provision**

The bill generally treats individuals who die from wounds or injury incurred as a result of the terrorist attacks that occurred on September 11, 2001, or April 19, 1995, or as a result of illness incurred due to an attack involving anthrax that occurs on or after September 11, 2001, and before January 1, 2002, in the same manner as if they were active members of the U.S. Armed Forces killed in action while serving in a combat zone or dying as a result of wounds or injury suffered while serving in a combat zone for purposes of section 2201. Consequently, the estates of these individuals are eligible for the reduction in Federal estate tax provided by section 2201. The provision does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

The bill also changes the general operation of section 2201, as it applies to both the estates of service members who qualify for special estate tax treatment under present law and to the estates of individuals who qualify for the special treatment under the bill. Under the bill, the Federal estate tax is determined in the same manner for all estates that are eligible for Federal estate tax reduction under section 2201. In addition, the executor of an estate that is eligible for special estate tax treatment under section 2201 may elect not to have section 2201 apply to the estate. Thus, in the event that an estate may receive more favorable treatment without the application of section 2201 in the year of death than it would under section 2201, the executor

may elect not to apply the provisions of section 2201, and the estate tax owed (if any) would be determined pursuant to the generally applicable rules.

Under the bill, section 2201 no longer reduces Federal estate tax by the amount of the additional estate tax. Instead, the bill provides that the Federal estate tax liability of eligible estates is determined under section 2001 (or section 2101, in the case of decedents who were neither residents nor citizens of the United States), using a rate schedule that is equal to 125 percent of the present-law maximum State death tax credit amount. This rate schedule is used to compute the tax under section 2001(b) or section 2101(b) (i.e., both the tentative tax under section 2001(b)(1) and section 2101(b), and the hypothetical gift tax under section 2001(b)(2) are computed using this rate schedule). As a result of this provision, the estate tax is unified with the gift tax for purposes of section 2201 so that a single graduated (but reduced) rate schedule applies to transfers made by the individual at death, based upon the cumulative taxable transfers made both during lifetime and at death.

In addition, while the bill provides an alternative reduced rate table for purposes of determining the tax under section 2001(b) or section 2101(b), the amount of the unified credit nevertheless is determined as if section 2201 did not apply, based upon the unified credit as in effect on the date of death. For example, in the case of victims of the September 11, 2001, terrorist attack, the applicable unified credit amount under section 2010(c) would be determined by reference to the actual section 2001(c) rate table.

As a conforming amendment, the bill repeals section 2011(d) because it no longer will have any application to taxpayers.

#### **Effective Date**

The provision applies to estates of decedents dying on or after September 11, 2001, or, in the case of victims of the Oklahoma City terrorist attack, estates of decedents dying on or after April 19, 1995.

A special rule extends the period of limitations to permit the filing of a claim for refund resulting from this provision until one year after the date of enactment, if that period would otherwise have expired before that date.

#### **4. Payments by charitable organizations treated as exempt payments (sec. 104 of the bill and secs. 501 and 4941 of the Code)**

##### **Present Law**

In general, organizations described in section 501(c)(3) of the Code are exempt from taxation. Contributions to such organizations generally are tax deductible (sec. 170). Section 501(c)(3) organizations must be organized and operated exclusively for exempt purposes and no part of the net earnings of such organizations may inure to the benefit of any private shareholder or individual. An organization is not organized or operated exclusively for one or more exempt purposes unless the organization serves a public rather than a private interest. Thus, an

organization described in section 501(c)(3) generally must serve a charitable class of persons that is indefinite or of sufficient size.

Tax-exempt private foundations are a type of organization described in section 501(c)(3) and are subject to special rules. Private foundations are subject to excise taxes on acts of self-dealing between the private foundation and a disqualified person with respect to the foundation (sec. 4941). For example, it is self-dealing if the income or assets of a private foundation are transferred to, or used by or for the benefit of a disqualified person, such as a substantial contributor to the foundation or a person in control of the foundation, and the benefit is not incidental or tenuous.

### **Explanation of Provision**

In light of the extraordinary distress caused by the attacks on the United States of September 11, 2001, and the subsequent attacks involving anthrax, the bill provides that organizations described in section 501(c)(3) that make payments by reason of the death, injury, wounding, or illness of an individual incurred as a result of the September 11, 2001, attacks, or as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, are not required to make a specific assessment of need for the payments to be related to the purpose or function constituting the basis for the organization's exemption. This rule applies provided that the organization makes the payments in good faith using a reasonable and objective formula which is consistently applied. As under present law, such payments must be for public and not private benefit and therefore must serve a charitable class. For example, under this standard, a charitable organization that assists families of firefighters killed in the line of duty could make a pro-rata distribution to the families of firefighters killed in the attacks, even though the specific financial needs of each family are not directly considered. Similarly, if the amount of a distribution is based on the number of dependents of a charitable class of persons killed in the attacks and this standard is applied consistently among distributions, the specific needs of each recipient do not have to be taken into account. However, it would not be appropriate for a charity to make pro-rata payments based on the recipients' living expenses before September 11 if the result generally is to provide significantly greater assistance to persons in a better position to provide for themselves than to persons with fewer financial resources. Although such a distribution might be based on objective criteria, it would not, under the statutory standard, be a reasonable formula for distributing assistance in an equitable manner. Similarly, although specific assessments of need are not required, the bill does not change the other substantive standards for exemption under section 501(c)(3), including the prohibition on private inurement and the need for a charitable class. It is impossible to list or anticipate the kinds of payments that meet the statutory test, but, in general, charities that make distributions in good faith using a reasonable and objective formula will be treated as acting consistently with exempt purposes. A charity that makes payments subject to this provision should indicate clearly on the charity's information return, for example by notation at the top of the relevant page of the return, that the charity relied on this provision in making distributions. The bill also provides that if a private foundation makes payments under the conditions described above, the payment is not treated as made to a disqualified person for purposes of section 4941.

For charities making payments in connection with the September 11 attacks or attacks involving anthrax, but not in reliance on this provision, present law rules apply. It is expected

that, because of the severity of distress arising out of the September 11 and anthrax attacks and the extensive variety of needs that the thousands of victims and their family members may have, a wide array of expenses will be consistent with operation for exclusively charitable purposes. For instance, payments to permit a surviving spouse with young children to remain at home with the children rather than being forced to enter the workplace seem to be appropriate to maintain the psychological well-being of the entire family. Similarly, assistance with elementary and secondary school tuition to permit a child to remain in the same educational environment seems to be appropriate, as does assistance needed for higher education. Assistance with rent or mortgage payments for the family's principal residence or car loans also seems to be appropriate to forestall losses of a home or transportation that would cause additional trauma to families already suffering. Other types of assistance that the scope of the tragedy makes it difficult to anticipate may also serve a charitable purpose.

### **Effective Date**

The provision applies to payments made on or after September 11, 2001.

## **5. Exclusion for certain cancellations of indebtedness (sec. 105 of the bill)**

### **Present Law**

Gross income includes income that is realized by a debtor from the discharge of indebtedness, subject to certain exceptions for debtors in Title 11 bankruptcy cases, insolvent debtors, certain farm indebtedness, and certain real property business indebtedness (secs. 61(a)(12) and 108). In cases involving discharges of indebtedness that are excluded from gross income (except for discharges of real property business indebtedness), taxpayers generally exclude discharge of indebtedness from income but reduce tax attributes by the amount of the discharge of indebtedness. The amount of discharge of indebtedness excluded from income by an insolvent debtor not in a Title 11 bankruptcy case cannot exceed the amount by which the debtor is insolvent. For all taxpayers, the amount of discharge of indebtedness generally is equal to the difference between the adjusted issue price of the debt being cancelled and the amount used to satisfy the debt. These rules generally apply to the exchange of an old obligation for a new obligation, including a modification of indebtedness that is treated as an exchange (a debt-for-debt exchange).

Present law generally requires "applicable entities" to file information returns with the Internal Revenue Service regarding any discharge of indebtedness in the amount of \$600 or more (sec. 6050P). This requirement applies without regard to whether the debtor is subject to tax on the discharged indebtedness.<sup>15</sup> The term "applicable entities" includes: (1) any financial institution (as described in section 581 (relating to banks) or section 591(a) (relating to savings institutions)); (2) any credit union; (3) any corporation that is a direct or indirect subsidiary of an entity described in (1) or (2) which, by virtue of being affiliated with such entity, is subject to supervision and examination by a Federal or State agency regulating such entities; (4) the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit

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<sup>15</sup> Treas. Reg. sec. 1.6050P-1(a)(3).

Union Administration, certain other Federal executive agencies, and any successor or subunit of any of them; (5) an executive, judicial, or legislative agency (as defined in 31 U.S.C. sec. 3701(a)(4)); and (6) any other organization a significant trade or business of which is the lending of money. Failures to file correct information returns with the Internal Revenue Service or to furnish statements to taxpayers with respect to these discharges of indebtedness are subject to the same general penalty that is imposed with respect to failures to provide other types of information returns. Accordingly, the penalty for failure to furnish statements to taxpayers generally is \$50 per failure, subject to a maximum of \$100,000 for any calendar year. These penalties are not applicable if the failure is due to reasonable cause and not to willful neglect.

### **Explanation of Provision**

The bill provides that gross income does not include any amount realized from the discharge (in whole or in part) of indebtedness if the indebtedness is discharged by reason of the death of an individual incurred as a result of the September 11, 2001, attacks, or as a result of a terrorist attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002. In all cases, the provision applies only if the indebtedness is discharged because the individual died as a result of one the attacks. Therefore, except in circumstances that indicate the taxpayer was financially dependent upon an individual who died in one of the attacks, it is intended that the provision generally applies only if the taxpayer was, or became, an obligor or co-obligor with respect to indebtedness of an individual who died as a result of one of the attacks (e.g., the surviving spouse or estate of the individual).

The bill also provides that the information return filing requirements that otherwise apply to discharges of indebtedness do not apply with respect to any discharge of indebtedness that is excluded from gross income under this provision.

### **Effective Date**

This provision applies to discharges made on or after September 11, 2001, and before January 1, 2002.

## **B. Other Relief Provisions**

### **1. Exclusion of disaster relief payments (sec. 111 of the bill and new sec. 139 of the Code)**

#### **Present Law**

##### **Taxation of disaster relief payments**

Gross income includes all income from whatever source derived unless a specific exception applies (sec. 61). There is no specific statutory exclusion from income for disaster payments. However, various types of disaster payments made to individuals have been excluded from gross income under a general welfare exception.<sup>16</sup> The exception has been held to exclude from income payments made under legislatively provided social benefit programs for the promotion of the general welfare. The general welfare exception generally applies if the payments (1) are made from a governmental general welfare fund, (2) are for the promotion of the general welfare (on the basis of need and not to all residents), and (3) are made without respect to services rendered by the recipient. The exclusion generally applies to payments for food, medical, housing, personal property, transportation, and funeral expenses.

The general welfare exception generally does not apply to payments in the nature of income replacement, such as payments to individuals for lost wages or unemployment compensation or payments in the nature of income replacement to businesses.<sup>17</sup> Income replacement payments are includable in gross income, unless another exception applies.

Disaster relief payments may be excludable under other provisions. For example, payments made by charitable relief organizations may be excluded from the gross income of the recipients as gifts. Payments made in a business context generally are not treated as gifts. Factual issues may arise as to whether a payment in the context of a business relationship is a gift or taxable compensation for services. In general, payments made by an employer to, or for the benefit of, an employee are not excluded from gross income as gifts (sec. 102(c)).

Under present law, gross income generally does not include payments received as damages (other than punitive damages) on account of personal physical injury (including death) or sickness (sec. 104(a)(2)). Such payments are excluded from gross income regardless of whether received by suit or agreement and whether received as a lump sum or as periodic payments.

Section 406 of the Air Transportation Safety and System Stabilization Act provides for the payment of compensation for eligible individuals who suffered physical harm or death as a result of the terrorist-related aircraft crashes of September 11, 2001. There is no statutory provision specifically addressing the taxation of such compensation; however, such

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<sup>16</sup> Rev. Rul. 98-19, 1998-1 C.B. 840; Rev. Rul. 76-144, 1976-1 C.B. 17.

<sup>17</sup> IRS Publication 547 (Casualties, Disasters, and Thefts), page 5 (revised December 2000); Rev. Rul. 91-55, 1991-2 C.B. 321; Rev. Rul. 73-408, 1973-2 C.B. 15.



compensation may be excludable from income under generally applicable Code provisions (e.g., section 104).

### **Rules relating to charitable organizations**

In general, organizations described in section 501(c)(3) of the Code are exempt from taxation. Contributions to such organizations generally are tax deductible (sec. 170). Section 501(c)(3) organizations must be organized and operated exclusively for exempt purposes and no part of the net earnings of such organizations may inure to the benefit of any private shareholder or individual. An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, an organization described in section 501(c)(3) generally must serve a charitable class of persons that is indefinite or of sufficient size.

Tax-exempt private foundations are a type of organization described in section 501(c)(3) and are subject to special rules. Private foundations are subject to excise taxes on acts of self-dealing between the private foundation and a disqualified person with respect to the foundation (sec. 4941). For example, it is self-dealing if the income or assets of a private foundation are transferred to, or used by or for the benefit of a disqualified person, such as a substantial contributor to the foundation or a person in control of the foundation, and the benefit is not incidental or tenuous. Private foundations also are subject to excise taxes on taxable expenditures (sec. 4945). For example, it is a taxable expenditure if a private foundation pays an amount that does not further certain charitable purposes, or makes a grant to an individual for educational or other similar purposes without following certain procedures.

### **Explanation of Provision**

#### **Taxation of disaster relief payments**

The bill clarifies that any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act is excludable from gross income. In addition, the bill provides a specific exclusion from income for qualified disaster relief payments. No inference is intended as to the taxability of such payments under present law. In addition, the provision is not intended to preclude the exclusion of other types of payments under the general welfare exception or other Code provisions.

Qualified disaster relief payments include payments, from any source, to, or for the benefit of, an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster. Personal, family, and living expenses are intended to have the same meaning as when used in section 262. Personal expenses include personal property expenses.

Qualified disaster relief payments also include payments, from any source, to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence, or for the repair or replacement of its contents, to the extent that the need for the repair, rehabilitation, or replacement is attributable to a qualified disaster. For purposes of determining the tax basis of a rehabilitated residence, it is intended that qualified disaster relief

payments be treated in the same manner as amounts received on an involuntary conversion of a principal residence under section 121(d)(5) and sections 1033(b) and (h). A residence is not precluded from being a personal residence solely because the taxpayer does not own the residence; a rented residence can qualify as a personal residence.

Qualified disaster relief payments also include payments by a person engaged in the furnishing or sale of transportation as a common carrier on account of death or personal physical injuries incurred as a result of a qualified disaster. Thus, for example, payments made by commercial airlines to families of passengers killed as a result of a qualified disaster would be excluded from gross income.<sup>18</sup>

Qualified disaster relief payments also include amounts paid by a Federal, State or local government in connection with a qualified disaster in order to promote the general welfare. As under the present law general welfare exception, the exclusion does not apply to payments in the nature of income replacement, such as payments to individuals of lost wages, unemployment compensation, or payments in the nature of business income replacement.

Qualified disaster relief payments do not include payments for any expenses compensated for by insurance or otherwise. No change from present law is intended as to the deductibility of qualified disaster relief payments, made by an employer or otherwise, merely because the payments are excludable by the recipients. Thus, it is intended that payments excludable from income under the provision are deductible to the same extent they would be if they were includable in income. In addition, in light of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the exclusion, provided that the amount of the payments can be reasonably expected to be commensurate with the expenses incurred.

Particular payments may come within more than one category of qualified disaster relief payments; the categories are not intended to be mutually exclusive. Qualified disaster relief payments also are excludable for purposes of self-employment taxes and employment taxes. Thus, no withholding applies to qualified disaster relief payments.

Under the bill, a qualified disaster includes a disaster which results from a terroristic or military action (as defined in section 692(c)(2), as amended by the bill), a Presidentially declared disaster, a disaster which results from an accident involving a common carrier or from any other event which would be determined by the Secretary to be of a catastrophic nature, or, for purposes of payments made by a Federal, State or local government, a disaster designated by Federal, State or local authorities to warrant assistance.

The exclusion from income under section 139 does not apply to any individual identified by the Attorney General to have been a participant or conspirator in the terrorist-related aircraft

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<sup>18</sup> The exclusion from income applies irrespective of section 104(a)(2). As previously discussed, no inference is intended that payments excludable under section 139 would not be otherwise excludable under another Code provision.

crashes of September 11, 2001, or any other terrorist attack, or to a representative of such individual.

### **Rules applicable to charitable organizations making disaster relief payments**

Recognizing that employers and employees may also contribute to section 501(c)(3) organizations that make disaster relief payments, clarification of the type of disaster relief grants such organizations may make consistent with exempt purposes to assist individuals in distress as a result of the September 11 attacks, and more generally, may be helpful. Because the bill provides a special rule for certain payments made by reason of death, injury, wounding, or illness of an individual as a result of the September 11 attacks, and certain attacks involving anthrax, the following discussion relates to disaster relief generally.

Generally speaking, a charitable organization must serve a public rather than a private interest. Providing assistance to relieve distress for individuals suffering the effects of a disaster generally serves a public rather than a private interest if the assistance benefits the community as a whole, or if the recipients otherwise lack the resources to meet their physical, mental and emotional needs. Such assistance could include cash grants to provide for food, clothing, housing, medical care, funeral costs, transportation, education and other needs. All such grants must be need-based, taking into account the family's financial resources and their physical, mental and emotional well-being.

Charitable organizations generally are in the best position to determine the type and amount of, and appropriate beneficiaries for, disaster relief. Accordingly, it is expected that the Secretary will presume that a charity providing cash assistance in good faith to victims (and their family members) of a qualified disaster is acting consistent with the requirements of section 501(c)(3) if the class of beneficiaries is sufficiently large or indefinite and the charity can demonstrate that it is applying consistent, objective criteria for assessing need.

In addition to the rules described above that are applicable to all charities, special rules apply with respect to disaster relief provided by private foundations controlled by an employer. In such cases, clarification of the appropriate treatment of the foundation and the payments may be helpful. In general, a private foundation that is established and controlled by an employer violates the requirements of section 501(c)(3) if it provides benefits to a class of beneficiaries composed exclusively of the employer's employees, and such benefits are a form of compensation. The IRS recently held in a private letter ruling,<sup>19</sup> and in similar rulings, that a private foundation that is established, funded and controlled by a particular employer for the purpose of providing disaster relief for employees of a particular employer does not qualify as a charitable organization under section 501(c)(3), because the foundation is not operated solely for charitable purposes and is providing a benefit on behalf of the employer in violation of the prohibition on private inurement. Although private letter rulings do not constitute precedent for other taxpayers, considerable uncertainty exists regarding IRS' position relating to employer-controlled private foundations making disaster relief payments to employee-beneficiaries.

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<sup>19</sup> Priv. Ltr. Rul. 199914040.

If payments in connection with a qualified disaster are made by a private foundation to employees (and their family members) of an employer that controls the foundation, the presumption that the charity acts consistently with the requirements of section 501(c)(3) applies if the class of beneficiaries is large or indefinite and if recipients are selected based on an objective determination of need by an independent committee of the private foundation, a majority of the members of which are persons other than persons who are in a position to exercise substantial influence over the affairs of the controlling employer (determined under principles similar to those in effect under section 4958). The presumption does not apply to grants made to, or for the benefit of, a disqualified person or member of the selection committee. However, the absence of an independent selection committee does not necessarily mean that a foundation violates the requirements of section 501(c)(3). Other procedures and standards may be adequate substitutes to ensure that any benefit to the employer is incidental and tenuous. Similarly, providing need-based payments to employees and their survivors in response to a disaster other than a qualified disaster may well further charitable purposes consistent with the requirements of section 501(c)(3).

It is intended that an employer-controlled private foundation is not providing an inappropriate benefit and is not disqualified from exemption under section 501(c)(3) if it makes a payment to an employee or a family member of an employee (who is employed by an employer who controls the foundation) that relieves distress caused by a qualified disaster as defined under section 139, provided that it awards grants based on an objective determination of need using either an independent selection committee or adequate substitute procedures, as described above. It is further intended that section 102(c) of the Code, which provides that a transfer from an employer to, or for the benefit of, an employee generally is not excludable from income as a gift, does not apply to such payments. It is further expected that the Service will reconsider the ruling position it has taken to ensure that private foundations established and controlled by employers will have appropriate guidance, consistent with the principles outlined above, on the circumstances under which they may provide disaster assistance in connection with a qualified disaster specifically to the employers' employees.

It is intended that the making by a private foundation of disaster relief payments that qualify for the presumption stated above (1) will not be treated as an act of self-dealing under section 4941 merely because the recipient is an employee (or family member of an employee) of a disqualified person with respect to the foundation, (2) will be treated as in furtherance of section 170(c)(2)(B) purposes, and (3) will be considered to meet the requirements of section 4945(g) to the extent that they apply. Moreover, contributions to a section 501(c)(3) organization administering relief in a manner outlined above (including those made by employers and any of their employees) are deductible under the generally applicable rules of section 170. Finally, it is confirmed that need-based payments made by an employer-controlled foundation to an individual for exclusively charitable purposes generally are excludable from the recipients' income as gifts.<sup>20</sup> Thus, such payments made by a foundation to relieve distress caused by a qualified disaster are excludable from the recipients' income regardless of whether they fall within the scope of section 139, or any other such provision of the Code providing for

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<sup>20</sup> See, e.g., Rev. Rul. 99-44, 1999-2 C.B. 549.

an exclusion. The IRS is directed to issue prompt guidance to taxpayers relating to the requirements applicable to private foundations making disaster assistance payments. The principles discussed above should apply to foundations and public charities providing relief in response to both the September 11, 2001, disaster and future qualified disasters.

### **Effective Date**

The provision applies to taxable years ending on or after September 11, 2001.

## **2. Authority to postpone certain deadlines and required actions (sec. 102 of the bill, sec. 7508A of the Code, and new sec. 518 and sec. 4002 of the Employee Retirement Income Security Act of 1974)**

### **Present Law**

#### **In general**

In general, the Secretary of the Treasury may prescribe regulations under which a period of up to 120 days may be disregarded for performing various acts under the Internal Revenue Code, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, for any taxpayer determined by the Secretary to be affected by a Presidentially declared disaster (sec. 7508A).

The suspension of time may apply to the following acts:

- (1) Filing any return of income, estate, or gift tax (except employment and withholding taxes);
- (2) Payment of any income, estate, or gift tax (except employment and withholding taxes);
- (3) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;
- (4) Allowance of a credit or refund of any tax;
- (5) Filing a claim for credit or refund of any tax;
- (6) Bringing suit upon any such claim for credit or refund;
- (7) Assessment of any tax;
- (8) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
- (9) Collection of the amount of any liability in respect of any tax;

- (10) Bringing suit by the United States in respect of any liability in respect of any tax; and
- (11) Any other act required or permitted under the internal revenue laws specified in regulations prescribed by the Secretary of the Treasury.<sup>21</sup>

Individuals may, if they choose, perform any of these acts during the period of suspension.

On September 13, 2001, the IRS issued Notice 2001-61 providing relief to taxpayers affected by the September 11, 2001, terrorist attack. Prior to issuance of this notice, the President had declared certain affected areas to be disaster areas. In addition, on September 14, 2001, the IRS issued Notice 2001-63 providing additional tax relief to taxpayers who found it difficult to meet their tax filing and payment obligations.

### **Employee benefit plans**

Questions have arisen about the scope of section 7508A in relation to employee benefit plans. Some acts related to employee benefit plans are not clearly covered by the suspension. For example, a plan sponsor or plan administrator may be required to provide a notice to plan participants or to make a plan contribution, or a plan participant may be required to make a benefit election or take a distribution under the plan. In addition, some acts related to employee benefit plans may be required or provided for under the Employee Retirement Income Security Act ("ERISA") or under the terms of the plan, rather than under the Internal Revenue Code. For example, on September 14, 2001, the Department of Labor issued News Release No. 01-36, announcing that the Pension and Welfare Benefits Administration, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation were extending the deadline for filing Form 5500 and Form 5500-EZ.

### **Explanation of Provision**

#### **In general**

The bill redrafts section 7508A to expand its scope and to clarify its application. Specifically, the bill permits the Secretary to suspend the period of time under this provision for up to one year (increased from up to 120 days). The bill also clarifies that interest on underpayments may be waived or abated pursuant to section 7508A with respect to either a declared disaster or a terroristic or military action. The bill clarifies that the Secretary of the Treasury has the authority to postpone actions pursuant to section 7508A in response to a terroristic or military action, regardless of whether a disaster area has been declared by the President in connection with the action. The bill facilitates the prompt issuance of guidance by the Secretary of the Treasury with respect to section 7508A by removing the requirement that regulations be published listing the scope of additional actions that may be postponed pursuant to

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<sup>21</sup> Treas. Reg. sec. 301.7508A-1(c)(1)(vii) states, with respect to this clause, that it encompasses "any other act specified in a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance published in the Internal Revenue Bulletin."

section 7508(a)(1)(K); accordingly, the Secretary may provide authoritative guidance via a notice or other mechanism of the Secretary's choice that may be issued more rapidly. It is intended that the Secretary construe this authority as broadly as is necessary and appropriate to respond to specific disasters or terroristic or military actions. The authority to postpone "any ... act" is sufficiently broad to encompass, for example, specific deadlines enumerated in the Code, such as those in section 1031 (relating to the exchange of property held for productive use or investment). Similarly, it is intended that the Secretary utilize this authority to address issues that arise from the discovery of tax information subsequent to the filing of a tax return that would affect the tax liability reported on that return.

### **Employee benefit plans**

The bill expands and clarifies the scope of the deadlines and required actions that may be postponed pursuant to section 7508A. The bill provides that the Secretary of the Treasury may prescribe a period of up to one year which may be disregarded in determining the date by which any action by a pension or other employee benefit plan, or by a plan sponsor, administrator, participant, beneficiary or other person would be required or permitted to be completed. The bill provides similar authority to the Secretary of Labor and the Pension Benefit Guaranty Corporation with respect to actions within their respective jurisdictions.

The bill is not limited to actions under the Internal Revenue Code. Accordingly, actions under ERISA or under the terms of the plan come within the scope of this provision. Acts performed within the extended period are considered timely under the Internal Revenue Code, ERISA, and the plan. In addition, a plan is not treated as operating in a manner inconsistent with its terms or in violation of its terms merely because acts provided for under the plan are performed during the extended period.

Examples of acts covered by the provision include (1) the filing of a form with the IRS, Department of Labor or the Pension Benefit Guaranty Corporation, (2) an employer's contribution to the plan of required quarterly amounts for the current year or the prior year minimum funding amounts, (3) the filing of an application for a waiver of the minimum funding standard, (4) the payment of premiums to the Pension Benefit Guarantee Corporation, (5) a participant's election of a form of benefits under a plan, (6) the plan administrator's distribution of benefits in accordance with a participant's election, (7) notice to an employee of eligibility for continuation coverage under a group health plan, and (8) an employee's election of continuation coverage.

### **Effective Date**

The provision applies to disasters and terroristic or military actions occurring on or after September 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation on or after the date of the enactment.

### **3. Application of certain provisions to terroristic or military actions (sec. 113 of the bill and secs. 104 and 692 of the Code)**

#### **Present Law**

##### **Taxation of disability income of U.S. employees related to terrorist activity outside the United States**

Gross income does not include amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terrorist attack (as determined by the Secretary of State) which occurred while the individual was performing official duties as an employee of the United States outside the United States (sec. 104(a)(5)).

##### **Income tax relief for military and civilian U.S. employees who die as a result of terrorist activity outside the United States**

Military and civilian employees of the United States who die as a result of wounds or injury incurred outside the United States in a terroristic or military action are not subject to income tax for the year of death and for prior taxable years beginning with the taxable year prior to the taxable year in which the wounds or injury were incurred. Accordingly, if such an individual is injured and dies in the same taxable year, this exemption from income tax is available for the taxable year of death as well as the prior taxable year.

#### **Explanation of Provision**

##### **Taxation of disability income related to terrorist activity**

The bill expands the present-law exclusion from gross income for disability income of U.S. civilian employees attributable to a terrorist attack outside the United States to apply to disability income received by any individual attributable to a terroristic or military action.

##### **Income tax relief for individuals who die as a result of terrorist activity**

The bill extends the income tax relief provided under present law to U.S. military and civilian personnel who die as a result of terroristic activity or military action outside the United States to such personnel regardless of where the terroristic activity or military action occurred.

#### **Effective Date**

The provision is effective for taxable years ending on or after September 11, 2001.



#### **4. Clarification that the special deposit rules provided under the Air Transportation Safety and Stabilization Act do not apply to employment taxes (sec. 114 of the bill and sec. 301 of the Air Transportation Safety and Stabilization Act)**

##### **Present Law**

Section 301 of the Air Transportation Safety and System Stabilization Act<sup>22</sup> provides a special rule for the deposit of certain taxes. If a deposit of these taxes was required to be made after September 10, 2001, and before November 15, 2001, they are treated as timely made if deposited by November 15, 2001. The Secretary of the Treasury is given the authority to extend this deadline further, but no later than January 15, 2002. For eligible air carriers, the special deposit rules are applicable to the excise taxes imposed on air travel. The special deposit rules were also applied inadvertently to the deposit of the following employment taxes: both the employer and employee portions of FICA, railroad retirement taxes, and income taxes withheld by employers from employees.

##### **Explanation of Provision**

The applicability of these special deposit rules to employment taxes is repealed. The applicability of these special deposit rules to excise taxes is unaffected. It is intended that no penalties be imposed with respect to taxes that were not deposited timely in reliance on the provisions of the Air Transportation Safety and System Stabilization Act prior to the enactment of this provision.

##### **Effective Date**

The provision is effective as if included in section 301 of the Air Transportation Safety and System Stabilization Act.

#### **5. Treatment of purchase of structured settlements (sec. 115 of the bill and new sec. 5891 of the Code)**

##### **Present Law**

Present law provides tax-favored treatment for structured settlement arrangements for the payment of damages on account of personal injury or sickness.

Under present law, an exclusion from gross income is provided for amounts received for agreeing to a qualified assignment to the extent that the amount received does not exceed the aggregate cost of any qualified funding asset (sec. 130). A qualified assignment means any assignment of a liability to make periodic payments as damages (whether by suit or agreement) on account of a personal injury or sickness (in a case involving physical injury or physical sickness), provided the liability is assumed from a person who is a party to the suit or agreement, and the terms of the assignment satisfy certain requirements. Generally, these requirements are that (1) the periodic payments are fixed as to amount and time; (2) the payments cannot be

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<sup>22</sup> Pub. L. No. 107-42.

accelerated, deferred, increased, or decreased by the recipient; (3) the assignee's obligation is no greater than that of the assignor; and (4) the payments are excludable by the recipient under section 104(a)(1) or (2) as workmen's compensation for personal injuries or sickness, or as damages on account of personal physical injuries or physical sickness.

A qualified funding asset means an annuity contract issued by an insurance company licensed in the U.S., or any obligation of the United States, provided the annuity contract or obligation meets statutory requirements. An annuity that is a qualified funding asset is not subject to the rule requiring current inclusion of the income on the contract which generally applies to annuity contract holders that are not natural persons (e.g., corporations) (sec. 72(u)(3)(C)). In addition, when the payments on the annuity are received by the structured settlement company and included in income, the company generally may deduct the corresponding payments to the injured person, who, in turn, excludes the payments from his or her income (sec. 104). Thus, neither the amount received for agreeing to the qualified assignment of the liability to pay damages, nor the income on the annuity that funds the liability to pay damages, generally is subject to tax.

The exclusion for recipients of the periodic payments received under a structured settlement arrangement as damages for personal physical injuries or physical sickness can be contrasted with the treatment of investment earnings that are not paid as damages. If a recipient of damages chooses to receive a lump sum payment (excludable from income under sec. 104), and then to invest it himself, generally the earnings on the investment are includable in income. For example, if the recipient uses the lump sum to purchase an annuity contract providing for periodic payments, then a portion of each payment under the annuity contract is includable in income, and the balance is excludable under present-law rules based on the ratio of the individual's investment in the contract to the expected return on the contract (sec. 72(b)).

Present law provides that the payments to the injured person under the qualified assignment cannot be accelerated, deferred, increased, or decreased by the recipient (sec. 130). Consistent with these requirements, it is understood that contracts under structured settlement arrangements generally contain anti-assignment clauses. It is understood, however, that injured persons may nonetheless be willing to accept discounted lump sum payments from certain "factoring" companies in exchange for their payment streams. The tax effect on the parties of these transactions may not be completely clear under present law.

### **Explanation of Provision**

The bill generally imposes an excise tax on any person who acquires certain payment rights under a structured settlement arrangement from a structured settlement recipient for consideration. The amount of the excise tax is 40 percent of the excess of (1) the undiscounted amount of the payments being acquired, over (2) the total amount actually paid to acquire them.

The 40-percent excise tax does not apply, however, if the transfer is approved in advance in a final order, judgment or decree that: (1) finds that the transfer does not contravene any Federal or State statute or the order of any court or responsible administrative authority; (2) finds that the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and (3) is issued under an applicable State statute by a court or is issued

by the responsible administrative authority. Rules are provided for determining the applicable State statute.

The provision also provides that the acquisition transaction does not affect the application of certain present-law rules, if those rules were satisfied at the time the structured settlement was entered into. The rules are section 130 (relating to an exclusion from gross income for personal injury liability assignments), section 72 (relating to annuities), sections 104(a)(1) and (2) (relating to an exclusion for amounts received under workers' compensation acts and for damages on account of personal physical injuries or physical sickness), and section 461(h) (relating to the time of economic performance in determining the taxable year of a deduction).

### **Effective Date**

The provision generally is effective for acquisition transactions entered into on or after 30 days following enactment. A transition rule applies during the period from that date to July 1, 2002. Under the transition rule, if no applicable State law (relating to the best interest of the payee) applies to a transfer during that period, then the exception from the 40 percent excise tax is available without the otherwise required court (or administrative) order, provided certain disclosure requirements are met. Under the transition rule, the person acquiring the structured settlement payments is required to disclose in advance to the payee: (1) the amounts and due dates of the payments to be transferred; (2) the aggregate amount to be transferred; (3) the consideration to be received by the payee; (4) the discounted present value of the transferred payments; and (5) the expenses to be paid by the payee or deducted from the payee's proceeds.

The provision providing that the acquisition transaction does not affect the application of certain present-law rules is effective for transactions entered into before, on or after the 30th day following enactment.

## **6. Personal exemption deduction for certain disability trusts (sec. 116 of the bill and sec. 642 of the Code)**

### **Present Law**

Present law provides a \$300 personal exemption for trusts that are required by their governing instruments to currently distribute all of their income. For other trusts, present law provides a \$100 personal exemption. These deductions are in lieu of the personal exemption that generally is provided under section 151 for individuals (sec. 642(b)).

Under present law, a grantor who transfers property to a trust while retaining certain powers or interests over the trust is treated as the owner of the trust for income tax purposes under the so-called "grantor trust rules" (secs. 671-677). Similarly, a third party who is not adverse to the grantor is treated as the owner of the trust under these rules to the extent that the third party is granted certain powers over the trust. If a grantor or third party is treated as the owner of a trust (a "grantor trust"), the income and deductions of the trust are included directly in the taxable income of the grantor or third party. Because the personal exemption under section 642(b) applies to income that is taxable to a trust (rather than a grantor or third party), the personal exemption under section 642(b) does not apply to grantor trusts.

### **Explanation of Provision**

The bill provides that certain disability trusts may claim a personal exemption in an amount that is based upon the personal exemption provided for individuals under section 151(d), rather than the \$300 or \$100 personal exemption provided under present law. The provision applies to taxable disability trusts described in 42 U.S.C. sec. 1396p(c)(2)(B)(iv) (relating to the treatment, for purposes of determining eligibility for medical assistance under the Social Security Act, of assets transferred to a trust established solely for the benefit of a disabled individual under 65 years of age).

The provision only applies to disability trusts the beneficiaries of which have been determined by the Commissioner of Social Security to be disabled (other than holders of a remainder or reversionary interest in the trust), within the meaning of 42 U.S.C. sec. 1382c(a)(3) (relating to the definition of a “disabled individual” for purposes of determining eligibility for Supplemental Security Income).

The provision applies if all of the beneficiaries of the trust at the end of the taxable year are determined under 42 U.S.C. sec. 1382c(a)(3) to be disabled for some portion of such year. Thus, a disability trust may claim the personal exemption under the provision even if one or more of the beneficiaries becomes no longer disabled during the taxable year. However, the trust may claim the personal exemption for the following taxable year only if such individual or individuals are no longer beneficiaries of the trust at the end of the following taxable year (i.e., all remaining beneficiaries of the trust at the end of the following taxable year are disabled or were disabled during some portion of such year). In the case of a disability trust with a single beneficiary, the trust may claim the personal exemption under the provision for the taxable year during which the beneficiary becomes no longer disabled, but not for subsequent taxable years.

The personal exemption provided for disability trusts under the provision is equal in amount to the section 151(d) personal exemption for unmarried individuals with no dependents and is subject to a phaseout, which is determined by reference to the phaseout of the personal exemption for such individuals under sec. 151(d)(3)(C)(iii). For purposes of computing the phaseout of the personal exemption under the provision, the adjusted gross income of the trust is determined by reference to section 67(e) (relating to the determination of adjusted gross income of estates and trusts for purposes of computing the 2-percent floor on miscellaneous itemized deductions).

The provision does not affect the determination of whether a disability trust is treated as a grantor trust under the present-law grantor trust rules, and does not change the inapplicability of the personal exemption under section 642(b) to grantor trusts. Thus, the provision does not apply to disability trusts that are treated as grantor trusts.

### **Effective Date**

The provision applies to taxable years of disability trusts ending on or after September 11, 2001.

**C. Disclosure of Tax Information in Terrorism and National Security Investigations  
(sec. 201 of the bill and sec. 6103 of the Code)**

**Present Law**

**In general**

Returns and return information are confidential (sec. 6103). A “return” is any tax return, information return, declaration of estimated tax, or claim for refund filed under the Code on behalf of or with respect to any person. The term return also includes any amendment or supplement, including supporting schedules, attachments, or lists, which are supplemental to or are part of a filed return. Return information is defined broadly. It includes the following information:

- a taxpayer’s identity, the nature, source or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments;
- whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing;
- any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense;
- any part of any written determination or any background file document relating to such written determination which is not open to public inspection under section 6110;
- any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to the agreement or any application for an advance pricing agreement; and
- any agreement under section 7121 (relating to closing agreements), and any similar agreement, and any background information related to such agreement or request for such agreement (sec. 6103(b)(2)).

The term “return information” does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. “Taxpayer return information” means return information which is filed with, or furnished to, the Internal Revenue Service by or on behalf of the taxpayer to whom such return information relates.

Section 6103 provides that returns and return information may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Internal Revenue Code. Section 6103 contains a number of exceptions to this general rule of nondisclosure that authorize disclosure in specifically

identified circumstances (including nontax criminal investigations) when certain conditions are satisfied.

Recordkeeping and safeguard requirements also are imposed. These requirements establish a system of records to keep track of disclosure requests and disclosures and to ensure that the information is securely stored and that access to the information is restricted to authorized persons. These conditions and safeguards are intended to ensure that an individual's right to privacy is not unduly compromised and the information is not misused or improperly disclosed. The IRS also must submit reports to the Joint Committee on Taxation and to the public regarding requests for and disclosures made of returns and return information 90 days after the close of the calendar year (sec. 6103(p)(3)). Criminal and civil sanctions apply to the unauthorized disclosure or inspection of returns and return information (secs. 7213, 7213A, and 7431).

### **Disclosure of returns and return information for use in nontax criminal investigations - by *ex parte* court order**

A Federal agency enforcing a nontax criminal law must obtain an *ex parte* court order to receive a return or taxpayer return information (i.e., that information submitted by or on behalf of a taxpayer to the IRS) (sec. 6103(i)(1)).<sup>23</sup> Only the Attorney General, Deputy Attorney General, Assistant Attorney Generals, United States Attorneys, Independent Counsels, or an attorney in charge of an organized crime strike force may authorize an application for the order.

For a judge or magistrate to grant such an order, the application must demonstrate that:

- there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;
- there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act;
- the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act; and
- the information sought reasonably cannot be obtained, under the circumstances, from another source.

Pursuant to the *ex parte* order, the information may be disclosed to officers and employees of the Federal agency who are personally and directly engaged in (1) the preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is a party, (2) any investigation which may result in such a proceeding, or (3) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party.

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<sup>23</sup> Return information other than that submitted by the taxpayer may be obtained by *ex parte* court order under this provision as well.

A Federal agency may obtain, by *ex parte* court order, the return and return information of a fugitive from justice for purposes of locating such individual (sec. 6103(i)(5)). The application for an *ex parte* order must establish that (1) a Federal felony arrest warrant has been issued and the taxpayer is a fugitive from justice, (2) the return or return information is sought exclusively for locating the fugitive taxpayer, and (3) reasonable cause exists to believe the information may be relevant in determining the location of the fugitive. Only the Attorney General, Deputy Attorney General, Assistant Attorney Generals, United States Attorneys, Independent Counsels, or an attorney in charge of an organized crime strike force may authorize an application for this order. Once a court grants the application for an *ex parte* order, the return or return information may be disclosed to any Federal agency exclusively for purposes of locating the fugitive individual.

### **Agency request procedure for disclosure of return information other than taxpayer return information to the IRS for use in criminal investigations**

For nontax criminal investigations, Federal agencies can obtain return information, other than taxpayer return information, without a court order. For nontax criminal purposes, the head of a Federal agency and other persons specifically identified by section 6103 may make a written request for return information that was not provided to the IRS by the taxpayer or his representative (sec. 6103(i)(2)). The written request must contain:

- the taxpayer's name, and address;
- the taxable period for which the information is sought;
- the statutory authority under which the criminal investigation or judicial, administrative or grand jury proceeding is being conducted; and
- the reasons why such disclosure is or may be relevant to the investigation or proceeding. Unlike the requirements for an *ex parte* order, the requesting agency does not have to demonstrate that the information sought is not reasonably available elsewhere.

### **Disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances**

#### Criminal activities

Section 6103 permits the IRS to disclose return information (other than taxpayer return information) that may be evidence of a crime (sec. 6103(i)(3)(A)). The IRS may make the disclosure in writing to the head of a Federal agency charged with enforcing the laws to which the crime relates. Return information also may be disclosed to apprise Federal law enforcement of the imminent flight of any individual from Federal prosecution. The IRS may not disclose returns under this provision.

#### Emergency circumstances

In cases of imminent danger of death or physical injury to an individual, the IRS may disclose return information to Federal and State law enforcement agencies (sec. 6103(i)(3)(B)). The statute does not grant authority, however, to disclose return information to local law

enforcement, such as city, county, or town police. The statute does not permit the IRS to disclose return information concerning terrorist activities if there is no imminent danger of death or physical injury to an individual.

### **Tax convention information**

With limited exceptions, the Code prohibits the disclosure of tax convention information (sec. 6105). A tax convention is any: (1) income tax or gift and estate tax convention, or (2) other convention or bilateral agreement (including multilateral conventions and agreements and any agreement with a possession of the United States) providing for the avoidance of double taxation, the prevention of fiscal evasion, nondiscrimination with respect to taxes, the exchange of tax relevant information with the United States, or mutual assistance in tax matters. Tax convention information is any: (1) agreement entered into with the competent authority of one or more foreign governments pursuant to a tax convention; (2) application for relief under a tax convention; (3) background information related to such agreement or application; (4) document implementing such agreement; and (5) other information exchanged pursuant to a tax convention which is treated as confidential or secret under the tax convention.

The general rule that tax convention information cannot be disclosed does not apply to the disclosure of tax convention information to persons or authorities (including courts and administrative bodies) that are entitled to disclosure under the tax convention and any generally applicable procedural rules regarding applications for relief under a tax convention. It also does not apply to the disclosure of tax convention information not relating to a particular taxpayer if the IRS determines, after consultation with the parties to the tax convention, that such disclosure would not impair tax administration.

### **Explanation of Provision**

#### **In general**

The bill expands the availability of returns and return information for purposes of investigating terrorist incidents, threats, or activities, and for analyzing intelligence concerning terrorist incidents, threats, or activities. In general, under the bill, returns and taxpayer return information must be obtained pursuant to an *ex parte* court order. Return information, other than taxpayer return information, generally is available upon a written request meeting specific requirements. Present-law safeguards, recordkeeping, reporting requirements, and civil and criminal penalties for unauthorized disclosures apply to disclosures made pursuant to the bill. The bill also permits the disclosure of tax convention information for the same purposes and in the same manner that return information is made available under the bill. No disclosures may be made under the bill after December 31, 2003.

#### **Disclosure of returns and return information including taxpayer return information - by *ex parte* court order**

Ex parte court orders sought by Federal law enforcement and Federal intelligence agencies.--The bill permits, pursuant to an *ex parte* court order, the disclosure of returns and return information (including taxpayer return information) to certain officers and employees of a



Federal law enforcement agency or Federal intelligence agency. These officers and employees are required to be personally and directly engaged in any investigation of, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. These officers and employees are permitted to use this information solely for their use in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceeding, pertaining to any such terrorist incident, threat, or activity.

The Attorney General, Deputy Attorney General, Associate Attorney General, an Assistant Attorney General, or a United States attorney, may authorize the application for the *ex parte* court order to be submitted to a Federal district court judge or magistrate. The Federal district court judge or magistrate would grant the order if based on the facts submitted he or she determines that:

- there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity; and
- the return or return information is sought exclusively for the use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

Special rule for *ex parte* court ordered disclosure initiated by the IRS.--If the Secretary of Treasury possesses returns or return information that may be related to a terrorist incident, threat, or activity, the Secretary of the Treasury (or his delegate), may on his own initiative, authorize an application for an *ex parte* court order to permit disclosure to Federal law enforcement. In order to grant the order, the Federal district court judge or magistrate must determine that there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity. Under the bill, the information may be disclosed only to the extent necessary to apprise the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity and for officers and employees of that agency to investigate or respond to such terrorist incident, threat, or activity. Further, use of the information is limited to use in a Federal investigation, analysis, or proceeding concerning a terrorist incident, threat, or activity. Because the Department of Justice represents the Secretary of the Treasury in Federal district court, the Secretary is permitted to disclose returns and return information to the Department of Justice as necessary and solely for the purpose of obtaining the special IRS *ex parte* court order.

### **Disclosure of return information other than taxpayer return information**

Disclosure by the IRS without a request.--The bill permits the IRS to disclose return information, other than taxpayer return information, related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. As under present law Code section 6103(i)(3)(A), the IRS on its own initiative and without a written request may make this disclosure. The head of the Federal law enforcement agency may disclose information to officers and employees of such agency to the extent necessary to

investigate or respond to such terrorist incident, threat, or activity. A taxpayer's identity is not treated as return information supplied by the taxpayer or his or her representative.

Disclosure upon written request of a Federal law enforcement agency.--The bill permits the IRS to disclose return information, other than taxpayer return information, to officers and employees of Federal law enforcement upon a written request satisfying certain requirements. The request must: (1) be made by the head of the Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and (2) set forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity. The information is to be disclosed to officers and employees of the Federal law enforcement agency who would be personally and directly involved in the response to or investigation of terrorist incidents, threats, or activities. The information is to be used by such officers and employees solely for such response or investigation.

The bill permits the redisclosure by a Federal law enforcement agency to officers and employees of State and local law enforcement personally and directly engaged in the response to or investigation of the terrorist incident, threat, or activity. The State or local law enforcement agency must be part of an investigative or response team with the Federal law enforcement agency for these disclosures to be made.

Disclosure upon request from the Departments of Justice or Treasury for intelligence analysis of terrorist activity.--Upon written request satisfying certain requirements discussed below, the IRS is to disclose return information (other than taxpayer return information<sup>24</sup>) to officers and employees of the Department of Justice, Department of Treasury, and other Federal intelligence agencies, who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence or investigation concerning terrorist incidents, threats, or activities. Use of the information is limited to use by such officers and employees in such investigation, collection, or analysis.

The written request is to set forth the specific reasons why the information to be disclosed is relevant to a terrorist incident, threat, or activity. The request is to be made by an individual who is (1) an officer or employee of the Department of Justice or the Department of Treasury, (2) appointed by the President with the advice and consent of the Senate, and (3) responsible for the collection, and analysis of intelligence and counterintelligence information concerning terrorist incidents, threats, or activities. The Director of the United States Secret Service also is an authorized requester under the bill.

### **Tax convention information**

The bill permits the disclosure of tax convention information on the same terms as return information may be disclosed under the bill, except that in the case of tax convention information provided by a foreign government, no disclosure may be made under this paragraph without the written consent of the foreign government.

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<sup>24</sup> A taxpayer's identity is not treated as having been supplied by the taxpayer or his representative.

## **Definitions**

The term “terrorist incident, threat, or activity” is statutorily defined to mean an incident, threat, or activity involving an act of domestic terrorism or international terrorism, as both of those terms were defined in the recently enacted USA PATRIOT Act.<sup>25</sup>

## **Effective Date**

The provision is effective for disclosures made on or after the date of enactment.

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<sup>25</sup> 18 U.S.C. sec. 2331.

**D. No Impact on Social Security Trust Funds**  
**(sec. 301 of the bill)**

**Present Law**

Present law provides for the transfer of Social Security taxes and certain self-employment taxes to the Social Security trust fund. In addition, the income tax collected with respect to a portion of Social Security benefits included in gross income is transferred to the Social Security trust fund.

**Explanation of Provision**

The bill provides that the Secretary is to annually estimate the impact of the bill on the income and balances of the Social Security trust fund. If the Secretary determines that the bill has a negative impact on the income and balances of the fund, then the Secretary is to transfer from the general revenues of the Federal government an amount sufficient so as to ensure that the income and balances of the Social Security trust funds are not reduced as a result of the bill. Such transfers are to be made not less frequently than quarterly.

The bill provides that the provisions of the bill are not to be construed as an amendment of title II of the Social Security Act.

**Effective Date**

The provision is effective on the date of enactment.