

ACT 208

S.B. NO. 1130

A Bill for an Act Relating to Tax Relief for Deployed Military Personnel.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that a large number of Hawaii's sons and daughters have been deployed to the Persian Gulf over the past five months. In addition to the personal sacrifice and commitment offered by these members of the forces of the Army, Navy, Air Force, Coast Guard, and Marine Corps, the legislature is aware of the emotional, economic, and personal hardship experienced by their families as a result of long absences and the imminent perils of their assignments.

On January 21, 1991, President George Bush, by Executive Order, officially designated the Persian Gulf as a combat zone for federal income tax purposes. The effect of this designation is to (1) suspend the tax obligations of military personnel as long as they remain in a combat zone; (2) provide for a one hundred eighty-day period after leaving a combat zone during which to fulfill their tax obligations; (3) exclude certain amounts of military pay from federal income tax; and (4) forgive tax liability in cases where a soldier dies while serving in a combat zone.

In addition to these tax relief measures, Congress has adopted legislation signed into law by President Bush as Public Law 102-2.

The purpose of this Act is to provide similar state tax relief for those deployed military personnel and their families. This bill would also conform to section 7508 of the Internal Revenue Code and Public Law 102-2 which will permit individuals serving with or in support of U.S. armed forces in operation desert shield and storm deployment areas (and their spouses) to defer (1) filing tax returns; (2) paying estimated taxes; (3) filing a claim for credit or refund of tax; and (4) other actions associated with income tax requirements. This deferral would be permitted during the period of service or associated hospitalization inside or outside the United States, and for an additional 180 days.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231- Time for performing certain acts postponed by reason of service in combat zone.** (a) This section shall apply to state tax laws set forth in this title 14 that provide for the filing with the director of taxation of a return or statement of the tax or payment of the amount taxable.

(b) This section applies to any individual serving in the armed forces of the United States, or serving in support of the armed forces, in an area designated by the President of the United States by Executive Order as a combat zone for purposes of section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended, at any time during the periods designated by the President by Executive order as the periods of combatant activities in the zone for the purposes of section 112, or hospitalized as a result of injury received while serving in such an area during such time.

The period of service in the zone, plus the period of continuous qualified hospitalization attributable to the injury, and the next one hundred eighty days thereafter, shall be disregarded in determining in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of the individual:

- (1) Whether any of the following acts was performed within the time prescribed therefor:
  - (A) Filing any tax return (except income tax withheld at source);
  - (B) Payment of any tax (except income tax withheld at source) or any installment thereof or any other liability to the State in respect of such tax;
  - (C) Filing a tax appeal pursuant to chapter 232 or an action to recover moneys paid under protest pursuant to section 40-35(b) if the payment was for tax liability imposed pursuant to this title 14;
  - (D) Allowance of a credit or refund of any tax;
  - (E) Filing a claim for credit or refund of any tax;
  - (F) Bringing suit upon any claim for credit or refund;
  - (G) Assessment of any tax;
  - (H) Giving or making any notice or demand for the payment of any tax or with respect to any liability to the State in respect of any tax;
  - (I) Collection by the director, by levy or otherwise, of the amount of any liability in respect of any tax;
  - (J) Bringing suit by the State or any representative of the State on its behalf in respect of any liability in respect of any tax; and
  - (K) Any other act required or permitted under the tax or revenue laws of the State pursuant to rules adopted by the director.
- (2) The amount of any credit or refund.

(c) This section shall apply to the spouse of any individual entitled to the benefits of this section. The preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than two years after the date designated under section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended, as the date of termination of combatant activities in a combat zone.

(d) The period of service in a designated combat zone shall include the period during which an individual entitled to benefits under this section is in a missing status, within the meaning of section 6013(f)(3) (with respect to joint return where an individual is in missing status) of the federal Internal Revenue Code of 1986, as amended.

(e) Notwithstanding subsection (b), any action or proceeding authorized by section 231-24 (regardless of the taxable year for which the tax arose) as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the director determines that collection of the amount of any assessment would be jeopardized by delay, subsection (b) shall not operate to stay collection of the amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this subsection the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (b). In any case to which this subsection relates, if the director is required to give any notice to or make any demand upon any person, the requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of the person last known to the director is in an area for which United States post offices under instructions of the Postmaster General, by reason of the combatant activities, are not accepting mail for delivery at the time the notice or demand is signed. In this case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(f) The assessment or collection of any tax or of any liability to the State in respect of any tax or any action or proceeding by or on behalf of the State in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to subsection (b), unless prior to the assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (b).

(g) Treatment of individuals performing Desert Shield services:

- (1) Any individual who performed Desert Shield services (and the spouse of the individual) shall be entitled to the benefits of this section in the same manner as if the services were services referred to in subsection (b).
- (2) For purposes of this subsection, "Desert Shield services" means any services in the armed forces of the United States or in support of the armed forces if these services are performed in the area designated by the President as the "Persian Gulf Desert Shield area" and the services are performed during the period beginning on August 2, 1990, and ending on the date on which any portion of the Persian Gulf Desert Shield area is designated by the President as a combat zone pursuant to section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended.

(h) For purposes of this section, "qualified hospitalization" means any hospitalization outside the United States and any hospitalization inside the United States, except that not more than five years of hospitalization inside the United States may be taken into account under this subsection. The five-year period of qualified hospitalization inside the United States shall not apply for purposes of applying this section with respect to the spouse of an individual entitled to the benefits of subsection (b).

(i) If an individual is entitled to the benefits of this section with respect to any return and the return is timely filed (determined after the application of subsection (b)) section 231-23(d)(1) with respect to the limitations for computing interest shall not apply and interest shall be paid from the due date of the return regardless of when the return is filed.

(j) If an individual is entitled to the benefits of subsection (b), then, with respect to claiming any credit pursuant to state tax laws set forth in this title 14 and any general credit enacted pursuant to Article VII, section 6, of the State

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Constitution, the limitation period prescribed for such claims shall be determined after the application of subsection (b).”

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§235- Abatement of income taxes of members of armed forces on death.** Section 692 (with respect to income taxes of members of armed forces on death) of the Internal Revenue Code shall be operative for the purposes of this chapter and the department shall have the authority to abate income taxes as provided in section 692.

For the purposes of this section “member of the Armed Forces of the United States” shall have the same meaning as provided by section 7701(a)(15) of the Internal Revenue Code.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act, upon its approval, shall take effect retroactive to August 2, 1990.

(Approved May 30, 1991.)

### Note

1. Edited pursuant to HRS §23G-16.5.