

107TH CONGRESS  
2D SESSION

# S. 2802

To amend the Internal Revenue Code of 1986 to provide tax fairness for military families.

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IN THE SENATE OF THE UNITED STATES

JULY 26, 2002

Mr. CLELAND introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide tax fairness for military families.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Families Tax  
5 Fairness Act”.

6 **SEC. 2. EXCLUSION FROM GROSS INCOME FOR DEPART-**  
7 **MENT OF DEFENSE PAYMENTS ON STUDENT**  
8 **LOANS OF MEMBERS OF THE ARMED FORCES.**

9 (a) IN GENERAL.—Part III of subchapter B of chap-  
10 ter 1 of the Internal Revenue Code of 1986 (relating to

1 items specifically excluded from gross income) is amended  
 2 by inserting after section 139 the following new section:

3 **“SEC. 139A. CERTAIN PAYMENTS ON STUDENT LOANS OF**  
 4 **MEMBERS OF ARMED FORCES.**

5 “Gross income shall not include any education loan  
 6 repayment made by the Federal Government on behalf of  
 7 a member of the Armed Forces of the United States.

8 (b) CLERICAL AMENDMENT.—The table of sections  
 9 for such part III is amended by inserting after the item  
 10 relating to section 139 the following new item:

“Sec. 139A. Certain payments on student loans of members of  
 Armed Forces.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to payments in taxable years end-  
 13 ing after the date of the enactment of this Act.

14 **SEC. 3. DEDUCTION OF CERTAIN EXPENSES OF MEMBERS**  
 15 **OF THE RESERVE COMPONENT.**

16 (a) DEDUCTION ALLOWED.—Section 162 of the In-  
 17 ternal Revenue Code of 1986 (relating to certain trade or  
 18 business expenses) is amended by redesignating subsection  
 19 (p) as subsection (q) and inserting after subsection (o) the  
 20 following new subsection:

21 “(p) TREATMENT OF EXPENSES OF MEMBERS OF  
 22 RESERVE COMPONENT OF ARMED FORCES OF THE  
 23 UNITED STATES.—For purposes of subsection (a), in the  
 24 case of an individual who performs services as a member

1 of a reserve component of the Armed Forces of the United  
2 States at any time during the taxable year, such individual  
3 shall be deemed to be away from home in the pursuit of  
4 a trade or business during any period for which such indi-  
5 vidual is away from home in connection with such serv-  
6 ice.”.

7 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-  
8 PAYER ELECTS TO ITEMIZE.—Section 62(a)(2) of the In-  
9 ternal Revenue Code of 1986 (relating to certain trade and  
10 business deductions of employees) is amended by adding  
11 at the end the following new subparagraph:

12 (E) CERTAIN EXPENSES OF MEMBERS OF  
13 RESERVE COMPONENTS OF THE ARMED FORCES  
14 OF THE UNITED STATES.—The deductions al-  
15 lowed by section 162 which consist of expenses,  
16 in amounts not in excess of the rates for travel  
17 expenses (including per diem in lieu of subsist-  
18 ence) authorized for employees of agencies  
19 under subchapter I of chapter 57 of title 5,  
20 United States Code, paid or incurred by the  
21 taxpayer in connection with the performance of  
22 services by such taxpayer as a member of a re-  
23 serve component of the Armed Forces of the  
24 United States.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to amounts paid or incurred in tax-  
3 able years beginning after December 31, 2002.

4 **SEC. 4. CREDIT FOR EMPLOYMENT OF RESERVE COMPO-**  
5 **NENT PERSONNEL.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-  
7 chapter A of chapter 1 of the Internal Revenue Code of  
8 1986 (relating to business-related credits) is amended by  
9 adding at the end the following new section:

10 **“SEC. 45G. RESERVE COMPONENT EMPLOYMENT CREDIT.**

11 “(a) GENERAL RULE.—For purposes of section 38,  
12 the reserve component employment credit determined  
13 under this section is an amount equal to the sum of—

14 “(1) the employment credit with respect to all  
15 qualified employees of the taxpayer, plus

16 “(2) the self-employment credit of a qualified  
17 self-employed taxpayer.

18 “(b) EMPLOYMENT CREDIT.—For purposes of this  
19 section—

20 “(1) IN GENERAL.—The employment credit  
21 with respect to a qualified employee of the taxpayer  
22 for any taxable year is equal to 50 percent of the  
23 amount of qualified compensation that would have  
24 been paid to the employee with respect to all periods  
25 during which the employee participates in qualified

1 reserve component duty to the exclusion of normal  
2 employment duties, including time spent in a travel  
3 status had the employee not been participating in  
4 qualified reserve component duty. The employment  
5 credit, with respect to all qualified employees, is  
6 equal to the sum of the employment credits for each  
7 qualified employee under this subsection.

8 “(2) QUALIFIED COMPENSATION.—When used  
9 with respect to the compensation paid or that would  
10 have been paid to a qualified employee for any pe-  
11 riod during which the employee participates in quali-  
12 fied reserve component duty, the term ‘qualified  
13 compensation’ means compensation—

14 “(A) which is normally contingent on the  
15 employee’s presence for work and which would  
16 be deductible from the taxpayer’s gross income  
17 under section 162(a)(1) if the employee were  
18 present and receiving such compensation, and

19 “(B) which is not characterized by the tax-  
20 payer as vacation or holiday pay, or as sick  
21 leave or pay, or as any other form of pay for  
22 a nonspecific leave of absence, and with respect  
23 to which the number of days the employee par-  
24 ticipates in qualified reserve component duty  
25 does not result in any reduction in the amount

1 of vacation time, sick leave, or other nonspecific  
2 leave previously credited to or earned by the  
3 employee.

4 “(3) QUALIFIED EMPLOYEE.—The term ‘quali-  
5 fied employee’ means a person who—

6 “(A) has been an employee of the taxpayer  
7 for the 21-day period immediately preceding the  
8 period during which the employee participates  
9 in qualified reserve component duty, and

10 “(B) is a member of the Ready Reserve of  
11 a reserve component of an Armed Force of the  
12 United States as defined in sections 10142 and  
13 10101 of title 10, United States Code.

14 “(c) SELF-EMPLOYMENT CREDIT.—

15 “(1) IN GENERAL.—The self-employment credit  
16 of a qualified self-employed taxpayer for any taxable  
17 year is equal to 50 percent of the excess, if any, of—

18 “(A) the self-employed taxpayer’s average  
19 daily self-employment income for the taxable  
20 year over

21 “(B) the average daily military pay and al-  
22 lowances received by the taxpayer during the  
23 taxable year, while participating in qualified re-  
24 serve component duty to the exclusion of the  
25 taxpayer’s normal self-employment duties for

1 the number of days the taxpayer participates in  
2 qualified reserve component duty during the  
3 taxable year, including time spent in a travel  
4 status.

5 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-  
6 COME AND AVERAGE DAILY MILITARY PAY AND AL-  
7 LOWANCES.—As used with respect to a self-em-  
8 ployed taxpayer—

9 “(A) the term ‘average daily self-employ-  
10 ment income’ means the self-employment in-  
11 come (as defined in section 1402) of the tax-  
12 payer for the taxable year divided by the dif-  
13 ference between—

14 “(i) 365, and

15 “(ii) the number of days the taxpayer  
16 participates in qualified reserve component  
17 duty during the taxable year, including  
18 time spent in a travel status, and

19 “(B) the term ‘average daily military pay  
20 and allowances’ means—

21 “(i) the amount paid to the taxpayer  
22 during the taxable year as military pay  
23 and allowances on account of the tax-  
24 payer’s participation in qualified reserve  
25 component duty, divided by

1                   “(ii) the total number of days the tax-  
2                   payer participates in qualified reserve com-  
3                   ponent duty, including time spent in travel  
4                   status.

5                   “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—  
6                   The term ‘qualified self-employed taxpayer’ means a  
7                   taxpayer who—

8                   “(A) has net earnings from self-employ-  
9                   ment (as defined in section 1402) for the tax-  
10                  able year, and

11                  “(B) is a member of the Ready Reserve of  
12                  a reserve component of an Armed Force of the  
13                  United States.

14                  “(d) CREDIT IN ADDITION TO DEDUCTION.—The  
15                  employment credit provided in this section is in addition  
16                  to any deduction otherwise allowable with respect to com-  
17                  pensation actually paid to a qualified employee during any  
18                  period the employee participates in qualified reserve com-  
19                  ponent duty to the exclusion of normal employment duties.

20                  “(e) LIMITATIONS.—

21                   “(1) MAXIMUM CREDIT.—

22                   “(A) IN GENERAL.—The credit allowed by  
23                   subsection (a) for the taxable year—

24                   “(i) shall not exceed \$7,500 in the ag-  
25                   gregate, and

1 “(ii) shall not exceed \$2,000 with re-  
2 spect to each qualified employee.

3 “(B) CONTROLLED GROUPS.—For pur-  
4 poses of applying the limitations in subpara-  
5 graph (A)—

6 “(i) all members of a controlled group  
7 shall be treated as one taxpayer, and

8 “(ii) such limitations shall be allo-  
9 cated among the members of such group in  
10 such manner as the Secretary may pre-  
11 scribe.

12 For purposes of this subparagraph, all persons  
13 treated as a single employer under subsection  
14 (a) or (b) of section 52 or subsection (m) or (o)  
15 of section 414 shall be treated as members of  
16 a controlled group.

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

23 “(A) any taxable year in which the tax-  
24 payer is under a final order, judgment, or other  
25 process issued or required by a district court of

1 the United States under section 4323 of title 38  
2 of the United States Code with respect to a vio-  
3 lation of chapter 43 of such title, and

4 “(B) the two succeeding taxable years.

5 “(3) DISALLOWANCE WITH RESPECT TO PER-  
6 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—  
7 No credit shall be allowed under subsection (a) to a  
8 taxpayer with respect to any period for which the  
9 person on whose behalf the credit would otherwise be  
10 allowable is called or ordered to active duty for any  
11 of the following types of duty:

12 “(A) active duty for training under any  
13 provision of title 10, United States Code,

14 “(B) training at encampments, maneuvers,  
15 outdoor target practice, or other exercises under  
16 chapter 5 of title 32, United States Code, or

17 “(C) full-time National Guard duty, as de-  
18 fined in section 101(d)(5) of title 10, United  
19 States Code.

20 “(f) GENERAL DEFINITIONS AND SPECIAL RULES.—

21 “(1) MILITARY PAY AND ALLOWANCES.—The  
22 term ‘military pay’ means pay as that term is de-  
23 fined in section 101(21) of title 37, United States  
24 Code, and the term ‘allowances’ means the allow-

1       ances payable to a member of the Armed Forces of  
2       the United States under chapter 7 of that title.

3           “(2)    QUALIFIED    RESERVE    COMPONENT  
4       DUTY.—The term ‘qualified reserve component duty’  
5       includes only active duty performed, as designated in  
6       the reservist’s military orders, in support of a con-  
7       tingency operation as defined in section 101(a)(13)  
8       of title 10, United States Code.

9           “(3)    NORMAL    EMPLOYMENT    AND    SELF-EM-  
10      PLOYMENT DUTIES.—A person shall be deemed to  
11      be participating in qualified reserve component duty  
12      to the exclusion of normal employment or self-em-  
13      ployment duties if the person does not engage in or  
14      undertake any substantial activity related to the per-  
15      son’s normal employment or self-employment duties  
16      while participating in qualified reserve component  
17      duty unless in an authorized leave status or other  
18      authorized absence from military duties. If a person  
19      engages in or undertakes any substantial activity re-  
20      lated to the person’s normal employment or self-em-  
21      ployment duties at any time while participating in a  
22      period of qualified reserve component duty, unless  
23      during a period of authorized leave or other author-  
24      ized absence from military duties, the person shall  
25      be deemed to have engaged in or undertaken such

1 activity for the entire period of qualified reserve  
2 component duty.

3 “(4) CERTAIN RULES TO APPLY.—Rules similar  
4 to the rules of subsections (c), (d), and (e) of section  
5 52 shall apply for purposes of this section.”.

6 (b) CONFORMING AMENDMENT.—Section 38(b) of  
7 the Internal Revenue Code of 1986 (relating to general  
8 business credit) is amended—

9 (1) by striking “plus” at the end of paragraph  
10 (14),

11 (2) by striking the period at the end of para-  
12 graph (15) and inserting “, plus”, and

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

15 “(16) the reserve component employment credit  
16 determined under section 45G(a).”.

17 (c) CLERICAL AMENDMENT.—The table of sections  
18 for subpart D of part IV of subchapter A of chapter 1  
19 of the Internal Revenue Code of 1986 is amended by add-  
20 ing at the end the following new item:

“Sec. 45G. Reserve component employment credit.”.

21 (d) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to taxable years beginning after  
23 December 31, 2002.

1 **SEC. 5. SPECIAL RULE FOR MEMBERS OF UNIFORMED**  
2 **SERVICES AND FOREIGN SERVICE AND CIVIL-**  
3 **IAN DOD EMPLOYEES IN DETERMINING EX-**  
4 **CLUSION OF GAIN FROM SALE OF PRINCIPAL**  
5 **RESIDENCE.**

6 (a) IN GENERAL.—Subsection (d) of section 121 of  
7 the Internal Revenue Code of 1986 (relating to exclusion  
8 of gain from sale of principal residence) is amended by  
9 adding at the end the following new paragraph:

10 “(9) MEMBERS OF UNIFORMED SERVICES AND  
11 FOREIGN SERVICE AND CIVILIAN DOD EMPLOY-  
12 EES.—

13 “(A) IN GENERAL.—At the election of an  
14 individual with respect to a property, the run-  
15 ning of the 5-year period described in sub-  
16 section (a) with respect to such property shall  
17 be suspended during any period that such indi-  
18 vidual or such individual’s spouse is serving on  
19 qualified official extended duty as a member of  
20 the uniformed services or of the Foreign Service  
21 or as a civilian employee of the Department of  
22 Defense.

23 “(B) MAXIMUM PERIOD OF SUSPENSION.—  
24 The 5-year period described in subsection (a)  
25 shall not be extended more than 5 years by rea-  
26 son of subparagraph (A).

1           “(C) QUALIFIED OFFICIAL EXTENDED  
2 DUTY.—For purposes of this paragraph—

3           “(i) IN GENERAL.—The term ‘quali-  
4 fied official extended duty’ means any ex-  
5 tended duty while serving at a duty station  
6 which is at least 50 miles from such prop-  
7 erty or while residing under Government  
8 orders in Government quarters.

9           “(ii) UNIFORMED SERVICES.—The  
10 term ‘uniformed services’ has the meaning  
11 given such term by section 101(a)(5) of  
12 title 10, United States Code, as in effect  
13 on the date of the enactment of this para-  
14 graph.

15           “(iii) FOREIGN SERVICE OF THE  
16 UNITED STATES.—The term ‘member of  
17 the Foreign Service’ has the meaning given  
18 the term ‘member of the Service’ by para-  
19 graph (1), (2), (3), (4), or (5) of section  
20 103 of the Foreign Service Act of 1980.

21           “(iv) EXTENDED DUTY.—The term  
22 ‘extended duty’ means any period of duty  
23 pursuant to a call or order to such duty for  
24 a period in excess of 90 days or for an in-  
25 definite period.

1           “(D) SPECIAL RULES RELATING TO ELEC-  
2           TION.—

3                   “(i) ELECTION LIMITED TO 1 PROP-  
4                   ERTY AT A TIME.—An election under sub-  
5                   paragraph (A) with respect to any property  
6                   may not be made if such an election is in  
7                   effect with respect to any other property.

8                   “(ii) REVOCATION OF ELECTION.—An  
9                   election under subparagraph (A) may be  
10                  revoked at any time.”.

11          (b) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to elections made after the date  
13 of the enactment of this Act for suspended periods under  
14 section 121(d)(9) of the Internal Revenue Code of 1986  
15 (as added by this section) beginning after such date.

16 **SEC. 6. QUALIFIED MILITARY BASE REALIGNMENT AND**  
17 **CLOSURE FRINGE BENEFIT.**

18          (a) IN GENERAL.—Section 132(a) of the Internal  
19 Revenue Code of 1986 (relating to the exclusion from  
20 gross income of certain fringe benefits) is amended by  
21 striking “or” at the end of paragraph (6), by striking the  
22 period at the end of paragraph (7) and inserting “, or”  
23 and by adding at the end the following new paragraph:

24                   “(8) qualified military base realignment and  
25                  closure fringe.”.

1           (b) QUALIFIED MILITARY BASE REALIGNMENT AND  
2 CLOSURE FRINGE.—Section 132 of the Internal Revenue  
3 Code of 1986 is amended by redesignating subsection (n)  
4 as subsection (o) and by inserting after subsection (m) the  
5 following new subsection:

6           “(n) QUALIFIED MILITARY BASE REALIGNMENT AND  
7 CLOSURE FRINGE.—For purposes of this section, the  
8 term ‘qualified military base realignment and closure  
9 fringe’ means 1 or more payments under the authority of  
10 section 1013 of the Demonstration Cities and Metropoli-  
11 tan Development Act of 1966 (42 U.S.C. 3374) to an em-  
12 ployee or a member of the Armed Forces to offset the ad-  
13 verse effects on housing values as a result of a military  
14 base realignment or closure.”.

15           (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to payments made after the date  
17 of the enactment of this Act.

○