



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
CHIEF COUNSEL

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CONEX-150088-08

The Honorable Jeff Miller
Member, U.S. House of Representatives
4300 Bayou Blvd., Suite 13
Pensacola, FL 32503

Attention:

Dear Congressman Miller:

This letter is in response to your inquiry dated November 24, 2008, on behalf of your constituent, _____, an Air Force surgeon, asked why the law limits the amount of combat zone pay officers can exclude from gross income. I hope this information is helpful in responding to _____.

Gross income is all income from whatever source, including compensation earned while serving in the military (section 61 of the Internal Revenue Code (the Code)). However, enlisted members of the United States Armed Forces can exclude compensation for active service in a combat zone from gross income. A commissioned officer in the United States Armed Forces can exclude from gross income his or her compensation up to the "maximum enlisted amount" received for active service in a combat zone (section 112(b) of the Code).

The term "maximum enlisted amount" refers to the sum of the highest monthly rate of basic pay payable to an enlisted member at the highest pay grade, and the amount of special pay for hostile fire or imminent danger that the officer receives in a month (section 112(c)(5) of the Code). The "maximum enlisted amount" does not include Additional Special Pay (ASP) and Incentive Special Pay (ISP). The only type of special pay included in "maximum enlisted amount" is hostile fire and imminent danger special pay. Additionally, no type of bonus is eligible for inclusion in "maximum enlisted amount" and therefore bonuses are not eligible for exclusion from gross income.

The Tax Benefits for Servicemen in Bosnia and Herzegovina Act of 1996, Pub. L. No. 104-117, 110 Stat. 827, established the limits on the amount of combat pay officers can exclude from gross income. Prior to this law, officers could exclude only \$500 per month from gross income. The change _____ requested would require legislative action.

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I hope this information is helpful. If we can assist you further, please contact me or
at () .

Sincerely,

LYNNE CAMILLO
Branch Chief, Employment Tax Branch 2
(Exempt Organizations/ Employment Tax/
Government Entities)
(Tax Exempt and Government Entities)