



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 24, 2009

Number: **INFO 2009-0164**

Release Date: 9/25/2009

UIL: 112.00-00

CONEX-133405-09

The Honorable Mel Martinez
United States Senator
315 East Robinson Street
Landmark Center One, Suite 475
Orlando, Florida 32801

Attention:

Dear Senator Martinez:

I apologize for the delay in responding to your inquiry, dated February 3, 2009 on behalf of your constituent, . 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). An officer must include in gross income all compensation including bonuses and base pay that exceeds the maximum enlisted amount. Thus, an officer can exclude bonuses and other types of special pay received for active service in a combat zone only to the extent that such pay does not cause the officer's compensation to exceed the maximum enlisted amount.

The Congress has statutorily limited the amount of combat pay officers can exclude from income. Removing all limitations on the amount of combat pay officers can exclude from his or gross income would require legislative action.

I hope this information is helpful. If I 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)