

**FILING EXTENSION FOR MILITARY
SERVING IN COMBAT ZONE**

**House Bill 4710 as introduced
First Analysis (6-12-03)**

**Sponsor: Rep. Bruce Caswell
Committee: Tax Policy**

THE APPARENT PROBLEM:

Under the federal Internal Revenue Code, the IRS grants an automatic extension for the deadline for filing a tax return, paying taxes, filing a claim for a refund, and other actions to a member of the armed forces serving in a combat zone or other qualified hazardous duty area. A combat zone is simply any area so designated by a presidential executive order as an area in which the U.S. Armed Forces are engaging or have engaged in combat. Executive Order 13239 designated the Afghanistan area (and the above airspace) as a combat zone beginning September 19, 2001. The Persian Gulf area (which includes the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates) was designated by Executive Order 12744, beginning January 17, 1991. A qualified hazardous duty area consists of Bosnia and Herzegovina, Croatia, and Macedonia.

The deadline for taking an action with the IRS (such as filing a return) is extended 180 days after the later of either of the following: (1) the last day the soldier was in a combat zone or qualified hazardous duty area or had qualifying service outside of the zone or (2) the last day of any continuous qualified hospitalization for any injury sustained from service in the zone or while performing qualifying service outside of the zone or area.

In addition, the 180-day extension is extended by the number of days prior to the filing or other deadline that a soldier entered a combat zone or qualified hazardous duty area. For instance, if a soldier began serving in a zone or area two months prior to the April 15th deadline for filing an income tax return, the 180-day extension would be further extended by two months.

Prior to the April 15th filing deadline for 2002 state individual income tax returns, Governor Granholm announced that Michigan servicemen and women serving in combat zones in the Middle East as part of Operation Iraqi Freedom would be granted an

automatic extension to file their income tax returns. While the governor's action may be laudable, it is not entirely clear under what authority she was acting.

The Revenue Act and the Income Tax Act do contain certain provisions relative to the granting of an automatic extension to members of the armed forces serving in a combat zone, but these provisions do not apply specifically to military personnel. Under the Income Tax Act [MCL 206.311(4)] all taxpayers who have been granted a federal extension automatically receive an extension for filing a state return for a period of time equal to that of the federal extension. However, they must submit a copy of the federal extension to the department and pay the estimated tax (along with interest and penalties) owed.

The Revenue Act [MCL 205.24] provides for the assessment of certain penalties and interest on a tax liability if the tax payer fails or refuses to file a return or pay the amount owed within the time required. However, the act does permit the Department of Treasury to waive the penalty if it is shown to the satisfaction of the department that the failure to pay the required tax or file a return within the time required "was due to reasonable cause and not to willful neglect".

THE CONTENT OF THE BILL:

The bill would amend the Income Tax Act to provide an automatic filing extension for the state income tax for a taxpayer who has an automatic extension for the federal return based on service in a combat zone. The state due date for a return or a payment of estimated tax would be extended for a period of time equivalent to the federal exemption.

Under the bill, the taxpayer would not have to file a copy of any federal extension but would have to print the words "Combat Zone" in red ink at the top of the return when filing. The taxpayer would not be required to pay the tax due by the date of the normal

filing deadline and the Department of Treasury could not impose any interest or penalties for the unpaid tax for the period of the extension.

MCL 206.311

BACKGROUND INFORMATION:

Under the rules promulgated pursuant to the Revenue Act (see ORR 205.1013), the taxpayer may request, in writing (including the reasons for the failure), that the state treasurer waive the penalties assessed under MCL 205.24. The rule states that the taxpayer bears the burden of affirmatively establishing, by clear and convincing evidence, that the failure to file a return or pay was due to reasonable cause. Under the rule, reasonable cause includes, by way of example, a delay in filing or payment that is caused by the prolonged unavoidable absence of the taxpayer responsible for filing and the taxpayer who is precluded, due to circumstances beyond the taxpayer's control, from making alternative arrangements for filing and paying.

FISCAL IMPLICATIONS:

Fiscal information is not yet available.

ARGUMENTS:

For:

This bill is necessary for a variety of reasons. First, the state Income Tax Act requires a taxpayer (even those who have received the federal combat zone extension) to pay an estimated tax upon filing a copy of the federal extension. Consistent with federal law, the bill would not require a taxpayer who received the combat zone extension to pay an estimated tax when he or she receives an extension. Although under current law a taxpayer is automatically granted a state extension if he or she is granted an automatic federal extension (and files a copy of the federal extension with the department), the state law is not very helpful in the instance when a taxpayer has received the federal combat zone extension. The federal combat zone extension applies to the filing of any income tax return and the paying of any income tax due, among other actions. Presumably, this extension also applies to the payment of any estimated tax. As a result, the taxpayer does not have any figures from the federal tax form that would be transferred to the state tax form, making it quite difficult for the taxpayer to submit the estimated tax that is required to be paid when he or she submits a copy of the federal extension to the department.

[Under the Income Tax Act, the federal adjusted gross income serves as the starting point on Michigan income tax forms.] Furthermore, given the fact that a family is likely to see a sharp reduction in their income when a husband or wife is called into active duty, the payment of the estimated tax can be a major financial burden.

Second, the bill specifies that the taxpayer who received the combat zone extension would not be subject to any interest or penalties. Under the Revenue Act, the Department of Treasury assesses certain penalties and interest when a person fails to file a return or pay the required tax (which is more just the income tax). Though the act specifically permits the department to waive the penalty, it says nothing about the interest. This bill, then, provides the taxpayer with added relief by waiving any interest that would otherwise be due.

Third, and perhaps most importantly, the bill provides members of the military serving in a combat zone with assurances that there aren't any problems with their state taxes. These servicemen and women and their families have a host of other, more pressing, concerns to worry about than whether their taxes are paid.

Finally, the bill clarifies the action taken on the part of governor in granting members of the military serving in combat zones the extension for filing their income taxes.

Response:

There exist a few questions - which would probably be addressed by the Department of Treasury - as to how the bill would be implemented. First, the bill states that the taxpayer would not have to file a copy of the federal combat zone extension, but would, instead, write "combat zone" on the return. It seems that to better effectuate the bill's purported intent, the bill could retain the requirement that a taxpayer submit a copy of the federal combat zone extension, and state that the taxpayer would not have to pay an estimated tax, penalties, or interest. From the taxpayer's standpoint, it may be a bit unnerving to receive notices from the department stating that you haven't filed a return or paid a tax, when you are fully aware of that fact. It seems like the department would not be aware of the federal extension until the taxpayer finally files a return several months after the April 15th deadline.

Second perhaps there ought to be a box on the tax form that a person can check-off indicating that he or she received a federal combat zone extension. The

check-off would provide for a greater uniformity or eliminate a possible administrative nightmare, as there are bound to be individuals who forget to write “combat zone” at the top of the form or at all, or in the correct color.

POSITIONS:

The Department of Treasury supports the bill. (6-11-03)

The Commanders Group of Veterans Organizations indicated their support for the bill. (5-21-03)

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.