

July 2021

Income Tax Returns for Servicemen

Wm. Hedges Robinson Jr.

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Wm. Hedges Robinson, Jr., Income Tax Returns for Servicemen, 21 Dicta 42 (1944).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Income Tax Returns for Servicemen

BY WM. HEDGES ROBINSON, JR.

This article is not intended to be an exhaustive analysis of all the problems which arise with reference to problems engendered in preparing income tax returns for servicemen. Its purpose is merely to point out the provisions of the Act and regulations and of other pertinent statutes which come into play most commonly in determining income tax liability of servicemen, and to point out further that considerable tax savings can be made available to servicemen if the provisions of the Acts are taken advantage of.

The Primary Sources of Information. The Revenue Act of 1942, the Current Tax Payment Act of 1943 (Pub. L. No. 68, 78th Cong.), Current Regulations, the Soldiers and Sailors Civil Relief Act of 1940, and the Soldiers and Sailors Civil Relief Act Amendments. A further aid to servicemen is "Current Payments and Deferrals of Federal Income Tax" issued by the War Department on August 13, 1943.

Definition of Armed Service. Unless otherwise noted this term includes all Army and Navy forces of the United States (both male and female) and may include members of the armed forces of the United Nations. The term Army and Navy forces, as used by the Civil Relief Act and its amendments, is broadened to include persons receiving induction orders and persons training or being educated under the supervision of the United States preliminary to being inducted.

Definition of Active Service. Active duty or active service includes all service, in the field or theater of war, and includes periods of absence from duty because of sickness, leave, internment, or other lawful cause. It does not include personnel in inactive reserve or on retirement.

Items of Pay to Be Included in Gross Income.

The following check list of common items of service pay will serve as a guide of items to be included when computing gross income.

1. Base pay.
2. Longevity pay. This constitutes certain percentage additions to base pay which are made according to the length of service of the person in question.
3. Extra compensation for special duty (aviation, foreign duty, parachute, sea duty, submarine, etc.). For such special duties further additional percentages are added to base pay.

*Of the Denver Bar.

4. Retirement pay where retirement was for age or service or for sickness or injury not incurred in line of duty.
5. Mileage (report entire amount received as gross income and deduct necessary traveling expenses, actually paid, such as meals, railroad fares, lodging, etc.). Where optional form of work sheet or return is used, include as a part of gross income only the amount of mileage in excess of actual expenses.
6. Travel pay to discharged enlisted men (report in the same manner as mileage).
7. Transportation of families of officers and enlisted men (the actual cost of such transportation to the government is considered taxable income to the serviceman. No deduction allowed.).
8. Interest on deposits of enlisted men.
9. Additional pay for special qualifications in use of arms.
10. One year's pay received by officers wholly retired.
11. All permanent and transient additions to pay (enlisted men).
12. Money allowances received by retired enlisted men under Acts of March 2, 1907 (34 STAT. 1217) and June 30, 1941 (55 STAT. 394) (Public Law 140, 77th Cong.) [prior to their repeal as to allowances by section 19 of the Pay Readjustment Act of 1942], in lieu of rations, clothing, quarters, fuel and light.
13. Enlistment allowances paid to honorably discharged enlisted men who reenlist.
14. Extra pay received as holder of Medal of Honor, or the like.
15. Extra pay to enlisted personnel from post exchanges, ship's services, etc. Certain enlisted personnel, such as barbers, are assigned to additional duty with post exchanges and ship's service departments. Post exchanges and ship's service departments although considered governmental instrumentalities, are self-sustaining and sell articles of common use and services such as barber shop, clothes pressing, etc., to servicemen. They pay enlisted men, who are employed by them, compensation in addition to their regular Army or Navy pay.

Persons in the service make allotments from pay to their dependents and for insurance, war bonds and savings. Such allotments are the same as wage assignments and do not in any way affect taxable income even though the pay check received is consequently less as a result of the amounts withheld due to such allotments. The same is true of the portion of monthly family allowances which is chargeable against enlisted men's pay under the Service Men's Dependents Allowance Act of 1942. (Pub. L. Nos. 625 and 705, 77th Cong., 2d Sess. Increase of

family allowance under Senate Bill 1279, 78th Cong. was enacted October 26, 1943.)

The finance officer or disbursing officer, who carries the payrolls of the particular serviceman in question, has to date been required to give to the serviceman a statement at the end of the year which shows the taxable pay received during the year. For purposes of estimates, an attorney can check the probable pay of a serviceman of a particular rating, length of service, and special duty by phoning to the finance officer or disbursing officer of the nearest Army or Navy activity.

Items of Pay to Be Excluded from Gross Income.

The following items are the most common items of pay furnished to servicemen which are to be excluded from gross income for tax purposes:

1. Value of subsistence and quarters furnished.
2. Money rental allowance where quarters are not furnished in kind. (Applicable to Army, Navy, Coast Guard and Geodetic Survey, and Public Health Service.)
3. Money subsistence allowance where subsistence is not furnished in kind.
4. Value of travel furnished in kind to discharged enlisted men.
5. Per diem allowance in lieu of subsistence paid to an officer traveling on official business away from post of duty. It is immaterial in this connection whether he does or does not maintain a home while in travel status, since his per diem is an "allowance" and not "compensation."
6. Uniforms furnished in kind to enlisted men.
7. Uniform gratuity or allowance paid to officers, nurses, or enlisted personnel.
8. Money allowance paid upon discharge to enlisted men, in lieu of unused clothing allowance to their credit.
9. Amounts contributed by government to serviceman's "monthly family allowance" are gifts and need not be reported by members of the family receiving them. Contributions to the family allowance by the serviceman through deductions from his pay need not be reported by the family, but are a part of his pay and are included in his gross income.
10. Gratuity pay (six months' pay to beneficiary of a deceased officer or enlisted man).
11. Gratuitous medical or hospital treatment provided by government in government hospitals.

12. Benefits and pensions received under World War Veterans Act, 1924 (43 STAT. 607), World War Adjusted Compensation Act (43 STAT. 121), Act of August 12, 1935 (49 STAT. 607) (Pub. L. No. 262, 74th Cong.), or war risk insurance acts.
13. Pensions received from the United States by the family of a veteran, for services rendered to the United States in time of war, are exempt as gifts.
14. Retired pay of persons retired from service for physical disabilities incurred in line of duty. (INT. REV. CODE § 22 (b) 5; Rev. Act. of 1942, § 113.)
15. Amounts received in reimbursement for losses, sustained by officers, nurses, and enlisted men, in foreign countries, due to appreciation of foreign currencies in the relation to the American dollar, as authorized by the Act of March 26, 1934 (48 STAT. 466), and by Executive Order dated September 15, 1938, as amended.
16. Personal cash allowance received by admirals and vice admirals.

Deductions Allowable. There are no special deductions allowable to servicemen. Their deductions are the same as allowed to civilians, but a few of the most important deductions which flow from service are:

(a) *Business expenses:*

1. Dues to professional societies.
2. Subscriptions to professional journals.
3. Expenses for use of personal automobile on official business if an official car is not available and if necessity for such use can be shown conclusively.
4. Expenses incurred in travel for which mileage allowance is reported as part of gross income.
5. Depreciation on capitalized cost of providing horse and essential equipment, where government requires officer to provide his own mount used exclusively in official duties.
6. Payment for premium on a bond (when required by the government of an individual as a protective measure).
7. With respect to the cost of equipment which is required of military or naval personnel, the Bureau of Internal Revenue allows a deduction only for those items of equipment which do not replace articles required in civilian life, such as epaulets, aiguillettes, campaign bars, collar ornaments, corps devices, Sam Browne belts, sword, sword belt (dress and undress) and sword knot.

NOTE: It is possible that a change in the bureau's policy will be made some time in the future in view of recent tax court decisions which tentatively indicate that a deduction may be allowable for uniforms even though they replace articles required in civilian life. RECOMMENDATION: Deduct cost of equipment.

8. Mess bills afloat—A naval officer while on permanent duty afloat who actually maintains a home elsewhere is entitled to deduct only the difference between amount expended for mess bill and the amount of his subsistence allowance. For example: An officer with dependents receiving subsistence allowance of \$18 per month and who pays a mess bill of \$30 per month is entitled only to a deduction of \$12 for each month. The existence of a "home" is a question of fact to be determined in each individual case (to the satisfaction of the Commissioner of Internal Revenue). If an officer does not have a "home," the difference between amount paid for mess bill and subsistence allowance received is not allowed as a deduction.
 9. Expenditure by officer for official entertainment.
 10. Legal expenses incurred in connection with successful litigation involving retirement pay.
- (b) *Losses:*
1. Incurred in trade or business (not insured).
 2. From fire, storm, shipwreck, theft, or casualty (not insured).
 3. War loss of property by military or naval operations or under enemy control.
 4. Loss of disbursing officers due to shortage but not result of negligence.

(c) *Alimony:*

Periodic payments (including amounts chargeable to an enlisted man's pay under the Servicemen's Dependents Allowance Act of 1942) by a husband to a divorced or legally separated wife subsequent to a divorce or separate maintenance decree in discharge of a legal obligation incurred by him under such decree or under a written instrument incident to such divorce or separation. (INT. REV. CODE § 23 (u); Revenue Act of 1942, § 120 (b).)

Deductions Not Allowable. Some of the more common questions involving deductible items follow. None of these items is deductible.

1. Uniforms—Cost of uniforms held to be in the nature of personal or living expenses, but see recommendation made above, Item 7. No deduction is allowed on account of depreciation or obsolescence of uniforms.
 - (a) Items of equipment such as gold lace, chin strap, gilt buttons, gilt and silver devices on caps, and gold lace and gold lace and gilt buttons on the uniforms are considered a part of the uniform and cap which take the place of regular clothing, and the cost thereof may not be deducted, but see Item 7 of allowable deductions.

- (b) The cost of altering the equipment on a uniform subsequent to promotion or demotion is a personal expense and not deductible.
2. Loss of pay by sentence or court martial.
 3. Hospital fund deductions from pay.
 4. Cost of packing, crating, freight, etc., in changing official station, attributable to personal effects of members of officer's family.
 5. Dues to officers' clubs.
 6. Premiums paid on war risk, converted government or commercial policies, life insurance policies, and premiums paid for increased insurance to cover hazards of aviation duty.
 7. Automobile expense where taxpayer receives a travel allowance but uses own personal car.
 8. Traveling expenses of wife and family of serviceman.

Personal Exemption. All servicemen, irrespective of the two special allowance provisions following, are entitled to the regular personal exemptions: \$1,200 for married person or head of family, \$500 for a single person and \$350 for each dependent. The special allowances are *in addition* to this exemption.

Special \$1,500 Allowance. Beginning January 1, 1943, and continuing to the termination of the war, a member of the armed services of the United States or United Nations in active duty, whether officer or enlisted man, and whether married or single, is entitled to exclude from his compensation received for military services an amount up to \$1,500. This exclusion applies only to compensation received for military service and does not apply to income received from other sources. In view of the fact it is an exclusion and not a deduction, it does not appear on the face of the tax return. Pay received subsequent to discharge, even the payment for military services, cannot be added to military pay to take advantage of this exclusion.

Special Allowance for 1942 Income Return Only. After January 1, 1942, but prior to January 1, 1943, a person below the rank of a commissioned officer in armed services of the United States may exclude from any income received from the United States in any form an amount not in excess of (a) \$250 if single, (b) \$300 if married or head of family. Both husband and wife may claim an exclusion if they meet the above requirements. This exclusion does not apply to the Army Specialist Corps or to pay received after discharge.

Special Provisions of Section 6(d) (1) of the Act. The effect of the Current Tax Payment Act is to put all taxpayers on a "pay-as-you-go-basis" and to forgive a portion of the 1942 or 1943 tax. If the 1943 tax is the higher tax of the two years, it is to be paid. If the 1942 tax is the higher, it is to be paid. In addition to paying the higher tax,

civilians pay 25 per cent of the lower tax, provided the total tax exceeds \$66.67 or if it exceeds \$50 but is less than \$66.67, then the excess over \$50. *Servicemen*, however, pay on this formula *only* if their 1943 tax is greater than their 1942 tax. If their 1943 tax is less they have the benefit of Section 6(d) (1) of the Act.

If the 1942 earned net income is greater than the 1943 earned net income, the *serviceman* is entitled to exclude all of his net income up to \$14,000.00. If the 1942 tax computed with this deduction exceeds the 1943 tax, the *serviceman* pays the 1942 recomputed tax, plus 25% of the 1943 tax. If, however, the 1943 tax is less than \$66.67, the *serviceman* then pays the amount by which the tax exceeds \$50.00.

Abatement. The estate of any member of the armed forces who being in active service of the armed forces of the United States or United Nations, dies after December 7, 1941, or prior to the termination of the war, shall not be liable for the income tax in the current year or for unpaid assessments of prior years.

Postponements. If a *serviceman* is on sea duty or is outside the Continental United States, he has until the 15th day of the fourth month after such person ceases to be a member of the armed forces serving outside the United States. A letter should be attached to the return explaining the cause of the delay. This provision relates only to the *filing* of a return, for the Act does not excuse the necessity of filing a return within the above period. As to the payment of the tax, the *serviceman* has until the termination of the period of service and six months thereafter to pay his tax if his ability to pay is impaired by reason of his service in the armed forces. Forms for deferment may be obtained from any collector's office, and should be attached to the return. No penalty or interest accrues for deferments.

Lawyers' Emergency Committee (Cont'd)

This committee is also engaged in a study of post war problems. How can we help the lawyer returning to practice? We solicit suggestions from you men in the service on this question. A survey is being made to determine the ratio of lawyers to population in the various communities of the state. Would library and secretarial facilities made immediately available to the returning lawyer be helpful? How can we lend impetus to the feeling which is shared by all that the returning lawyer should receive preferential treatment in court appointments and in other ways to assist him in re-establishing his practice. These are a few of the questions on which we solicit your suggestions.

The end of the war will bring problems which we cannot now foresee—complex and difficult problems some of which may threaten the existence of our social, economic and political structure. With the help and cooperation of all the lawyers of Colorado—and with your suggestions and criticisms—the organized bar will, we hope, continue to serve the interests of our country and our people.