

Saving Private Ryan's Tax Refund

By Francine J. Lipman*

Sergeant Horvath: This time the mission IS a man.
Saving Private Ryan (1998)

Almost two million men and women serve the United States as enlisted personnel in the Army, Navy, Marines and Air Force. This essay will examine certain tax provisions unique to members of the armed forces and suggest a sweeping procedural change to save Private Ryan's tax refund. The proposed change is shaped to better accommodate the unique demographics of the targeted taxpayers. A threshold issue when designing a tax benefit should be "Who is the targeted taxpayer?"

Who is Private Ryan?

Captain Miller: James Francis Ryan of Iowa?

Private Ryan: Yes, sir. Patton, Iowa, that's correct. How'd you guess that? What is this about?

Enlisted members of the armed forces are notably young, with an average age of 27. For most enlisted soldiers the military is their first full time job and their first time away from home. Most soldiers are male, with women representing 13% of the population. The South, rural areas, high school graduates and people of color are disproportionately overrepresented. Fifty-four percent of enlisted personnel are married (nine percent are dual military marriages) and many of these married soldiers have children. Only seven percent are single parents and most of the single parents are mothers.

Captain Miller: Your brothers were killed in combat.

Private Ryan: Which—which ones?

Captain Miller: All of them.

Enlisted members of the armed forces generally receive annual cash compensation of less than \$20,000. In addition to their basic pay, military personnel are provided with free room and board, free medical and dental care, a military

clothing allowance, military supermarket and department store shopping privileges and 30 days of paid leave per year. In many duty stations, military personnel may receive a tax-free housing allowance that can be used for off-base housing. Members of the armed forces can deduct home mortgage interest and property taxes paid on their principal residences even if paid with their tax-free housing allowances. Other allowances are paid for foreign, hazardous, submarine and flight duties.

Tax Benefits for Private Ryan

Tax-Free Income

As you can see from the general compensation package and the demographic profile, enlisted members of our armed services are likely to be in lower-income families. While the federal tax system provides certain special tax benefits for members of the armed services, the predominant tax benefits for this group are tax-free living allowances and combat and hazardous duty pay. These tax benefits are immediately and seamlessly realized because tax withholding payments are not required for this tax-free income. From the perspective of the taxpayer these tax-free income items are readily derived

because this income is excluded from taxable income on a soldier's year-end Form W-2.

Expanded Earned Income Tax Credit ("EITC")

Another significant tax benefit for working families in the armed services is the EITC. The EITC is a refundable tax credit of up to \$5,657 in 2009 for working families. Nontaxable combat pay can be included in earned income for either or both spouses for purposes of maximizing the EITC. In addition, the child tax credit can generate a refundable credit of up to \$1,000 per qualifying child. As a result of these tax credits, tax withholdings, and the low level of taxable income, many military families pay little or no federal income taxes and receive significant tax refunds. These financially crucial cash refunds require members of the armed services to file their tax returns.

Automatic Extensions for Tax Deadlines

Given these meaningful tax refunds it is ironic that the federal tax system is uniquely generous to members of the armed services with respect to extensions for filing tax returns and paying any income, estate or gift taxes.

Lieutenant Dewindt: FUBAR

[echoed by Private Reiben, Sergeant Horvath, and Captain Miller]

Private Jackson: Y'all got that right.

These deadlines are automatically extended if military personnel are serving in a combat zone or in qualifying service outside of a combat zone. These extensions are extensive: up to 180 days plus the number of days remaining in the filing period when the soldier entered the combat zone, after the later of: (1) the last day serving in a combat zone (or other qualifying duty); or (2) any continuous qualified hospitalization for injury from service in the combat zone (or other qualifying duty).

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For example: Captain Zoe Burg entered Iraq on October 31, 2006. She remained there through March 31, 2009, when she returned home to San Diego, California.

Her 2006 tax return is due on January 10, 2010. This deadline is 285 days (180 plus 105) after Captain Burg's last day in the combat zone (March 31, 2009).

Her 2007 tax return is due on January 11, 2010. This deadline is 286 days (180 plus 106 (leap year)) after Captain Burg's last day in the combat zone.

Her 2008 tax return is due on January 10, 2010. This deadline is 285 days (180 plus 105) after Captain Burg's last day in the combat zone.

Her 2009 tax return is not extended and is due on April 15, 2010.

While these extensions relieve military families of the burdens of tax return preparation and filings when a soldier is serving in a combat zone, it undermines the goal of getting critical refund dollars into these households as quickly as possible.

As the wars in Iraq and Afghanistan continue to demand long and multiple deployments of soldiers, the Army high command is focusing more attention on a tragic consequence to military families. ... Researchers tracking 226 Army marriages at Fort Campbell, Ky., last year, found that 6% ended in divorce, and that nearly 12% of the couples either became divorced or separated, The civilian [divorce] rate is 3.5%. USA TODAY, Aug. 4, 2009, http://www.usatoday.com/news/military/2009-08-03-broken-families_N.htm.

Given long and multiple deployments and a high incidence of divorce and separation, one wonders if many of these tax returns ever get filed due to the extensive lapse of time, potential for lost documents and information as well as

difficulty and cost of finding a competent tax preparer for several prior year tax returns. As the demographics portray, Private Ryan is neither an experienced nor a sophisticated taxpayer. Unless he files a return, these crucial tax refunds will be lost forever.

Corporal Upham: "War educates the senses, calls into action the will, perfects the physical constitution, brings men into such swift and close collision in critical moments that man measures man."

Captain Miller: I guess that's Emerson's way of finding the bright side.

....

Corporal Upham: "Theirs is not to reason why, theirs is but to do or die."

Tax Benefits for Fallen Soldiers

If a member of the armed services dies while in active service in a combat zone, or from wounds or other injury received in a combat zone, her tax liabilities for the year of death and any earlier tax year ending on or after the first day the member served in a combat zone in active service are forgiven. In addition, ANY unpaid taxes at the date of death are forgiven. For soldiers dying from wounds or injury incurred in a terrorist or military action the tax liabilities for the year of death and for any earlier tax year in the period beginning the year before the injury or wound was incurred are forgiven. Only the decedent's tax liability is forgiven. Therefore, if a soldier is a married filing jointly taxpayer three tax returns have to be prepared to determine the amount of the forgiveness for each tax year: a separate tax return for the decedent; another one for the spouse; and one for them jointly.

Given the demographics of this group these death tax benefits might not be significant. However, the tax computations necessary to generate the benefits are well beyond the scope of an average enlisted soldier and his family or any free tax assistance program. Ironically, the

greatest death tax benefit could be for any pre-combat tax liabilities that the soldier owed, but never paid. Rather than provide this disincentive to pay a legitimate pre-combat tax liability, perhaps resources should be allocated to providing free tax assistance for families of deceased soldiers so that they will receive these tax benefits without incurring excessive tax return preparation and filing expenses.

Saving Private Ryan's Tax Refund by Implementing a Voluntary "Simple Return" System for Enlisted Soldiers

Indeed, given the demographics of enlisted military families generally, the federal government should provide a tax system that accelerates rather than delays tax return preparation and filing for enlisted soldiers and their families. This goal could be accomplished by instituting a "simple return" system, a voluntary seamless free tax return preparation and filing system for enlisted members of the armed services and their families. The concept is that the federal government would provide a pro forma tax return based upon information it already has in its database that the taxpayer could accept, reject, or change—and file.

Although the "simple return" concept might be new to taxpayers in the United States, it has operated smoothly in other nations for years. Sweden and Denmark have highly successful programs with 75-90% of taxpayers using a simple return. In the United States the "simple return" concept has had bipartisan support and is backed by tax policy experts including Professor Austan Goolsbee, a University of Chicago professor who is serving President Barack Obama as chief economist and staff director of the Presidential Economic Recovery Advisory Board and on the Council of Economic Advisors, Professor Joseph Bankman, a Stanford law

professor who has spearheaded support for a successful similar ReadyReturn program in California, and even former President Ronald Reagan, who together with the U.S. Treasury Department, endorsed a simple-return approach in a 1984 study.

The “simple return” system should achieve the paramount goal of getting crucial tax refund dollars into military households as quickly as possible with little or no out-of-pocket taxpayer costs, time or aggravation. While this tax return preparation and filing system should provide a meaningful benefit for military families, it should also benefit the federal government with more accurate, comprehensive and less expensive federal tax compliance. Enlisted members of the armed services and their families are well suited for this type of government tax assistance because of their tax profiles as well as their confidence in and reliance upon the government for many goods and services. If successful, the “simple return” system could be used to streamline and meaningfully lower the high cost of tax return preparation and filing for the federal government and more than 100 million taxpayers. As thousands of delighted ReadyReturn filers in California (99% want to receive the free service again) exclaimed, “Finally, the government is doing something to make my life easier.” Private Ryan and his family deserve no less.

Old James Ryan: Tell me I have had a good life.

Ryan's Wife: What?

Old James Ryan: Tell me I'm a good man.

Ryan's Wife: You **are**. ■

What's Next in the Section 6501(e) Overstated Basis Controversy?

By Steve R. Johnson*

Section 6501(e) is among the exceptions to the normal three-year statute of limitations on assessment. Under section 6501(e)(1), a six-year limitations period applies “[i]f the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return.” The six-year period clearly applies when the taxpayer fails to report taxable receipts surpassing the 25% threshold. Does it also apply when overstatement of basis sufficiently reduces reported gain on the sale of assets, particularly when the sale is not incident to conduct of a trade or business?

The courts have been divided on the issue. The taxpayers have had the upper hand recently, prevailing in three 2009 cases. This article describes case law on the issue and considers possible future moves in the controversy.

Judicial Division

In light of earlier judicial division, the Supreme Court heard and decided *Colony Inc. v. Commissioner*, 357 U.S. 28 (1958). The Court held for the taxpayer under section 6501(e)'s predecessor in the 1939 Code. The Government accepts that *Colony* controls when, as in that case, the sales in question are incident to the taxpayer's trade or business. In non-trade or business cases, however, the Service has continued to assert the six-year limitations period as to basis overstatements of sufficient magnitude. The Government has sought to distinguish *Colony* based on textual differences between the current section and its predecessor and to limit *Colony* to sales incident to a trade or business.

In the ensuing years, courts split again. Cases holding for the Government include *Taylor v. United States*, 417 F.2d 991, 993 (5th Cir. 1969), *Brandon*

Ridge Partners v. United States, 100 A.F.T.R.2d 5347, 5351-53 (M.D. Fla. 2007), and *Insulglass Corp. v. Commissioner*, 84 T.C. 203, 210 (1985).

Cases holding for taxpayers include *Grapevine Imports, Ltd. v. United States*, 77 Fed. Cl. 505 (2007), and the three 2009 cases. In *Bakersfield Energy Partners, LP v. Commissioner*, 568 F.3d 767 (9th Cir. June 17, 2009), a unanimous panel upheld a decision for the taxpayer, 128 T.C. 207 (2007). In *Salman Ranch Ltd. v. United States*, 573 F.3d 1362 (Fed. Cir. July 30, 2009), a divided panel reversed a decision for the Government, 79 Fed. Cl. 189 (2007). Most recently, in a case appealable to the Seventh Circuit, the Tax Court, relying on *Colony* and *Bakersfield*, held for the taxpayer. *Beard v. Commissioner*, T.C. Memo. 2009-184 (Aug. 11, 2009).

Salman Ranch is analytically the richest of the three 2009 cases. The taxpayer was a family partnership which participated in what the Service saw as a variant of the Son-of-BOSS tax shelter. See Notice 2000-44, 2000-2 C.B. 255. The partnership allegedly overstated its basis in certain assets as a result of adjustments under sections 754 and

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