

**SUMMARY OF MAJOR CHANGES TO CHAPTER 44
DOD 7000.14-R, VOLUME 7A
MILITARY PAY POLICY AND PROCEDURES - ACTIVE DUTY AND RESERVE PAY**

New and revised instructions are indicated by a star placed immediately before the new or revised section, paragraph, subparagraph, decision logic table, etc.

Page	Paragraph	Explanation of Change/Revision	Effective Date
44-14	Table 44-1	Interim Change (IC) 24-97 revised Table 44-1 by adding a new rule 20 to Table 44-1.	Apr 1, 1996
44-7 to 44-8	440106.D	IC 14-98 renumbered subparagraph 440106.D as 440106.E and added a new subparagraph 440106.D regarding disclosure of withholding information.	Feb 27, 1998
44-2	440103A.4	IC 13-99 designated Federal Republic of Yugoslavia (Serbia and Montenegro), Albania, the airspace above, and adjacent waters as a combat zone.	Mar 24, 1999

Interim Changes 24-97, 14-98, and 13-99 are incorporated in this chapter.

CHAPTER 44

WITHHOLDING INCOME TAX

4401 WITHHOLDING FROM CURRENT PAY

440101. Wages Subject to Withholding of Federal and State Income Tax. The taxable pay (Table 44-1) of all Service members, except those listed in paragraph 440102, below, is subject to withholding of federal and state income tax. The taxable value of certain noncash fringe benefits, in excess of statutory limitations, that are provided to some members, is subject to federal and applicable state income taxes (see Table 44-1, rules 18 and 19).

440102. Wages Not Subject to Withholding of Federal and State Income Tax. Military pay of the following Service members is not subject to withholding of federal and state income tax:

A. On or before March 31, 1996, the pay of all active duty members for any month during which they qualify for combat zone or qualified hazardous duty area exclusion, as prescribed in paragraph 440103, below. Beginning April 1, 1996, the pay of commissioned officers (O-1 and above) not subject to withholding was capped. Pay earned up to the highest rate of pay payable to any enlisted member plus the amount of hostile fire/imminent danger pay that actually is payable to commissioned officers for any month during which they qualify for combat zone or qualified hazardous duty area exclusion, as prescribed in paragraph 440103, below, is not subject to withholding of federal and state income tax.

B. All active duty members for any month during any part of which the member is in a missing status as defined in the Definitions during the Vietnam conflict as a result of such conflict; except for periods for which it officially is determined that the member is absent from post of duty without authority. These provisions became effective on February 28, 1961, and were terminated on June 30, 1996.

C. Federal income tax shall not be withheld from the military pay of legal residents of Puerto Rico. United States income tax withholding is precluded when military pay is properly subject to Puerto Rico withholding. Puerto Rico withholding is not required for military pay earned but unpaid at the date of death of a military member; consequently, federal income tax withholding is proper for such payments.

440103. Combat Zone Income Tax Exclusion for Active Service in a Combat Zone or Qualified Hazardous Duty Area

A. Combat Zone Defined

1. Effective January 1, 1964, Executive Order 11216 (reference (cc)) designated the following area as a combat zone: Vietnam, including the waters adjacent thereto within the following described limits: From a point on the east coast of Vietnam at the juncture of Vietnam with China southeastward to 21 degrees N. Lat., 108 degrees 15' E. Long.; thence southward to 18 degrees N. Lat., 108 degrees 15' E. Long.; thence southeastward to 17 degrees 30' N. Lat., 111 degrees E. Long.; thence southward to 11 degrees N. Lat., 111 degrees E. Long.; thence southwestward to 7 degrees N. Lat., 105 degrees E. Long.; thence westward to 7 degrees N. Lat., 103 degrees E. Long.; thence northward to 9 degrees 30' N. Lat., 103 degrees E. Long.; thence northeastward to 10 degrees 15' N. Lat., 104 degrees 27' E. Long.; thence northward to a point on the west coast of Vietnam at the juncture of Vietnam with Cambodia. The island of Phu Quoc is a part of the territory of Vietnam.

2. Effective January 17, 1991, Executive Order 12744 (reference (cd)) designated the following areas (including air space and adjacent waters) as combat zones: Persian Gulf; Red Sea; Gulf of Oman; Gulf of Aden; that portion of the Arabian Sea that lies north of 10 degrees N. Lat., and west of 68 degrees E. Long.; and the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

3. Per Executive Order 13002 (reference (eh)), signed May 13, 1996, the designation of Vietnam and waters adjacent thereto as a combat zone was terminated effective as of midnight on June 30, 1996.

★ 4. *Effective March 24, 1999, Executive Order 13119 designated the following areas (including the airspace above) as a combat zone: The Federal Republic of Yugoslavia (Serbia and Montenegro), Albania, the Adriatic Sea, and the Ionian Sea north of the 39th parallel. (IC13-99)*

B. Qualified Hazardous Duty Area Defined. Effective November 21, 1995, Public Law 104-117 (reference (ei)) authorized tax benefits for members performing services in peacekeeping efforts in Bosnia-Herzegovina, Croatia, and Macedonia, hereinafter referred to as qualified hazardous duty areas, in the same way as if services were performed in a combat zone.

C. Qualification for Combat Zone Income Tax Exclusion for Active Service in a Combat Zone or Qualified Hazardous Duty Area. A member of the Armed Services is entitled to combat zone tax exclusion or qualified hazardous duty area exclusion for any month during any part in which he or she:

1. Performs active service in a combat zone or qualified hazardous duty area designated in subparagraph 440103.A., above. Periods in the zone or area during which a member is absent from his or her duty assignment in the zone or area on account of sickness, wounds, internment by the enemy, or other lawful cause are periods of active service.

2. Becomes a prisoner of war or missing in action while in active service in a combat zone or qualified hazardous duty area. (NOTE: Such personnel are deemed, for the purposes of this paragraph, to continue in active service in the combat zone or area for the period for which they are entitled to such status for military pay purposes.)

3. Is granted official leave, or is authorized to depart from assigned duty in a zone or qualified hazardous duty area for other lawful cause on or after November 21, 1995, and is directed to perform temporary duty, and the departure or return is on any day of the month. Exception: In instances when the absence on leave, TAD, or TDY extends over a period which includes a full calendar month, the tax exclusion may not be allowed for that calendar month.

4. Is present, however briefly, in the combat zone or qualified hazardous duty area on official duty requiring presence in that zone or area. When the airspace over a combat zone or qualified hazardous duty area is included as part of the zone or area, a member who passes over or through the zone or area during the course of a trip between two points, both of which lie outside the zone or area, is entitled to an exclusion only if he or she is assigned to official temporary duty to the airspace of the zone or area, or qualifies for hostile fire or imminent danger pay as a result of the flight. If the airspace is not designated for imminent danger pay (but is part of the designated zone or area), a member must be assigned to perform duty in the airspace rather than flying over the zone or area as in an incidental part of the trip to qualify for the exclusion. The fact that most members are in an official duty status when flying through a designated airspace should not be construed to mean they are assigned to the airspace to perform duty and therefore entitled to the exclusion. The following examples apply:

Example 1. Member A is assigned as a navigator in an air unit stationed outside the combat zone. On June 4, during the course of a flight between his home base and another base outside the combat zone, the aircraft on which he serves as a navigator flies over a combat zone (given that the airspace is part of the designated combat zone). Member A is not on official temporary duty in the airspace of the combat zone and does not qualify for hostile fire or imminent danger pay as a result of the flight. Accordingly, he is not deemed to have served in a combat zone since he passes through the zone without either being on official duty to the combat zone or qualifying for hostile fire or imminent danger pay.

Example 2. Same scenario as example 1, except that the airspace is not part of the designated zone and Member B is entitled to hostile fire or imminent danger pay as a result of the flight. Member B is deemed to have served in a combat zone and is entitled to the combat zone tax exclusion if his duties are determined to be in direct support of the military operation in the zone.

Example 3. Member C is a navigator in an air unit stationed outside a combat zone. On June 4, she is ordered to perform duty (execute a mission) in the airspace over the combat zone (which is part of the designated zone) and return to her home station outside the combat zone. Member C is not entitled to hostile fire or imminent danger pay as a result of the flight. She is, however, entitled to the combat zone tax exclusion for the month of June for performing official temporary duty in the airspace (combat zone) during the period.

5. A member performs military duties in areas outside the combat zone or qualified hazardous duty area in direct support of military operations in the combat zone or qualified hazardous duty area and qualifies for hostile fire or imminent danger pay under Chapter 10 of this volume. (The hostile fire or imminent danger pay entitlement must be related to activities or circumstances in the combat zone or qualified hazardous duty area.) Unit commanders who believe that their personnel qualify for combat zone or qualified hazardous duty area treatment under this provision shall request certification from the applicable approval authority as designated by the Secretary of Defense.

a. When members are entitled to tax exclusion under this paragraph, entitlement continues for periods of absence, prisoner or missing status, and temporary duty as stated for service in the actual combat zone or qualified hazardous duty area in subparagraphs 440103.C.1, 2, 3, or 4, above.

b. Military service is considered to be in direct support if it has the effect of maintaining, upholding, or providing assistance for those involved in military operations in the combat zone or qualified hazardous duty area. The following examples are provided to assist in determining whether personnel qualify for combat zone or qualified hazardous duty area tax exclusion. In each case, personnel must be entitled to hostile fire pay or imminent danger pay.

(1) Since the act of transporting necessary supplies is a function included within the concept of providing direct support of military operations, services rendered on a supply vessel transporting supplies to a combat zone or qualified hazardous duty area are in direct support of military operations in the combat zone or qualified hazardous duty area.

(2) If an aircraft in a nearby country outside the combat zone or qualified hazardous duty area is used to transport supplies and personnel into the combat zone or qualified hazardous duty area, the members of the ground crews who load the aircraft and the maintenance personnel who maintain the aircraft all qualify for combat zone or qualified hazardous duty area tax exclusion. In addition, members who maintain and control the airstrip (e.g., as a meteorologist or air traffic controllers) are performing services in direct support of military operations in the combat zone or qualified hazardous duty area qualify for the tax exclusion.

(3) Members of a unit or installation who support and assist other members of that unit or installation who serve in direct support of military operations in a combat zone or qualified hazardous duty area are considered to be serving in direct support of military operations in the combat zone or qualified hazardous duty area. Generally, all members who serve in support of operations at an installation where some members serve in direct support of military operations in a combat zone or qualified hazardous duty area are considered to be serving in direct support of military operations in that combat zone or qualified hazardous duty area (e.g., unit or installation personnel for an airstrip would qualify).

6. A member is hospitalized or rehospitalized any place as a result of wounds, disease, or injury incurred while serving in a combat zone or qualified hazardous duty area or while serving in areas identified in subparagraph 440103.C.5, above. A member is considered as hospitalized or rehospitalized until such time as status as a hospital patient ceases by reason of discharge from the hospital. Combat zone or qualified hazardous duty area tax exclusion under this subparagraph shall not apply to any months beginning more than 2 years after the date of the termination of activities in the combat zone or qualified hazardous duty area.

D. Periods For Which Tax Exclusion Does Not Apply. Members who are in the combat zone or qualified hazardous duty area merely for their own convenience, e.g., while on leave from a duty station not in the zone or area, are not entitled to the exclusion.

E. Tax Abatement in Case of Death

1. A member who dies in a combat zone or qualified hazardous duty area, or as a result of wounds, disease, or injury incurred while serving in the combat zone or qualified hazardous duty area (including under subparagraph 440103.C.5, above) is exempt from income tax for:

- a. The taxable year in which death occurs
- b. Any prior taxable year ending on or after the first day served in a combat zone or qualified hazardous duty area
- c. Any such tax for prior years that remains unpaid at date of death.

2. For missing members, the date of death is not earlier than the date on which a determination of death is made. The preceding sentence does not cause abatement of taxes for any taxable year beginning:

- a. After January 2, 1978, for service in the combat zone designated for purpose of the Vietnam conflict, or
- b. More than 2 years after the date designated under 26 U.S.C. 112 (reference (ce)) as the date of termination of combatant activities in any combat zone other than that designated for purposes of the Vietnam conflict.

F. Termination Date Other than Cases of Hospitalization. In no case shall the tax exclusion authorized in subparagraph 440103.C.1 through C.6, above, for active duty members extend beyond the effective date specified in an executive order terminating the designation of the combat zone. In the case of qualified hazardous duty areas, the exclusion shall not extend beyond the effective date of the termination of imminent danger pay for the area.

440104. Tax Abatement for Death Caused by Terrorist or Military Action Overseas. A

member whose death was caused by terrorist or military action overseas (excluding training exercises) qualifies for federal tax abatement under the provisions of 26 U.S.C. 692(c) (reference (ce)). The law forgives the deceased member's tax liability for the year of death and for all prior tax year(s) for the period beginning with the tax year before the year the injuries or wounds were incurred. The deceased member's survivors, executor, or administrator should contact the Internal Revenue Service for necessary guidance in claiming the tax exemption.

440105. Rate of Withholding

A. General. The withholding of federal and state taxes shall be in accordance with Treasury Department Circular E (reference (cf)) and Treasury Department regulations governing state income tax withholding as implemented in Military Service directives.

B. Additional Federal and State Withholding Tax. Consistent with his or her tax planning needs, a member may authorize an additional amount to be withheld monthly even though entitled to combat zone tax exclusion. A member, who becomes entitled to combat zone exclusion while on temporary additional duty (TAD) or temporary duty (TDY), may authorize that regular withholding be continued. The member's pay account must be adjusted for the combat zone exclusion. See the applicable procedural instructions of the Military Service concerned for preparation of additional withholding tax requests and effective dates.

440106. State and Local Taxes

A. Tax Requirements. The state in which a member claims legal residence may tax compensation and other income regardless of the member's location. Compensation for Military Service, however, is not taxable by any state, territory, possession, political subdivision, or district that is not the member's legal residence.

B. Legal Residence. Each member must designate a legal residence and report any changes of legal residence. A member's legal residence does not change because of change of permanent station. Legal residence at the time of entry into the Armed Forces remains the same until changed by the member. Notification of a change of legal residence must be accomplished by the member using DD Form 2058 (State of Legal Residence Certificate).

C. Withholding. Compensation for military service that is subject to federal taxation also is subject to the mandatory withholding of income taxes on behalf of those states (including the District of Columbia) that have entered into an agreement for the purpose of such withholding with the Secretary of the Treasury. The following states have entered into such an agreement:

<u>State</u>	<u>Effective Date To Commence Withholding</u>
Alabama	July 1, 1977
Arizona	September 1, 1993
Arkansas	March 30, 1981
California	February 1, 1978
Colorado	August 1, 1977
Connecticut	January 1, 1992
Delaware	July 1, 1977
District of Columbia	August 1, 1977
Georgia	January 1, 1979
Hawaii	December 1, 1977
Idaho	July 1, 1977
Indiana	August 1, 1977
Iowa	July 1, 1977
Kansas	July 1, 1977
Kentucky	September 1, 1977
Louisiana	September 1, 1977
Maine	November 1, 1977
Maryland	August 1, 1977
Massachusetts	August 1, 1977
Minnesota	November 1, 1977
Mississippi	June 1, 1978
Missouri	January 1, 1993
Nebraska	September 1, 1977
New Jersey	July 1, 1977
New Mexico	July 1, 1977
New York	July 1, 1977
North Carolina	July 1, 1977
North Dakota	July 29, 1987
Ohio	September 1, 1978
Oklahoma	September 1, 1977
Oregon	November 1, 1977
Pennsylvania	July 1, 1977
Puerto Rico	November 29, 1988
Rhode Island	August 1, 1977
South Carolina	July 1, 1977
Utah	July 1, 1977
Vermont	January 1, 1990
Virginia	July 1, 1977
Wisconsin	August 1, 1977

D. Disclosure of Withholding Information. The furnishing of annual wage and tax information of military members to states (including the District of Columbia) that have a withholding agreement with the Treasury Department must comply with the Privacy Act of 1974. Based upon regulatory provisions pertaining to disclosure to the states, the wages of a member who claims exemption from withholding should not be reported to a state without the member's consent. In lieu of reporting the wages of members who claim exemption from state tax withholding, name, social security number, and the member's claimed basis for exemption shall be provided to the state. This rule applies to all Military Services and pay or personnel systems.

E. Delinquent Taxes. There is no authority for the involuntary collection of delinquent state tax liabilities of members.

440107. Nonresident Aliens

A. Definition. For the purpose of federal income tax withholding, a nonresident alien is an individual who neither is a citizen of the United States nor a resident of the United States. An alien (non-citizen) is a resident of the United States if he or she is admitted lawfully to the United States for permanent residence, meets the substantial presence test, or makes an election to be treated as a resident during the first year of presence in the United States, except as may be provided by tax treaty between the United States and the alien's country of residence.

1. Lawfully admitted for permanent residence. An alien is considered lawfully admitted for permanent residence when he or she first arrives in the United States after his or her immigration status is approved as a permanent residence. Status as lawfully admitted for permanent residence continues, regardless of the alien's location, until the alien is outside the United States after his or her immigration status as a permanent resident is revoked or is determined by a court or administrative body to have been abandoned. Nominal presence in the United States of 10 days or less after revocation or abandonment of permanent resident status will be disregarded if the alien is substantially connected to a foreign country during that time.

2. Substantial presence test. An alien meeting the substantial presence test is a resident from the first day of presence in the United States in a calendar year in which the test is met, except that nominal presence for less than 10 days while still substantially connected to a foreign country is disregarded, until the alien leaves the United States and establishes connections closer to a foreign country than to the United States. Nominal presence in the United States of 10 days or less after this point is disregarded. Also, days of presence in the United States during which the alien is unable to leave the United States due to a medical condition that arose while in the United States are disregarded in applying the substantial presence test. An alien meets the substantial presence test if:

a. He or she is present in the United States on at least 31 days of the calendar year; and

b. The sum of the days on which the individual was present in the United States during the current calendar year, 1/3 of the days on which the individual was present in the first preceding calendar year, and 1/6 of the days on which the individual was present in the second preceding calendar year, equals or exceeds 183. Individuals do not meet the substantial presence test for the current year if they are present on less than 183 days in the current year and have, in the current year, a tax home in a foreign country to which they have closer connections than to the United States, provided that they have not applied for an adjustment of immigration status or otherwise taken steps toward lawful permanent residence in the United States.

B. Tax Liability. A service member, who is a nonresident alien, is liable for United States income tax on pay attributable to service performed in the United States, even if such pay is not subjected to federal income tax withholding because of the provisions in subparagraph 440107.C., below. A nonresident alien member's pay attributable to service performed outside the United States is not subject to United States income tax. For purposes of this paragraph, service outside the United States means shore duty at a naval or other military installation outside the United States and the States of Alaska or Hawaii, or duty on board a seagoing vessel of the Navy (other than a vessel normally used only in coastal waters). Service in a possession of the United States is considered duty outside the United States. A nonresident alien member is not disqualified from eligibility for any of the income exclusions or withholding exemptions set forth in Chapters 44 and 45 of this volume because of a nonresident alien status.

C. Income Tax Withholding. The pay of a non resident alien for any period of service within the United States exceeding 60 calendar days is subject to federal income tax withholding. Such pay also may be subject to state income tax withholding, depending on the state residency status of the alien. Pay for periods of service within the United States of 60 calendar days or less, or for service outside the United States, is not subject to federal or state income tax withholding. The nonresident alien member nevertheless is subject to federal income taxation, and may be subject to state income taxation, on pay for all days of service within the United States and is responsible for reporting, and paying any tax due on, all such income. The fact that income tax is not withheld on pay attributable to a particular day does not prevent that day from being counted as a day of presence in the United States for purposes of subparagraph 440107.A., above.

440108. Advance Payment of Earned Income Credit Amounts. Members who can satisfy the Internal Revenue Service (IRS) tests for earnings and status of dependents qualify for the earned income credit and may elect to receive advance payments. Advance payments will be made after such members file an Earned Income Credit Advance Payment Certificate (TD Form W-5), which may be obtained from the IRS. Payments may be made to members under Treasury Department regulations as implemented in Military Service directives.

4402 COLLECTION OF DELINQUENT FEDERAL TAXES BY LEVY

440201. Authority. When a member does not pay any federal income tax due within 30 days after the IRS has issued a notice and payment demand to the member, the IRS may collect the tax

by levy on the member's salary or other income. Receipt by the cognizant Military Service (or DFAS Center) of a levy notice is the legal authority to commence collection of the delinquent federal income taxes after taking into consideration the appropriate exemptions.

440202. Levy Processing Procedures

A. The IRS serves the tax levy by mail. The Notice of Levy on Wages, Salary, and Other Income, IRS Form 668-W(c) (a 5-part form), includes instructions for the employer (Military Service) and the employee (member).

B. Upon receipt of the levy, the disbursing officer immediately:

1. Completes part 3 and returns the levy to IRS if no funds are due the member (for example, higher precedence deductions (Table 52-1) or in a status described in paragraph 440203, below); or

2. Forwards parts 2 through 5 to the member if funds are due or soon will become due.

C. The member certifies his or her filing status and number of personal exemptions and returns parts 3 and 4 to the disbursing officer within 3 days (or other period authorized by the IRS in coordination with the Military Service concerned and as established within Military Service regulations). If the member does not return parts 3 and 4, the levy will be processed as if the member is "married filing a separate return with one personal exemption."

D. The levy will continue in effect until the amount due in the levy notice is collected or until the levy is released by the IRS.

E. Forward a misrouted levy notice or levy release to the member's cognizant DFAS Center.

440203. Effect on Members in a Combat Zone or Qualified Hazardous Duty Area

A. The disbursing officer immediately will complete part 3, with appropriate notations, and return the levy to the IRS if the member is:

1. Serving (performing official duties) in a designated combat zone or qualified hazardous duty area for any period of time;

2. Serving (performing official duties) outside a designated combat zone or qualified hazardous duty area, but in direct support of military operations in a combat zone or qualified hazardous duty area, and in receipt of hostile fire or imminent danger pay as a result of duties performed in direct support of designated combat zone or qualified hazardous duty area operations;

3. Continuously hospitalized as a result of service in a designated combat zone or qualified hazardous duty area (limited to 5 years of hospitalization in the United States); or

4. In a missing status.

B. Levy deferment remains in effect for 180 days after a member no longer meets any of the above criteria. Entitlement begins anew (including a new 180-day clock) when a member requalifies for deferment (again meets one of the above criteria), with one exception. Rehospitalization for a previously treated wound, illness, or injury does not requalify a member, nor does it stop/restart a 180-day clock.

440204. Attachment of Earnings and Payment to IRS

A. The member's "take home pay," minus exempt amounts claimed via the member's certified claim on part 3 of the levy, shall be attached and sent to the IRS until the levy is satisfied or released by the IRS. The member's usual pay deductions will continue while the levy is in effect.

B. When exemptions are equal to or exceed the member's "take home pay," the disbursing officer will so advise the IRS office that served the levy.

440205. Problem Cases. When the IRS determines that a member's delinquent income tax is a "problem case," that agency shall furnish with the levy notice:

A. A statement of amount of delinquent taxes, and

B. A statement that member's "take home pay" is not enough to pay the levy and all available accrued pay should be attached. In such cases, use all items of pay and allowances including travel allowances and accrued leave settlement paid upon discharge, less exemptions (refer to Form 668-W(c)) and deductions and collections in Table 52-1, rules 1 through 12. Discontinue the member's voluntary (non-discretionary) allotments (except for allotments for support of minor children that are authorized in compliance with court orders when entered prior to date of levy) as necessary to pay the levy. If the amount of the levy does not require stopping all voluntary allotments, the member may select any allotments to be stopped. If the member does not make that selection, the disbursing officer stops allotments as necessary, with insurance allotments the last to be stopped.

4403 INSTALLMENT COLLECTION OF DELINQUENT TAXES

440301. Agreement for Liquidation of Federal Tax Indebtedness by Payroll Deductions.

A member may arrange with the IRS to pay delinquent taxes by monthly deductions from pay. Agreements are made on IRS Form 2159. Once effected, a member may not cancel an agreement before the tax indebtedness is completely liquidated. The Military Services handle agreements as

follows:

A. Army. Collect and pay to IRS as prescribed for payment of indebtedness to instrumentalities and agencies of the government.

B. Navy and Marine Corps. Process the agreement as a T allotment if the period of liquidation is 3 months or longer. If the period is less than 3 months, the disbursing officer pays each month to IRS in the amount of the deduction.

C. Air Force. Process as class T allotment.

440302. Change of Member's Status During Liquidation Period. See Table 44-2.

TAXABILITY OF ITEMS OF MILITARY PAY AND ALLOWANCES				
R U L E	A	B	C	D
	If item is	then item is		
		taxable and subject to federal/ state income tax withholding (notes 5, 9, and 10)	taxable but not subject to federal/ state income tax withholding (notes 5, 9, and 10)	not taxable (notes 5, 9, and 10)
1	basic pay or inactive pay compensation (note 1)	for any month combat zone or qualified hazardous duty area exclusions does not apply (notes 2 and 13).		for enlisted members or warrant officers (W-1 through W-5), and up to \$500 per month of such pay for commissioned officers (0-1 and above) for any month combat zone tax exclusion applies. Beginning November 21, 1995, for commissioned officers (0-1 and above) in amounts up to the highest rate of pay payable to any enlisted member plus the amount of hostile fire/imminent danger pay that is actually payable to the officer for any month combat zone or qualified hazardous duty area tax exclusion applies (notes 2 and 7); or, for any member while in a missing status authorized tax exclusion under the provisions of subparagraph 440102.B.
2	incentive pay for hazardous duty (see Chapters 22-24)			
3	special pay (see Chapters 5-21)			
4	lump-sum payment of accrued leave (basic pay portion)			
5	separation pay, readjustment pay, or severance pay (except for dis-ability)(see note 6)	remains taxable income subject to reporting and withholding if paid during any month the combat zone exclusion applies.		
6	contract cancellation pay	(same as rule 5)		
7	selective or regular reenlistment bonus (including applicable installments)	if reenlistment or extension occurs in a month during which combat zone exclusion does not apply.		if reenlistment or extension occurs in a month during which combat zone or qualified hazardous duty area exclusion applies.
8	pay forfeited by court-martial sentence or non-judicial punishment			and is loss of entitlement to pay in the amount of the forfeiture (however, remaining pay is subject to tax withholding (note 3)).
9	payment(s) in excess of actual travel and transportation costs incurred while carrying on business of U.S. Government (includes any temporary lodging entitlements)		and will not be reported on TD Form W-2 or 1099. The member will account for such payment(s) on individual income tax return.	
10	incentive payment paid to member for do-it-yourself move per JFTR, part D, Chapter 5	at time of payment.		

Table 44-1. Taxability of Items of Military Pay and Allowances

R U L E	A	B	C	D
	If item is	then item is		
		taxable and subject to federal/ state income tax withholding (notes 5, 9, and 10)	taxable but not subject to federal/ state income tax withholding (notes 5, 9, and 10)	not taxable (notes 5, 9, and 10)
11	muster duty allowance	at time of payment under the provisions of subparagraph 580106.C.		
12	personal money allowance	and will be reported on IRS Form W-2.		
13	an allowance (BAS, BAH, FSA, clothing and uniform allowances, and overseas station allowances) (note 8)			at any time.
14	death gratuity		to the extent the total payment for any death exceeds \$3,000 (note 11).	
15	otherwise taxable item of pay earned by member but unpaid at death		but will be reported on TD Form 1099-MISC when paid to beneficiary (note 4).	if death occurs in month member was entitled to combat zone or qualified hazardous duty area exclusion.
16	special separation benefit or voluntary separation incentive	at the flat withholding rate (currently 28 percent) for FITW and at appropriate SITW rate for SSB payments and initial VSI payments. Withhold taxes from VSI installment payments at the annual withholding rate contained in Table 7, IRS Circular E (note 12).		
17	former captive payment (see Chapter 37)		if payment is for former captive status resulting from a lawful action. Payment will be reported on IRS Form W-2 (note 4).	if payment is for former captive status resulting from the deprivation of personal rights.
18	employer provided home-to-work transportation	even if transportation is provided for security reasons (note 14).		
19	employer-provided parking	to the extent that the value exceeds the monthly exclusion limit (note 14).		to the extent that the value is equal to or less than the monthly exclusion limit.
20	waived portion of court martial forfeiture of taxable pay or pay and allowances (Chapter 48)	see subparagraph 480306.C		

NOTES:

1. Excludes the reduction of basic pay for educational benefits under the “New G.I. Bill” after December 31, 1985 (38 U.S.C. 1411).
2. Add payments (rules 1 through 6) made currently or at a later date for commissioned officer service (O-1 and above) to other pay for the month of service (up to the highest rate of pay payable to any enlisted member) to determine the maximum amount to be applied for combat zone or qualified hazardous duty area exclusion. (See subparagraph 350103.B.)

Table 44-1. Taxability of Items of Military Pay and Allowances (Continued)

3. This does not apply to fines imposed by court-martial or non-judicial punishments. Withhold tax from the member's full pay credited before deducting the fine. Report the full amount of the pay credited, without deducting the fine, as earned income.
4. Exception is pay earned for any month combat zone or qualified hazardous duty area exclusion applies. Combat zones and qualified hazardous duty areas are so designated by Executive Order or statute, respectively.
5. The susceptibility of items of military pay and allowances to state income taxes depends upon the law of the member's state of legal residence. Items of pay and allowances, which are not subject to Federal Income Tax Withholding (FITW), however, will not be subject to State Income Tax Withholding (SITW). Items of pay and allowances subject to FITW will be subject to SITW if the member's state of legal residence has entered into a withholding agreement with the Secretary of the Treasury. The total or partial exclusion by states of military pay from income will be recognized in the computation of the amount of state income tax to be withheld.
6. See paragraph 350404 of this volume for exceptions to the normally taxable payment of disability severance pay.
7. Only pay and allowances actually earned during any month in which a combat zone or qualified hazardous duty area designation applies are excludable, even if paid in a later, non-qualifying month. Entitlements earned during any non-qualifying month, but paid in a month the exclusion applies, remain taxable. Accrued leave payments qualify only for that portion of days which were actually earned during a qualifying month.
8. Allowances considered nontaxable on September 9, 1986, remain nontaxable. Any allowance created after September 9, 1986, will be taxable for federal and state income tax purposes unless specified otherwise.
9. If a member receives an overpayment of a taxable pay item, then the overpayment should be reported in the year paid unless the combat zone or qualified hazardous duty area tax exclusion is applicable. If recovery of the overpayment is waived, remitted, or canceled, there are no additional tax reporting requirements. If the overpayment consists of a nontaxable pay item, then the overpayment should not be reported as taxable income if the resulting debt is waived, remitted, or canceled.
10. Taxable wages and withholding must reflect the debt in the year the payment was received. Collection action will reflect impact on taxable wages and withholding (if applicable) as collection is made, but only if made in the same year as the original payment.
11. The amount of death gratuity payments made to survivors of military members who died after August 20, 1996, that is excludable from income, may not exceed \$3,000, regardless of the number of beneficiaries. If there are multiple beneficiaries, the \$3,000 exclusion should proportionately be applied. Report all death gratuity payments separately, using TD Form 1099R. Report the gross amount of each payment in box 1 and 2A. Enter code 4 in box 7. For members who died on or before August 20, 1996, the maximum exclusion amount is \$5,000.
12. SSB and VSI payments remain taxable even if a member signs the agreement to separate while serving in a combat zone or qualified hazardous duty area.
13. For combat zone and qualified hazardous duty areas, effective April 1, 1996, for commissioned officers (O-1 and above), amounts over the highest enlisted grade (Sergeant Major of the Army, Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps; see Table 2-8, note 2, for clarification) plus the amount of hostile fire/imminent danger pay that is actually payable to the officer for that month are taxable and subject to federal and state tax withholding.
14. Home-to-work provided transportation and employer provided parking.
 - a. Per DoD 4500.36-R, the USD(C) and USD (P&R) jointly will issue updated annual guidance concerning the valuation, on a monthly basis, of taxable government employer-provided home-to-work transportation fringe benefits provided to certain military members. Armed Forces Tax Council service representatives annually will distribute the updated guidance to the Military Services.
 - b. Each DoD Component will determine the value, to be calculated on a monthly basis, of government employer-provided taxable parking fringe benefits provided to military members. The monthly exclusion amount for 1996 is \$165.
 - c. Determination must be accomplished utilizing the provisions of the Internal Revenue Code and Treasury Regulations and accordingly documented. Each member's Service shall:
 - (1) Identify members receiving government employer-provided home-to-work transportation and/or parking fringe benefits, certify that the fringe benefits were authorized, calculate and certify the value of the taxable fringe benefits, and submit the appropriate taxable gross income amounts to the servicing DFAS central site no less often than once a year. Exception: When members receive taxable fringe benefits from active duty assignments outside their DoD Component, the agency providing the taxable fringe benefit (such as parking) calculates the value of the benefit provided, and the member's Service verifies the correctness of the calculations;
 - (2) Keep members receiving such benefits advised of the tax liability annually accruing to them.
 - d. Members' certified taxable fringe benefit amounts must be sent to the supporting DFAS Center no less often than annually and not later than December 15, each year, for processing to:
 - (1) Include the taxable non-cash benefit amounts in members' gross income
 - (2) Withhold and deduct appropriate federal and state income taxes (not FICA taxes)
 - (3) Generate TD Forms W-2 that reflect the adjusted gross income and withholdings. Military Service field finance offices are not authorized to process taxable fringe benefits as additional taxable wages, to withhold applicable taxes, or to generate manual TD Forms W-2.

Table 44-1. Taxability of Items of Military Pay and Allowances (Notes Continued)

COLLECTION OF DELINQUENT TAXES BY INSTALLMENT—CHANGE OF MEMBER'S STATUS				
R U L E	A	B	C	D
		When a member who has arranged with IRS for installment collection of delinquent taxes	and	then
1	is discharged or released from active duty	immediately reenlists	deduct from member's pay as agreed with IRS without interruption	
2		does not immediately reenlist	deduct from final pay enough to liquidate the remaining indebtedness, or all available if the remaining indebtedness is more than is available	notify IRS of the member's separation.
3	enters a period of unauthorized absence for which pay and allowances are not payable	is a member of the Army or Air Force	deduct from member's pay and pay to IRS for the month the absence begins the amount agreed to or as much as is available if less than agreed to	suspend further deductions and payments for tax indebtedness until member is restored to a pay status. If deductions and payments are suspended at the time additional payment is due, so notify IRS. Remove suspension when member is restored to a pay status. Deduct and pay for the month of restoration as much as is available if less than the agreed to amount.
4		is a member of the Navy or Marine Corps and a T allotment has not been established		
5		is a member of the Navy or Marine Corps and a T allotment has been established		
6	is retired from the Air Force	a T allotment has been established	allotment remains in effect	deductions required by allotment are made from retired pay.
7	is retired from the Army	an E allotment has been established		
8		an E allotment has not been established	deduct for the month of retirement or transfer, as agreed with the IRS	notify member and the IRS that new agreement must be made.
9		is a Navy or Marine Corps member and is transferred to the Fleet Reserve, Fleet Marine Corps Reserve or retired list and not immediately recalled to active service		

Table 44-2. Collection of Delinquent Taxes by Installment—Change of Member's Status

COLLECTION OF DELINQUENT TAXES BY INSTALLMENT—CHANGE OF MEMBER'S STATUS				
	A	B	C	D
R U L E	When a member who has arranged with the IRS for installment collection of delinquent taxes	and	then	and
10	is a Navy or Marine Corps member and is transferred to the Fleet Reserve, Fleet Marine Corps Reserve or retired list and not immediately recalled to active service	a T allotment has been established	the T allotment remains in effect	deductions required by T allotment are made from retired pay or retainer pay.
11	has qualified for collection deferment because of service in a combat zone or enters hospitalized/missing status as a result of service in a combat zone (note)		defer initiating collection effective the month entering such status	commence collection in accordance with paragraph 440203.

NOTE: Includes direct support of combat zone operations.

Table 44-2. Collection of Delinquent Taxes by Installment—Change of Member's Status (Continued)

Chapter 44—Withholding Income Tax

4401—Withholding from Current Pay

440101	Treasury Regulation 1.162-1(b)(5) and 1.262-2(e) IRS Notice 94-3
440102.A	26 U.S.C. 3401a(1)
440102.B	26 U.S.C. 112(d)
440102.C	OASD(FM&P) Memo, Sep 6, 1990
440103	Public Law 104-117, Mar 20, 1996, 109 Stat 827
440103.A and C	26 U.S.C. 112
440103.A.3	Executive Order 13002, May 13, 1996 26 U.S.C. 112 (c) (3)
★ 440103.A.4	<i>Executive Order 13119, Apr 13, 1999</i>
440103.C.4	26 C.F.R. 1.112-1(f)(2)
440103.C.5	OASD(M&RA)MPP Memo, Mar 26, 1974 Treasury Regulation 1.112-1(f) SECDEF(FM&P) MSG 141656Z, Mar 1991 SECDEF(FM&P) MSG 282245Z, May 1991
440103.C.6	26 U.S.C. 112
440103.D	Treasury Regulation 1.112-1(k)
440103.E	26 U.S.C. 692
440103.F	26 U.S.C. 112
440105.B	26 U.S.C. 3402i
440106	TFM, Vol 1, Part 3, Chapter 5000
440106.B	50 U.S.C. App 574

440106.C	TFM, Part 3, Chapter 5000
440106.D	TFM 3-5070
440107	26 U.S.C. 871
440107.A.2	26 CFR 301.7701(b)-1
440107.B and C	IRS Ltr Ruling (CP:10:41) Dec 17, 1971 and Sep 26, 1968
440108	26 U.S.C. 3507 Public Law 95-600, Nov 6, 1978
4402—Collection of Delinquent Federal Taxes by Levy	
440201	26 U.S.C. 6321(a) 26 U.S.C. 6331 Public Law 100-647, Nov 10, 1988
440203	26 U.S.C. 7508 IR Manual, 53(10)6.1 Treasury Regulation 1.112-1(j) Treasury Regulation 1.112-1(e)
440204	26 U.S.C. 6331, 6334 Public Law 100-647, Nov 10, 1988
Table 44-1	Public Law 104-117, Mar 20, 1996, 109 Stat 827
Rules 5 and 6	Treasury Regulation 1.112-1
Rule 7	Public Law 104-117, Mar 20, 1996, 109 Stat 827
Rule 10	Public Law 94-212, Feb 9, 1976

Rule 11	Revised Rule 77-350, Int Rev Bulletin No. 40, Oct 3, 1977 Armed Forces Individual Income Tax Council Memo, Jan 3, 1978 Treasury Regulation 1.62-2 Treasury Regulation 31.3401(a) 31 CFR 215.8
Rule 14	Public Law 104-188, section 1402, Aug 20, 1996 10 U.S.C. 1475-1480 26 U.S.C. 134
Rule 17	OASD(FM&P) Memo, Jan 15, 1987 IRS Ltr, June 24, 1988 OASD(FM&P) Memo, Nov 18, 1991
Rules 18 and 19	Treasury Regulation 1.162-1(b)(5) and 1.262-2(e) IRS Notice 94-3 10 U.S.C. 2637
Notes 2 and 4	Public Law 104-117, Mar 20, 1996, 109 Stat 827
Note 5	EO 11968, Jan 31, 1977
Note 7	26 U.S.C. 112 IRS Rev. Rul. 71-343 as amended by IRS Rev. Rul. 73-187
Notes 9 and 10	IRS Rev Rul 79-311 Treasury Regulation 1.61-12 IRS, Apr 18, 1960 DoD(C) Memo, Jan 28, 1984
Note 11	Public Law 104-188, section 1402, Aug 20, 1996 10 U.S.C. 1475-1480 26 U.S.C. 134

Note 14

Armed Forces Tax Council
Memo, July 24, 1996
ASD(ES) I Memo,
Oct 3, 1994

Table 44-2

Rule 11

Note 1

26 U.S.C. 7508
IRS Notice 951 (Feb 1991)