BRAC Commission

DCN: 10751

OCT 1 2 2005

Received

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PSC 817 Box 51
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2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

29 September 2005

re: Taxation penalties to overseas DoD Federal Employees due to BRAC Relocation

Dear Sir;

I'm contacting you to request your help and support for the numerous Department of Defense (DoD) Civilian employees such as myself who are working overseas in an official DoD capacity and now subject of a BRAC 2005 relocation. Specifically, I need your help to mitigate the taxation penalties resulting from the impending BRAC 2005 forced relocations.

Let me explain, overseas employees are a unique group affected by this BRAC process. Our stateside places of employment are being relocated. Accordingly, we must find employment at other locations upon our return, which will require relocation to another city. Relocation, of course means selling your home and purchasing a new residence. Here's the "Catch"; since I've been overseas and renting my home until my return, it does not meet the IRS's "primary residence rule" defined within the IRS tax Code Pub 523 "Selling Your Home". Therefore, because of a BRAC closure, we must sell our homes to relocate and this IRS rule requires the equity in our homes to be treated as "income" with full tax liability.

The IRS recognizes this injustice and has protections for active duty personnel and Foreign Service civilians by provisions listed within the same IRS Tax Code Pub 523 "Selling Your Home" (Excerpt attached for your use). This protection is simple; the IRS does not count the overseas tour of duty in their computation to determine Primary Residency for taxation purposes.

My request is as follows:
As part of the impending BRAC legislation, expand the existing coverage of the IRS Publication 523 "Selling Your Home" allowance to members of the Department of Defense serving overseas in an official capacity and under a BRAC relocation. This will allow the 5-year test period for home ownership and use to be suspended while serving overseas in an official capacity (ie: under official Government orders) for a period not to exceed 10-years.

There is no "wind fall", only a fair and equitable application of existing protections to all Federal Employees serving overseas in support of the Armed Services. If you need any further assistance or information, please contact me at +39 (081) 526-4281 or via E-mail at knoxjl@eu.navfac.navy.mil

Thank you and sincerely;

John L. Knox, P.E.

Excerpt from IRS Pub 523 "Selling Your Home"

NOTE: This exemption below does not currently apply to DoD Civilians serving overseas subject to BRAC relocation.

Members of the uniformed services or Foreign Service. *You can choose to have the 5-year test period for ownership and use suspended during any period you or your spouse serve on "qualified official extended duty" as a member of the uniformed services or Foreign Service of the United States. This means that you may be able to meet the 2-year use test even if, because of your service, you did not actually live in your home for at least the required 2 years during the 5-year period ending on the date of sale.*

If this helps you qualify to exclude gain, you can choose to have the 5-year test period suspended by filing a return for the year of sale that does not include the gain.

Example.
David bought and moved into a home in 1996. He lived in it as his main home for 2½ years. For the next 6 years, he did not live in it because he was on qualified official extended duty with the Army. He then sold the home at a gain in 2004. To meet the use test, David chooses to suspend the 5-year test period for the 6 years he was on qualifying official extended duty. This means he can disregard those 6 years. Therefore, David's 5-year test period consists of the 5 years before he went on qualifying official extended duty. He meets the ownership and use tests because he owned and lived in the home for 2½ years during this test period.

Period of suspension. The period of suspension cannot last more than 10 years. You cannot suspend the 5-year period for more than one property at a time. You can revoke your choice to suspend the 5-year period at any time.

Uniformed services. The uniformed services are:

- The Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard),
- The commissioned corps of the National Oceanic and Atmospheric Administration, and
- The commissioned corps of the Public Health Service.

Foreign Service member. You are a member of the Foreign Service if you are any of the following.

- A Chief of mission.
- An Ambassador at large.
- A member of the Senior Foreign Service.
- A Foreign Service officer.
- Part of the Foreign Service personnel.

Qualified official extended duty. You are on qualified official extended duty if you serve on extended duty either:

- At a duty station at least 50 miles from your main home, or
- While you live in Government quarters under Government orders.

You are on extended duty when you are called or ordered to active duty for a period of more than 90 days or for an indefinite period.