



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

February 19, 2009

Number: **INFO 2009-0027**

Release Date: 3/27/2009

CONEX-104473-09

UIL: 112.00-00

The Honorable Jeff Miller  
Member, U.S. House of Representatives  
4300 Bayou Boulevard., Suite 13  
Pensacola, FL 32503

Attention:

Dear Congressman Miller:

This letter is in response to your inquiry on behalf of your constituent, . , an Air Force surgeon, asked whether he can exclude Incentive Special Pay (ISP) and Additional Special Pay (ASP) from gross income if he applied for these special pays while in a combat zone. I hope this information is helpful in responding to .

Gross income is all income from whatever source, including compensation earned while serving in the military (section 61 of the Internal Revenue Code (the Code)). However, enlisted members of the United States Armed Forces can exclude compensation for active service in a combat zone from gross income. A commissioned officer in the United States Armed Forces can exclude from gross income his or her compensation up to the "maximum enlisted amount" received for active service in a combat zone (section 112(b) of the Code).

The term "maximum enlisted amount" refers to the sum of the highest monthly rate of basic pay payable to an enlisted member at the highest pay grade, and the amount of special pay for hostile fire or imminent danger that the officer receives in a month (section 112(c)(5) of the Code). An officer must include in gross income all compensation including bonuses and base pay that exceeds the maximum enlisted amount. Thus, an officer can exclude bonuses and other types of special pay (such as ASP and ISP) received for active service in a combat zone only to the extent that the pay does not cause the officer's compensation to exceed the maximum enlisted amount.

CONEX-104473-09

2

I hope this information is helpful. If we can assist you further, please contact me or  
at ( ) .

Sincerely,

LYNNE CAMILLO  
Branch Chief, Employment Tax Branch 2  
(Exempt Organizations/ Employment Tax/  
Government Entities)  
(Tax Exempt and Government Entities)