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Exemption from the Federal Additional Estate Tax for Certain Members of Armed Forces

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EXEMPTION FROM THE FEDERAL ADDITIONAL ESTATE
TAX FOR CERTAIN MEMBERS OF ARMED FORCES

Public Law 378,¹ enacted by the Eighty-first Congress and approved by the President October 25, 1949, adds a new section² to the estate tax provisions of the Internal Revenue Code, exempting the estates of certain members of the armed forces from the additional estate tax.

The exemption applies only to the additional estate tax imposed by Section 935 of the Code, and no change is made with respect to liability for the basic estate tax. The new provision, therefore, does not affect the computation of liability under the Florida estate tax law, which imposes state death duties equal to eighty per cent of the federal basic estate tax.³

The exemption provided under Section 939 of the Code is available to only those estates that meet the following conditions:

1. The decedent must have been a citizen or resident of the United States at his death.
2. He must have died while in active service as a member of the military or naval forces of the United States or of any of the other United Nations.
3. He must have died on or after December 7, 1941, and before January 1, 1947.
4. He must have either
 - (a) been killed in action; or
 - (b) died as a result of wounds or other injuries, or of

¹Pub. L. No. 378, 81st Cong., 1st Sess., §10 (Oct. 25, 1949).

²INT. REV. CODE §939 reads as follows:

"Sec. 939. Certain Members of Armed Forces.

"The tax imposed by section 935 shall not apply to the transfer of the net estate of a citizen or resident of the United States dying on or after December 7, 1941, and before January 1, 1947, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations if such decedent—

(1) was killed in action; or

(2) died as a result of wounds or other injuries, or of disease, suffered while in line of duty by reason of a hazard to which he was subjected as an incident of military or naval service."

³For a discussion of the new Florida apportionment statute concerning the estate tax see Legis., 3 U. OF FLA. L. REV. 83 (1950).

disease, suffered while in line of duty by reason of a hazard to which he was subjected as an incident of military or naval service.

New Code Section 939 applies retroactively and gives rise to a right to a refund, which is dealt with specifically in the 1949 statute.⁴ No interest is allowed on any previous payment that is converted into an overpayment as the result of the application thereto of new Code Section 939. Limitations against claims for refund arising out of any law or rule of law, other than Code Section 3761 relating to compromises, are waived as regards refunds of this type; in their stead a new period for filing these particular claims is provided. This new period extends to one year from the date of enactment of Public Law 378; therefore it is vital that any such claim be filed on or before October 25, 1950.⁵

GEORGE EARL BROWN

⁴Pub. L. No. 378, 81st Cong., 1st Sess., §10(b) (Oct. 25, 1949), reads as follows:

“(b) If the refund of any overpayment resulting from the application of this section is prevented on the date of the enactment of this Act, or within one year from such date, by the operation of any law or rule of law (other than section 3761 of the Internal Revenue Code relating to compromises), refund of such overpayment may, nevertheless, be made if claim therefor is filed within one year from the date of the enactment of this Act. No interest shall be paid on any overpayment resulting from the application of this section.”

⁵On the usual basis of computation of time, the period of one year from Oct. 25 expires on the following Oct. 25. This matter has not been tested in court, however; therefore, to be absolutely safe, it would be well to file on Oct. 24, 1950, or earlier.