WEST VIRGINIA CODE: §11-21-61

§11-21-61. Extension of time for performing certain acts due to Desert Shield service.

(a) General rule. -- For purposes of applying this article and article ten of this chapter with respect to the tax liability (including any interest, penalty, additional amount, or addition to tax) of any individual who performed Desert Shield services, the period during which such individual performed such services, and the next one hundred eighty days thereafter, shall be disregarded in determining whether any of the acts referred to in subsection (b) were performed within the time prescribed therefor.

(b) Time for performing certain acts postponed by reason of Desert Shield service. -- Whenever the general rule specified in subsection (a) applies, it shall apply to determine:

Whether any of the following acts was performed within the time prescribed therefor;

(A) Filing any return of income under this article (except income tax withheld at source);

(B) Payment of any income tax due under this article (except income tax withheld at source), or any installment thereof or of any other liability to this state in respect thereof;

(C) Filing a petition for reassessment or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(D) Allowance of a credit or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(E) Filing a claim for credit or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(F) Appealing any appealable decision of the Tax Commissioner to the courts of this state, or for appealing to the Supreme Court of Appeals a circuit court decision affirming, in whole or in part, the decision of the Tax Commissioner;

(G) Assessment of any tax (including any penalty, additional amount or addition to tax);

(H) Giving or making any notice or demand for the payment of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax), or with respect to any liability to this state in respect of any such tax;

(I) Collection by the Tax Commissioner, by levy or otherwise, of any liability in respect of any tax administered under article ten of this chapter;

(J) Bringing suit by any officer on behalf of this state, in respect of any liability in respect of

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any tax administered under article ten of this chapter;

(K) Any other act required or permitted under article nine or ten of this chapter or under any article of this chapter administered under said article ten, or specified in regulations promulgated under this section by the Tax Commissioner, in conformity with the provisions of article three, chapter twenty-nine-a of this code.

(c) Treatment of individuals performing Desert Shield services.

(1) In general. -- Any individual who performed Desert Shield service shall be entitled to the benefits of this section.

(2) Desert Shield service. -- For purposes of this section, the term "Desert Shield service" means any service in a unit of the Armed Forces of the United States (as defined in Section 7701(a)(15) of the Internal Revenue Code of 1986) or in support of any such unit if:

(A) Such service is performed in the area designated by the President of the United States as the "Persian Gulf Desert Shield Area";

(B) Such service is performed during any portion of the period beginning August 2, 1990, and ending on the date on which any portion of the area referred to in subparagraph (A) is designated a combat zone pursuant to Section 112 of the Internal Revenue Code of 1986; or

(C) Such service is performed during any portion of the period that there is in effect a designation by the President of the United States that the "Persian Gulf Desert Shield Area" is a combat zone, pursuant to Section 112 of the Internal Revenue code.

(3) Hospitalization. -- An individual shall be treated as performing Desert Shield services during any period of continuous qualified hospitalization attributable to an injury received while performing Desert Shield service. The term "qualified hospitalization" means:

(A) Any hospitalization outside the United States; and

(B) Any hospitalization inside the United States, except that not more than five years of hospitalization may be taken into account under this subparagraph (B); and this subparagraph shall not apply for purposes of applying this section with respect to the spouse of an individual entitled to the benefits of subsection (a) of this section.

(d) Special rules.

(1) Application to spouse. -- The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than two years after the date designated by the President of the United States, under Section 112 of the Internal Revenue Code, as the date of termination of combatant activities in the Persian Gulf Desert Shield area.

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(2) Missing status. -- The period of service referred to in subsection (c) shall include the period during which an individual entitled to benefits under subsection (a) is in missing status, within the meaning of Section 6013(f)(3) of the Internal Revenue Code of 1986.

(e) Exceptions.

(1) Jeopardy assessments or collection. -- Notwithstanding the provisions of subsection (a), if the Tax Commissioner determines that collection of the amount of any tax would be jeopardized by delay, the provisions of subsection (a) shall not operate to stay the assessment of such amount, or the collection of such amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this subsection the amount of interest, penalty, additional amount and addition to the tax, if any, in respect of the period disregarded under subsection (a).

(2) Action taken before ascertainment of rights to benefits. -- The assessment or collection of any tax administered under article ten of this chapter may be made, begun or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment, collection, action or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

(3) Notwithstanding the provisions of paragraphs (1) and (2), the provision of this subsection shall be applied in conformity with the Soldiers' and Sailors' Civil Relief Act.

(f) Effective Date. -- The provisions of this section shall be retroactive to August 2, 1990.

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