

# TJAGSA Practice Notes

Faculty, The Judge Advocate General's School, U.S. Army

## Legal Assistance Note

### New Immigration and Naturalization Rules to Assist Soldiers Fighting the War on Terrorism

The War on Terrorism has led to changes in the immigration laws and regulations that greatly benefit soldiers and their spouses. First, active duty soldiers who are not U.S. citizens are now immediately eligible to apply for naturalization. Second, conditional lawful permanent resident alien spouses of soldiers who are deployed in support of Operation Enduring Freedom may request that the Immigration and Naturalization Service (INS) extend their conditional status for one year, and in six-month increments thereafter, until their spouses return from abroad.

On 3 July 2002, President George W. Bush signed Executive Order 13,269,<sup>1</sup> expediting the naturalization of aliens<sup>2</sup> and non-citizen nationals<sup>3</sup> serving in an active duty status<sup>4</sup> during the War on Terrorism. This executive order made all aliens and noncitizen nationals serving honorably on active duty between 11 September 2001 and a future date, to be determined by executive order, eligible for immediate naturalization under section 329 of the Immigration and Naturalization Act.<sup>5</sup> This authority does not require a period of residence or any specified period of physical presence in the United States before the soldier's application for naturalization.<sup>6</sup> The soldier must show, however, that for at least one year before filing for naturalization, he or she has been, and continues to be: (1) of good moral character; (2) attached to the principles of the Constitution; and (3) favoring the good order and happiness of the United States.<sup>7</sup> Moreover, the government may revoke citizenship granted under this executive order if the soldier is subsequently separated under other than honorable conditions.<sup>8</sup> Former President

---

1. 67 Fed. Reg. 45,287 (July 8, 2002).

2. The term "alien" is defined as "any person not a citizen or national of the United States." See 8 U.S.C. § 1101(a)(3) (2000).

3. A "national of the United States" is defined as "a citizen of the United States, or . . . a person who, though not a citizen of the United States, owes permanent allegiance to the United States." *Id.* § 1101(a)(22). Another provision provides that the following are nationals of the United States at birth:

- (1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;
- (2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person;
- (3) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and
- (4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years—

(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year; and

(B) at least five years of which were after attaining the age of fourteen.

*Id.* § 1408; see also *id.* § 1101(a)(29) (providing that "[t]he term 'outlying possessions of the United States' means American Samoa and Swains Island").

4. The term "serving in an active duty status" is defined as service in the United States Army, Navy, Marine Corps, Air Force, Coast Guard, and service in a National Guard unit that is federally recognized as a Reserve Component of the Armed Forces of the United States and called for active duty. 8 C.F.R. subpt. 329.1 (2002).

5. Immigration and Nationality Act, Pub. L. No. 82-414, § 329, 66 Stat. 163, 250-51 (1952) (codified as amended at 8 U.S.C. § 1440). This section provides that the President, by executive order, may authorize any person who, as an alien or U.S. national, has served honorably in the Armed Forces during a period of time as defined below:

a period in which the Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, [to] be naturalized . . . if (1) at the time of enlistment, reenlistment, extension of enlistment or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, or on board a public vessel owned or operated by the United States for noncommercial service, whether or not he has been lawfully admitted to the United States for Permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence.

6. 8 U.S.C. § 1440(b)(2).

7. 8 C.F.R. § 329.2(d).

8. 8 U.S.C. § 1440(c).

Clinton last used this authority to expedite the naturalization of service members who served on active duty during the Persian Gulf War.<sup>9</sup>

Legal assistance attorneys should advise soldiers to apply for naturalization under this executive order using the procedures found in *The Soldier's Guide to Citizenship Applications*.<sup>10</sup> Department of the Army policy has directed Personnel Service Battalions (PSBs) and Military Personnel Divisions (MPDs) to assist soldiers in filing their applications for naturalization.<sup>11</sup>

In addition to the executive order authorizing soldiers on active duty to apply for naturalization immediately, the INS has issued rules that will assist soldiers' alien spouses in their immigration process. On 7 January 2002, the INS issued a policy memorandum providing for special procedures if a conditional lawful permanent resident's spouse is a member of the U.S. Armed Forces and is stationed abroad as part of Operation Enduring Freedom.<sup>12</sup>

Generally, a soldier's alien spouse receives only *conditional* lawful permanent resident status if: (1) he or she was married within twenty-four months of the alien spouse obtaining resident status as an immediate relative of the soldier; or (2) the alien spouse received permanent residence after entering the United States under a fiancée "K" visa to marry the soldier.<sup>13</sup> Ordinarily, the alien spouse and the sponsoring soldier must jointly petition to remove the spouse's conditional status during the ninety-day period before the second anniversary of the date the spouse obtained conditional lawful permanent resident status.<sup>14</sup> Additionally, the alien spouse and sponsoring soldier must generally appear for a personal interview before an INS

officer before the INS will remove the conditional status.<sup>15</sup> If the couple fails to file a petition, or (barring a showing of good cause) fails to appear for the interview, the alien spouse's permanent resident status is terminated as of the second anniversary of the spouse's admission for permanent residence.<sup>16</sup> The spouse is then subject to removal from the United States.

If a sponsoring soldier is deployed in support of Operation Enduring Freedom, the soldier may be unable to sign the joint petition requesting removal of the conditional status or to appear before an INS officer for the personal interview. Fortunately, the INS has recognized this problem and has issued special instructions for such situations.<sup>17</sup> Under the INS policy memorandum, if the soldier's deployment is imminent and the soldier has already filed the petition to remove the conditional status, the INS Service Office must make "every effort" to complete adjudication of the petition prior to the soldier's deployment.<sup>18</sup> If the INS cannot adjudicate the petition before the soldier deploys, the INS places the petition on "overseas hold" pending the soldier's return from abroad.<sup>19</sup>

If the soldier has already deployed and his or her spouse's conditional status is due to expire, the INS will accept a petition signed by the conditional resident only, provided the petition is accompanied by evidence that the soldier's spouse is deployed.<sup>20</sup> In addition, the policy provides that the service center may approve the petition without an interview, unless the petition's supporting documentation does not warrant approval. In that case, the service center must schedule the case for an interview and place the case on "overseas hold."<sup>21</sup>

The INS will initially extend the alien spouse's conditional resident status for one year.<sup>22</sup> If the soldier has not returned

9. See Exec. Order No. 12,939, 59 Fed. Reg. 61,231, *reprinted in* 8 U.S.C. § 1440.

10. U.S. Dep't of Army, *Perscom On Line, The Soldier's Guide to Citizenship Applications* (May 18, 2001), at <https://www.perscomonline.army.mil/tagd/pssd/psb/The%20Soldier's%20Guide%20to%20Citizenship%20Application.htm>. The Adjutant General publishes this guide.

11. *Id.* at 1. Under this policy, all such applications are filed with the Immigration and Naturalization Service, Nebraska Service Center in Lincoln, Nebraska.

12. Memorandum, Immigration and Naturalization Service Policy, subject: Removal of Conditional Resident Status If Conditional Resident Is the Spouse of an Individual Serving Abroad in the U.S. Armed Forces for Operation Enduring Freedom (Jan. 7, 2002) [hereinafter INS Policy Memorandum], *available at* <http://www.usais.org/news/90.pdf>.

13. The U.S. Code definition of "alien spouse" for purposes of conditional permanent resident status is located at 8 U.S.C. § 1186(g)(1).

14. *Id.* §§ 1186a(c)(1)(A), (d)(2). The alien spouse and petitioning spouse must file a Form I-751. U.S. Dep't of Justice, Immigration and Naturalization Service, Form I-751, Petition to Remove Conditions on Residence (June 2002).

15. 8 U.S.C. § 1186a(c)(1)(B).

16. *Id.* § 1186a(c)(2).

17. See INS Policy Memorandum, *supra* note 12.

18. *Id.* at 1.

19. *Id.*

20. *Id.* at 2. Such evidence may include "a photocopy of the service member's travel orders, a letter from the commanding officer, or other appropriate documentation signed by responsible military personnel. *Id.*

## Key Changes for 2002

### Form 1040—U.S. Individual Income Tax Return

#### *Tax Rates Reduced*

Most of the tax rates on individual income decreased by one-half of one percent in 2002; a new 10% tax rate is a permanent feature of the tax code. The 10% tax bracket, which was implemented as a rate reduction credit in 2001,<sup>25</sup> is fully incorporated into the tax rate structure for 2002.<sup>26</sup> All tax rates above the 15% tax bracket are reduced by one-half of one percent in 2002.<sup>27</sup> The new tax rates on individual income for 2002 are 10%, 15%, 27%, 30%, 35%, and 38.6%.<sup>28</sup> The Tax Table and the Tax Rate Schedules published by the Internal Revenue Service (IRS) reflect these changes; they are also listed in the appendix at the end of this note. These annual tax rate reductions will continue through the year 2006.<sup>29</sup>

#### *Income*

**Frequent Flier Miles—Line 7:** Beginning in 2002, military and civilian employees of the Department of Defense may keep and make use of frequent flyer miles they earn during official travel.<sup>30</sup> On 21 February 2002, in *Announcement 2002-18*, the IRS announced that an individual's receipt or personal use of frequent flyer miles (or other in-kind promotional benefits attributable to business or official travel) is not taxable income for the employee.<sup>31</sup> Travel or other promotional benefits that employees convert to cash, compensation in the form of travel or other promotional benefits, and any in-kind benefit used to disguise compensation will still be considered income.<sup>32</sup> *Announcement 2002-18* formalizes the IRS's previous unofficial policy on frequent flyer miles.<sup>33</sup>

**Coverdell Education Savings Account (ESA) distributions—Line 21:** Distributions from Coverdell ESAs will be divided into taxable and non-taxable portions; the taxpayer should report the taxable portion of the distribution on Line 21.<sup>34</sup> These distributions are not taxable when taxpayers use

from abroad within the period of the one-year extension, the service center will revalidate the extension of the conditional status in six-month increments.<sup>23</sup> The soldier must remember to contact the INS service center immediately upon his or her return from the deployment so that the INS may adjudicate the request to remove the spouse's conditional status.

The President has given all non-U.S. citizen soldiers on active duty on or after 11 September 2001 the unique opportunity to apply immediately to become U.S. citizens. Legal assistance attorneys should ensure that these soldiers are aware of this opportunity and visit their PSB or MPD to begin the naturalization process. In addition, legal assistance attorneys should be aware of the special rules for removal of an alien spouse's conditional resident status when his or her soldier spouse is deployed as a part of Operation Enduring Freedom. These conditional resident spouses need not worry that they will be subject to removal from the United States because their spouses are deployed to fight in the War on Terrorism. Lieutenant Colonel Pam Stahl.

### ***Tax Law Note***

#### **Update for 2002 Federal Income Tax Returns**

The Economic Growth and Tax Relief Reconciliation Act of 2001<sup>24</sup> (2001 Act) brought several significant changes in federal income tax law for tax year 2002. Congress has reduced tax rates, created several new adjustments and credits, and most notably, relaxed the earned income credit rules, potentially making this credit available to many more service members.

This note highlights key changes to the 2002 *Form 1040*, its schedules, and some related forms that are important for taxpayers in the military community. This note generally lists changes in the order in which they appear on the return, schedules, or forms. Its goal is to inform legal assistance attorneys of updates in tax numerology and changes for the upcoming tax season.

---

21. *Id.*

22. *Id.* That is, the conditional resident's Form I-551 is extended. See U.S. Dep't of Justice, Immigration and Naturalization Service, Form I-551, Permanent Resident Card (June 1999).

23. *Id.*

24. Pub. L. No. 107-16, 115 Stat. 38 (LEXIS 2002) [hereinafter 2001 Act].

25. I.R.C. § 6428 (codifying the 2001 Act).

26. *Id.* § 1(i)(1).

27. *Id.* § 1(i)(2) (codifying 2001 Act § 101(a)(i)(2)).

28. *Id.* § 1.

29. *Id.* § 1(i)(2) (codifying 2001 Act § 101(a)(i)(2)).

them to pay qualified elementary and secondary school expenses.<sup>35</sup>

**Qualified state tuition program earnings—Line 21:** A taxpayer who receives a distribution from a qualified state tuition program may be able to exclude part or all of the earnings from income if used to pay for qualified higher education.<sup>36</sup>

#### *Adjustments*

**Educator expenses—Line 23:** Eligible educators may now deduct up to \$250 of the cost of books, supplies, computer equipment, and software they use in the classroom.<sup>37</sup>

**Individual Retirement Arrangements—Line 24:** The adjusted gross income (AGI) phase-out limitations increased again for 2002, potentially making it easier for employees covered by qualified retirement plans to make deductible contributions to a traditional IRA.<sup>38</sup> Because service members are active participants and are covered by a pension or retirement plan, deductible IRA contributions are subject to limitations.<sup>39</sup> For taxpayers who file their 2002 taxes as “married filing jointly,” the phase-out begins at \$54,000 and tops out at

\$64,000. In 2007 and thereafter, the maximum range will be from \$80,000 to \$100,000. For single filers (including heads of household), the phase-out begins at \$34,000 and ends at \$44,000. In 2005 and thereafter, the maximum range will be from \$50,000 to \$60,000. For taxpayers who are married but file separately, the limit is remains at \$10,000. The annual IRA contribution limit has risen to \$3000, or \$3500 for those fifty or older.<sup>40</sup>

The 2001 Act increases IRA contribution limits over the next several years. The Act increases the maximum annual dollar contribution limit for IRA contributions to \$3000 for tax years 2002 through 2004, \$4000 for 2005 through 2007, and \$5000 for 2008.<sup>41</sup> After 2008, the limit is adjusted annually for inflation in \$500 increments.<sup>42</sup> The Act also provides for catch-up contributions. Individuals who have attained age fifty may make additional catch-up IRA contributions. What would otherwise be the maximum contribution limit (before application of the AGI phase-out limits) for an individual age fifty or more before the end of the taxable year increases by \$500 for tax years 2002 through 2005, and \$1000 for 2006 and thereafter.<sup>43</sup>

**Student loan interest deduction—Line 25:** The Student Loan Interest Deduction continues to increase for military tax-

---

30. The new rule states as follows:

Retention of Travel Promotional Items. To the extent provided under subsection (c), a Federal employee, member of the Foreign Service, member of a uniformed service, any family member or dependent of such an employee or member, or other individual who receives a promotional item (including frequent flyer miles, upgrade, or access to carrier clubs or facilities) as a result of using travel or transportation services obtained at Federal Government expense or accepted under section 1353 of title 31, United States Code, may retain the promotional item for personal use if the promotional item is obtained under the same terms as those offered to the general public and at no additional cost to the Federal Government.

National Defense Authorization Act of 2002, Pub. L. No. 107-107, § 1116(b), 115 Stat. 1012, 1241 (2001).

31. I.R.S. Announcement 2002-18, 2002-10 I.R.B. 1 (2002).

32. *Id.*; see *Charley v. Commissioner*, 91 F.3d 72 (9th Cir. 1996) (affirming a Tax Court decision that a shareholder-employee's conversion of frequent flyer miles provided by the employer to cash was taxable).

33. *Id.* For more information on the rules pertaining to taxation of frequent flyer miles, see Lieutenant Colonel Curtis A. Parker, *TJAGSA Practice Note: IRS Says No Tax Implications for Personal Use of Frequent Flyer Miles*, *ARMY LAW.*, Mar. 2002, at 51-53.

34. U.S. Internal Revenue Service, Form 1040 Instructions, at 29 (2002); I.R.C. § 530(d)(2)(B).

35. I.R.C. § 530(b)(2)(A)(ii).

36. I.R.S. Form 1040, Instructions, at 29 (2002); I.R.C. § 529(c)(3)(A).

37. I.R.C. § 62(a)(2)(D), (d).

38. I.R.C. § 219(g); see ADMINISTRATIVE & CIVIL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, JA 269, FEDERAL TAX INFORMATION SERIES (Dec. 2002) [hereinafter JA 269]; see generally U.S. INTERNAL REVENUE SERVICE, PUB. 590, INDIVIDUAL RETIREMENT ARRANGEMENTS (2002).

39. I.R.C. § 219(g); *Morales-Caban v. Commissioner*, 66 T.C.M. (CCH) 995 (1993); I.R.S. Notice 87-16.

40. I.R.C. § 219(g)(2)(A)(ii).

41. *Id.* § 219(b)(5)(A) (as amended by 2001 Act § 601(a)).

42. *Id.* § 219(C).

43. *Id.* § 219(b)(5)(B).

payers.<sup>44</sup> For 2002, taxpayers will be able to deduct up to \$2500 of student loan interest.<sup>45</sup> The Student Loan Interest Deduction is taken as an adjustment to income; taxpayers do not have to itemize their deductions to qualify for this deduction.<sup>46</sup>

The sixty-month limitation no longer applies. Previously, student loan interest deductions were limited to the interest paid during the first sixty months in which interest is required to be paid on an educational loan. Beginning with tax year 2002, the 2001 Act repeals this sixty-month limitation. Further, the 2001 Act increases the income phase-out ranges for eligibility for the Student Loan Interest Deduction to \$50,000 to \$65,000 for single taxpayers and to \$100,000 to \$130,000 for married taxpayers filing joint returns. These are significant increases over last year's amounts (\$60,000 to \$75,000 for couples and \$40,000 to \$55,000 for single taxpayers).<sup>47</sup> The 2001 Act includes automatic annual adjustments for inflation, affecting income phase-out ranges after 2002.<sup>48</sup>

**Tuition and fees deduction—Line 26:** Taxpayers will now be able to deduct up to \$3000 of the qualified higher education expenses they paid in 2002 for themselves, their spouses, and their dependents. The deduction is not available if the taxpayer's modified AGI exceeds \$65,000 (\$130,000 for joint returns). There is no gradual phase-out for this deduction; if AGI exceeds this limit by any amount, the taxpayer loses the entire deduction. Taxpayers close to the limit should plan carefully to avoid exceeding this limit and losing the deduction.<sup>49</sup>

**Clean-fuel deduction for new hybrid cars—Line 34:** Individuals, partnerships, and corporations may deduct up to \$2000 of the incremental cost of buying a motor vehicle that uses a clean-burning fuel.<sup>50</sup> The IRS announced that buyers of a new Toyota Prius for model years 2001, 2002, and 2003; a

new Honda Insight for model years 2000, 2001, and 2002;<sup>51</sup> and a new Honda Civic Hybrid for model year 2003<sup>52</sup> may claim a deduction of \$2000 for the year they first put the vehicle into use. The deduction is available whether the taxpayer uses the vehicle for business or personal reasons, whether or not the taxpayer itemizes deductions. Taxpayers may also claim the deduction for a previous year by filing an amended return.<sup>53</sup>

### *Calculating Taxable Income and Tax*

**Standard deduction—Line 38:** For 2002, the standard deduction is \$4700 for single filers, \$3925 for married persons filing separately, \$7850 for joint filers and qualifying widow(er)s, and \$6900 for heads of household.<sup>54</sup>

**Personal exemptions—Line 40:** The exemption amount for 2002 is \$3000. Exemptions phase out if AGI exceeds \$137,300 for single filers, \$103,000 for married persons filing separately, \$206,000 for joint filers and qualifying widow(er)s, and \$171,650 for heads of household.<sup>55</sup>

### *Credits*

**Education credits—Line 48:** The modified AGI-based phase-out range for the education credits is higher, at \$41,000-\$51,000 (\$82,000-\$102,000 for joint filers).<sup>56</sup>

**Retirement savings contributions credit—Line 49:** Eligible lower-income taxpayers may now claim a nonrefundable tax credit for a percentage of up to \$2000 of qualified retirement savings contributions.<sup>57</sup> The percentage (10%, 20%, or 50%) depends on filing status and AGI.<sup>58</sup>

44. For more information on the Student Loan Interest Deduction, see Major Richard Rousseau, *TJAGSA Practice Notes: Internal Revenue Service Restructuring and Reform Act of 1998*, ARMY LAW., Nov. 1998, at 40-41; Major Richard Rousseau, *TJAGSA Practice Notes: Update for 1998 Federal Income Tax Returns*, ARMY LAW., Nov. 1998, at 44-45; Major Richard Rousseau, *TJAGSA Practice Notes: Update for 1999 Federal Income Tax Returns*, ARMY LAW., Dec. 1999, at 30.

45. I.R.C. § 221(b)(1).

46. *Id.* § 62(a)(17).

47. *Id.* § 221(d) (amending I.R.C. § 2219(e) and 2001 Act § 412).

48. *Id.* § 221(f) (codifying 2001 Act § 412).

49. For example, a deductible contribution to a traditional IRA or Thrift Savings Plan (TSP) contributions for future years.

50. I.R.C. § 179A(a)(1)(a), (b)(1)(a)(i).

51. I.R.S. Announcement 2002-93 (2002).

52. I.R.S. Announcement 2002-97 (2002).

53. *Practice Alert*, 48 FED. TAXES WEEKLY ALERT 42 (2002).

54. I.R.C. § 63(c); I.R.S. Form 1040, Instructions, at 34 (2002).

55. I.R.C. § 151; I.R.S. Form 1040, Instructions, at 35 (2002).

56. I.R.C. §§ 25A(d)(2), (h).

**Child tax credit—Line 50:** New rules apply to determining who is a qualifying child for purposes of the child tax credit. “Qualifying child” will now include a brother, sister, step-brother, or stepsister of the taxpayer, or a descendant of any such individual, who the taxpayer cares for as the taxpayer’s own child.<sup>59</sup> This change removes such individuals from the definition of “eligible foster child,” and therefore eliminates the requirement that they reside in the taxpayer’s home for the entire tax year.

**Adoption credit—Line 51:** The maximum adoption credit has risen to \$10,000, and phases out over a higher range of modified AGI (\$150,000-\$190,000).<sup>60</sup>

**Earned income credit—Line 64:** Several changes to the Earned Income Credit (EIC) rules should clarify taxpayers’ eligibility for the EIC; they will also increase the number of service members eligible for this valuable credit. The definition of earned income no longer includes non taxable items such as Basic Allowance for Housing (BAH), Basic Allowance for Subsistence (BAS), and combat zone excluded pay.<sup>61</sup> Adjusted gross income, rather than modified AGI, is now the measure from which the phase-out for eligibility for the EIC is mea-

sured.<sup>62</sup> The definition of “qualifying child” has changed.<sup>63</sup> Finally, the 2001 Act creates new rules for credit eligibility when multiple taxpayers share the same qualifying child.<sup>64</sup>

## Schedule A—Itemized Deductions

**Medical and dental expenses—Schedule A, Line 1:** These expenses include weight-loss programs for treatment of a specific disease (for example, obesity).<sup>65</sup>

**Unreimbursed employee business expenses—Schedule A, Line 20:** The standard mileage rate for business travel is 36.5¢ per mile.<sup>66</sup> A taxpayer should not include any deduction on this line for educator expenses he is claiming on Form 1040, Line 23, or any tuition and fees deduction he is claiming on Form 1040, Line 26.<sup>67</sup>

**Total itemized deductions—Schedule A, Line 28:** Adjusted gross income over \$137,300 (\$68,650 if married filing separately) will now trigger a reduction in itemized deductions.<sup>68</sup>

---

57. *Id.* § 25B(a).

58. *Id.* § 25B(b). The applicable percentage (38%, 20%, or 10%) depends on filing status and AGI, as follows:

Joint filers: \$0-\$30,000, 50%; \$30,000-\$32,500, 20%; and \$32,500 to \$50,000, 10% (no credit if AGI is above \$50,000).

Heads of household: \$0-\$22,500, 50%; \$22,500-\$24,375, 20%; and \$24,375-\$37,500, 10% (no credit if AGI is above \$37,500).

All other filers: \$0-\$15,000, 50%; \$15,000-\$16,250, 20%; and \$16,250-\$25,000, 10% (no credit if AGI is above \$25,000).

*Id.*

59. *Id.* §§ 24(c)(1), 32(c)(3)(B)(i)(II).

60. *Id.* §§ 23(a)-(b).

61. *Id.* § 32(c)(2)(A)(i) (codifying 2001 Act § 303(b)). The definition of earned income will include “wages, salaries, tips, and other employee compensation, if includible in gross income for the tax year, plus net earnings from self-employment. Military taxpayers will no longer be required to include nontaxable combat zone pay, nontaxable-housing allowance, and nontaxable subsistence allowance as earned income.” *Id.*

62. I.R.C. §§ 32(a)(2)(B), (c)(5) (codifying 2001 Act § 303(d)(1)) (codifying 2001 Act § 303(d)(2)(A)). Beginning in 2002, the phase-out of the credit will apply to taxpayers whose AGI (rather than modified AGI) or earned income, whichever is greater, exceeds a phase-out amount. The maximum credit amount will be reduced by the phase-out percentage multiplied by the AGI (or earned income) that exceeds the phase-out amount (as adjusted for inflation). Accordingly, the 2001 Act deletes the definition of “modified AGI.” *Id.*

63. I.R.C. § 32(c)(3)(A)(ii), (B)(i), B(iii) (codifying 2001 Act § 303(e)(2)(B)) (codifying 2001 Act § 303(e)) (codifying 2001 Act § 303(e)(2)(A)). Beginning in 2002, the 2001 Act removes the exception for a foster child from the over-six-month residency requirement. In its definition of “eligible foster child,” the 2001 Act also removes the requirement that the child have the same principal residence as the taxpayer for the entire tax year. The removal of this requirement for eligible foster children extends the over-six-month residency requirement to all children, including foster children, after 2001. *Id.*

64. I.R.C. § 32(c)(1)(C) (codifying 2001 Act § 303(f)). For more information on the changes to the Earned Income Credit, see Lieutenant Colonel Curtis A. Parker, *TJAGSA Practice Notes: Earned Income Credit: New Rules Could Ease Qualification*, ARMY LAW., June 2002, at 36-41.

65. Rev. Rul. 2002-19, 2002-16 I.R.B. 779; I.R.C. § 213.

66. I.R.S. Form 2106, Instructions, at 1 (2002).

67. I.R.C. § 265.

68. I.R.S. Form 1040, Schedule A, Instructions, at A-6 (2002).

## Schedule B—Interest and Ordinary Dividends

**Increased threshold for those who must complete a Schedule B:** For tax year 2002, taxpayers whose ordinary dividends or interest each are less than or equal to \$1500 (an increase from \$400) generally do not have to complete Schedule B.<sup>69</sup> Taxpayers no longer need to file this schedule to report the receipt and payment of interest separately, unless the total of all interest or dividends the taxpayer received exceeds \$1500. This is not a combined interest and dividend threshold; it applies separately to each. The taxpayer may still need to file Schedule B, even when his interest or dividend income is below \$1500, if the taxpayer cashed U.S. Savings Bonds and used the interest income for qualified education expenses.<sup>70</sup>

**Excludable interest on Series EE and I U.S. savings bonds—Schedule B, Line 3:** The exclusion for education related savings bond interest phases out at higher income levels. For 2002, the phase-out begins at modified AGI above \$57,600 (\$86,400 on a joint return).<sup>71</sup>

## Schedule C—Profit or Loss from Business (Sole Proprietorship)

**Car and truck expenses (Schedule C, Line 10 and Schedule F, Line 12:** The standard mileage rate is now 36.5 cents per mile for business travel.<sup>72</sup>

## Schedule D—Capital Gains and Losses

**Sale of main home:** Taxpayers affected by the 11 September 2001 terrorist attacks are eligible for a partial home sale exclusion, based on the unforeseen circumstance rule. Home sellers may exclude up to \$250,000 of home sale gain (up to \$500,000 for joint filers) if: (1) during the five years ending on the sale or exchange date, they owned and used the residence as their main home for periods aggregating at least two years; and (2) they did not use the exclusion within the preceding two years. A partial home sale exclusion rule allows home sellers to exclude part or all of their home sale gain, even though they do not fully meet these requirements. The partial exclusion applies only if the home seller's failure to meet either rule occurs because he must sell the home due to "a change of place of employment, health, or other unforeseen circumstances."<sup>73</sup> The IRS has said that the 11 September 2001 terrorist attacks are an "unforeseen circumstance" for purposes of the partial home sale exclusion rule.<sup>74</sup>

## Mailing Locations for Tax Returns

Some taxpayers will mail their tax returns to a different IRS Service Center this year because the IRS changed the filing location for several areas. Taxpayers should mail tax returns to the address on the envelope they received with their tax package, or note the proper mailing address in the Form 1040 Instruction Booklet.<sup>75</sup> Lieutenant Colonel Curtis A. Parker.

---

69. I.R.S. Form 1040, Schedule B, Instructions, at B-1 (2002).

70. I.R.C. § 135; I.R.S. Form 1040, Schedule B, Instructions, at B-1 (2002).

71. I.R.C. § 135; I.R.S. Form 1040, Schedule B, Instructions, at B-1 (2002).

72. I.R.S. Form 1040, Schedule C, Instructions, at C-3 (2002).

73. I.R.C. § 121(c).

74. Notice 2002-60, 2002-36 I.R.B. 482.

75. See I.R.S. 1040, Instructions.

## Appendix

### Summary of Tax Year 2002 Changes in Tax Rates and Deductions

There are six different tax rate brackets for tax year 2002, taxed at the following marginal tax rates: 10%, 15%, 27%, 30%, 35%, and 38.6%.<sup>76</sup> The 2002 tax rates by filing status are:

#### Married Filing Jointly and Qualifying Widow(er):

<u>Taxable Income</u>	<u>Marginal Tax Rate</u>
\$1 - 12,000	10%
12,000 - 46,700	15%
46,700 - 112,850	27%
112,850 - 171,950	30%
171,850 - 307,050	35%
307,050	38.6%

#### Single:

<u>Taxable Income</u>	<u>Marginal Tax Rate</u>
\$0 - 6000	10%
6000 - 27,950	15%
27,950 - 67,700	27%
67,700 - 141,250	30%
141,250 - 307,050	35%
307,050	38.6%

#### Head of Household:

<u>Taxable Income</u>	<u>Marginal Tax Rate</u>
\$0 - 10,000	10%
10,000 - 37,450	15%
37,450 - 96,700	27%
96,700 - 156,600	30%
156,600 - 307,050	35%
307,050	38.6%

#### Married Filing Separately:

<u>Taxable Income</u>	<u>Marginal Tax Rate</u>
\$0 - 6000	10%
6000 - 23,350	15%
23,350 - 56,425	27%
56,425 - 85,975	30%
85,975 - 153,525	35%
153,525	38.6%

---

76. I.R.C. § 1(a)-(d), (i)(2).

**Estates and Trusts:**

<u>Taxable Income</u>	<u>Marginal Tax Rate</u>
\$1 - 1850	15%
1850 - 4400	27%
4400 - 6750	30%
6750 - 9200	35%
9200	38.6%

**Standard Deduction**

- Married filing jointly or qualifying widow(er), 2002: \$7850 (\$7600 in 2001; \$7950 projected for 2003).
- Single, 2002: \$4700 (\$4550 in 2001; \$4750 projected for 2003).
- Head of household, 2002: \$6900 (\$6650 in 2001; \$7000 projected for 2003).
- Married filing separately, 2002: \$3925 (\$3800 in 2001; \$3975 projected for 2003).

**Reduction of Itemized Deductions**

- Married filing separately: \$68,650.
- All other returns: \$137,300.

**Personal Exemptions**

Higher personal exemption deduction, 2002: \$3000 (up from \$2900 in 2001; \$3050 projected for 2003).

2002 Phase Out Amounts for personal exemptions:

<u>Taxpayer</u>	<u>Begins After</u>
Married filing jointly	\$206,000
Single	\$137,300
Head of household	\$171,650
Married filing separately	\$103,000

**Foreign Earned Income Exclusion<sup>77</sup>**

Higher exclusion for 2001: \$80,000 (was \$78,000 in 2001; will continue at \$80,000 for future years with indexing for inflation).<sup>78</sup>

**Earned Income Credit**

Number of Children	Maximum Amount of Credit	Earned Income Amount	Threshold Phase-out Amount	Completed Phase-out Amount
None	\$376	\$4990	\$6150	\$12,060
1	\$2506	\$7350	\$13,550	\$30,201
2	\$4140	\$10,350	\$13,550	\$34,178

---

77. *Id.* § 911. For more information on Foreign Earned Income Exclusion, see I.R.S. PUB. 54, TAX GUIDE FOR U.S. CITIZENS AND RESIDENT ALIENS ABROAD (2002); I.R.S. PUB. 516, TAX INFORMATION FOR U.S. GOVERNMENT CIVILIAN EMPLOYEES STATIONED ABROAD (2002); I.R.S. PUB. 593, INCOME TAX BENEFITS FOR CITIZENS WHO GO OVERSEAS (2002); JA 269, *supra* note 38.

78. I.R.C. § 911(b).

## Auto Standard Mileage Allowances

If a taxpayer can use an automobile for business, medical, charity, and/or moving purposes, the taxpayer is allowed a standard mileage deduction rate. For 2002, the rates are:

Business:	36.5¢ per mile
Charity:	14¢ per mile
Medical or Moving:	10¢ per mile