



TAX NEWS

Veterans – Claim Refunds on Lump-Sum Military Disability Severance—The Combat-Injured Veterans Tax Fairness Act enacted in 2016 helps veterans recoup taxes that were improperly paid on lump-sum disability severance payments. The Act covers payments received as far back as 1991 and through 2016. Special provisions in the law allow veterans to claim refunds for closed years and to optionally claim a standard refund amount of up to \$3,200. Note, this guidance is intended for retired veterans and not for active duty military personnel currently serving in the Armed Forces.

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Disaster Relief: Missouri (Severe Storms, Tornadoes, and Flooding 4/29/19)—Parts of Missouri have been declared a major disaster area because of severe storms, tornadoes, and flooding starting on April 29, 2019. Tax deadlines occurring on or after that date are generally postponed to August 30, 2019.

A casualty loss related to this disaster may be claimed on an original or amended 2018 return or on a 2019 return filed next tax season. However, it is not a qualified disaster loss and cannot be used to increase the standard deduction. A personal casualty loss from this disaster may be claimed as an itemized deduction on line 15 of Schedule A. [Page 3](#)

QUESTION OF THE WEEK

Does a non-citizen child living in Canada qualify a taxpayer for dependent-related benefits?

[Answer on page 3](#)

VETERANS - CLAIM REFUNDS ON LUMP-SUM MILITARY DISABILITY SEVERANCE

IRS news release [IR-2019-125](#) advises combat-injured veterans to file amended returns to claim a refund of taxes paid in error on lump-sum disability severance payments. Note that this guidance is meant for retired veterans who received Department of Defense (DoD) notices explaining the error and not for active duty military personnel currently serving in the Armed Forces.

The Combat-Injured Veterans Fairness Act

President Obama signed the Combat-Injured Veterans Tax Fairness Act of 2016 into law on December 16, 2016. The intent of this law is to help veterans recover federal income taxes on lump-sum disability severance payments received after January 17, 1991 and before January 1, 2017 that were erroneously treated as taxable income. The Act effectively codified the *St. Clair* decision (*St. Clair v. U.S.*, 69 AFTR 2d 92-1209 (09/10/1991)) which held that lump-sum disability severance payments are excluded from taxable income.

The law required the Department of Defense (DoD) to identify impacted veterans and provide each with a notice of improperly withheld taxes and instructions on how to recover the taxes. A special provision in this law allows impacted veterans to file amended returns for up to one year after receiving their notice, even if the refund claim is made after the usual statute of limitations. See *TAX in the News* December 27, 2016.

Time frame to claim a refund

The time available for claiming a refund under the Act is:

- The normal statute of limitations, which is three years after the due date for filing the tax return for the year the lump-sum disability severance payment was made or two years from the date the tax was paid, or
- One year from the date of the DoD notice.

According to the release, some veterans who have received Letter 6060-A or 6060-D have not yet taken action and time may be running out for them to do so. The last open year covered under the Act is 2016, if the veteran received the payment that year and paid tax on it. Otherwise, the veteran must file a refund claim within one year of the DoD notice.

Refund options and filing instructions

Veterans can submit a refund claim based on the actual amount of their disability severance payment by completing Form 1040X in the usual manner or by claiming an optional standard refund amount. Those who use the standard amount do not have to include information from the original return, show the net change, etc.

The optional amount depends on the year the veteran received the lump-sum payment:

- \$1,750 for tax years 1991 – 2005
- \$2,400 for tax years 2006 – 2010
- \$3,200 for tax years 2011 – 2016

Refund claims should have “Veteran Disability Severance” or “St. Clair Claim” printed on top of Form 1040X. All claims should be mailed along with a copy of the DoD notice to:

Internal Revenue Service
333 W. Pershing Street, Stop 6503, P5
Kansas City, MO 64108

See the news release and [Form 1040X Instructions](#) for acceptable alternative documentation for those who did not receive a DoD letter.

DISASTER RELIEF: MISSOURI (SEVERE STORMS, TORNADOES, AND FLOODING 4/29/19)

Parts of Missouri have been declared a major disaster area eligible for federal disaster aid to individuals and businesses.

Affected taxpayers have the option of claiming a casualty loss related to this disaster on their 2019 tax return filed next tax season or on an original or amended tax return for 2018.

Note: This is *not* a qualified disaster loss and cannot be used to increase the standard deduction. A personal casualty loss related to this disaster may be claimed only as an itemized deduction on line 15 of [Schedule A \(Form 1040\)](#), *Itemized Deductions*.

In addition, the IRS has postponed deadlines for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts. Affected taxpayers are those who:

- Live in the covered disaster area
- Have a main place of business located in the covered disaster area
- Have books and records needed to complete the return located in the disaster area
- Assist government or qualified non-profit organizations in relief efforts
- Were injured or killed while visiting the area

Generally, the IRS identifies affected taxpayers located in the disaster area and automatically applies filing and payment relief. Affected taxpayers outside the disaster area should call the IRS at 1-866-562-5227 to request tax relief.

Missouri disaster: severe storms, tornadoes, and flooding starting on April 29, 2019

FEMA disaster declaration announcement: [DR-4451](#) dated July 9, 2019

IRS release: [MO-2019-01](#) dated July 11, 2019; check the link for future updates

Covered disaster area (as of publication date): Andrew, Atchison, Boone, Buchanan, Carroll, Chariton, Cole, Greene, Holt, Jackson, Jasper, Lafayette, Lincoln, Livingston, Miller, Osage, Pike, Platte, Pulaski, and St. Charles Counties.

Postponement periods: Tax returns and other time-sensitive acts due on or after April 29, 2019, and before August 30, 2019 are postponed until **August 30, 2019**.

This includes quarterly estimated income taxes due June 17 and employment and excise tax returns due April 30 and July 31, 2019.

Employment and other excise tax deposits due on or after April 29, 2019, and before May 14, 2019, must have been deposited by May 14, 2019.

QUESTION OF THE WEEK

Q. My client is a Canadian citizen who moved to the U.S. as a lawful permanent resident (green card holder) in December of 2018. He is divorced and has an 18-year old daughter who lives with her mother in Canada; they are Canadian citizens and residents. Their daughter will start as a freshman at McGill University in Montreal in the fall of 2019. My client continues to pay for most of the daughter's support, including part of her tuition. Is he eligible to file as head of household? Can he claim the credit for other dependents or an education credit? He knows he would have to get an ITIN for her.

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A. To see if your client can claim any dependent-connected tax benefits for his daughter, you must first determine if she is a qualifying child or qualifying relative and, if so, which benefits he can claim.

Qualifying child

Your client's daughter is not his qualifying child because they did not share the same abode for more than half of the tax year. That is, your client has lived in the U.S. for all of 2019, while his daughter lived in Canada with her mother. Note that the abode test would not have been met even if they lived in the same country and city but not in the same household.

Qualifying relative

It is possible that the daughter *is* a qualifying relative, but you must ensure that all tests are met. From the information you've given, the relationship and gross income tests are met. She is a Canadian resident and presumably not married. It is best to complete a support worksheet to verify this test is met as well.

Finally, make sure that the mother is not a "taxpayer," i.e. does not have a U.S. tax filing obligation and doesn't file a U.S. tax return for any reason. If she were a U.S. taxpayer, the daughter would be her qualifying child and could not be claimed as a qualifying relative.

Tax benefits for dependents

If all qualifying relative requirements are met, your client's daughter is his dependent. However, because she is a Canadian resident, the tax benefits he can claim are limited.

- *Head of household.* Regardless of the support he provides, your client does not qualify to file as head of household because he and his daughter do not live in the same home. Similar to the abode test issue, this would hold true even if they lived in the same area but in different homes.

Note, unless his marital status changes before the end of the year, your client will file using the single filing status for 2019.

- *Credit for other dependents.* Before the Tax Cuts and Jobs Act of 2017 (TCJA), your client could have claimed the dependent exemption for a dependent in Canada or Mexico. The new credit for other dependents (ODC) has similar requirements to the dependent exemption but is not available for a dependent residing in Canada or Mexico who is not a U.S. citizen.
- *Education credits.* The Department of Education publishes an annual [Federal School Code List](#). These are schools in the U.S., Canada, and Mexico that participate in U.S. Title IV federal student aid programs and thus are eligible educational institutions for education credit purposes. McGill is an eligible university, so, if all other requirements for education credits are met, your client may claim the American opportunity credit or lifetime learning credit for his daughter, depending on her course load, how much tuition he paid, etc.
- *Other benefits.* Although it isn't likely, if your client itemizes deductions and deducts medical expenses, he can deduct out-of-pocket medical expenses he paid for his daughter.