



Changes in Military Death Gratuity

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With little national attention, on July 23, 2007 and July 30, 2007, the U.S. House of Representatives and Senate passed House Concurrent Resolution 175 (the "Resolution"). The Resolution does not require submission to the President for his approval. The Resolution is designed to express the opinion of Congress that state and federal courts have a fiduciary responsibility for a child of a deceased servicemember. The Resolution also provides families impacted by the restrictive requirements of 1477 of Title 10, United States Code, with legal standing to petition their local district court for discretion to redistribute death gratuity funds to caretakers. The judicial discretion is predicated upon the courts finding of a clear expression of intent regarding the use of the funds on behalf of a deceased service member's child.

History of the Law: Created in 1908, the death gratuity was originally equal to six months of a servicemember's pay and was intended to ease the family's financial burdens between the time a member's pay stopped and other government death benefits commenced. In 1991, the death gratuity was increased to \$6,000 (\$3,000 being tax exempt) from \$3,000. In 2003, the Military Family Tax Relief Act increased the death gratuity from \$6,000 to \$12,000 (fully tax exempt). Subsequently, in 2005, the FY 2005 Emergency Supplemental Appropriations for Defense, the Global War on Terror and Tsunami Relief increased the death gratuity from \$12,000 to \$100,000 retroactive to Oct. 7, 2001.

Background: The Resolution was authored to help the 150 plus military families impacted by the current restrictions of 1477 of Title 10, United States Code, relating to the collection of the death gratuity benefit for the minor children of servicemembers killed during their service to our nation. The issue gained national attention as a result of the plight of 9-year-old Kayla Jaenke who is being cared for by her grandparents. Prior to her death, Kayla's mother had provided written instructions that if she died the death gratuity should be used by her parents to raise Kayla. Unfortunately, this is not a legal option available under the death gratuity program. As a result, Kayla's family has experienced severe

financial hardships while the funds are maintained in a trust for her benefit (health, education, maintenance and welfare) until she reaches age 18. Recently, the Iowa court consented to a \$200 monthly stipend for the family.

Current Law: Under current law (1477), the death gratuity is paid to the following survivors: (i) A surviving spouse; (ii) Children (legitimate or adopted) of the deceased service member (in equal shares); (iii) The decedent's parents, brothers and sisters (in equal shares); (iv) Stepchildren who were a part of the decedent's household at the time of his or her death; or (v) Illegitimate children.

Additionally, the death gratuity is paid out to children who were receiving child support from the decedent. If the death gratuity is payable to a deceased service member's child, the funds will be held in a trust account according to the state laws of the child's residence. The trust funds cannot be accessed, without court authorization, until the child reaches the age of 18. In many cases, this can leave the minor child's caretaker without access to the death benefit to raise the service member's child.

To increase the laws flexibility, on Feb.16, 2007, U.S. Rep. Tom Latham introduced HR 1115, Payment of Death Gratuities to Custodians of Surviving Minor Children. The bill would permit the payment of a service member's death gratuities, without a surviving spouse but with surviving children, to his or her family member (parents, brothers, sisters) having custody of the child.

Post Resolution Planning:

To obtain the full benefit of the Resolution, a single parent service member with a child should draft written instructions (dated, witnessed and signed) stating: who should be in control of the death gratuity before the child turns 18; the guidelines under which the gratuity funds may be used for the minor's benefit (health, education, maintenance and welfare); and the authorization of the caretaker's access to the funds to support the household. The clearer the instructions, the stronger the likelihood that the court will respect the service member's instructions, and allow them to be followed in the case of their death.