The American Legion continues to support legislation allowing military retirees to receive their full military retired pay and their VA awarded, service-connected disability compensation without the dollar-for-dollar offset commonly referred to as the Disabled Veterans’ Tax. The origin of the Disabled Veterans’ Tax dates back to 1891, when Congress passed a law prohibiting active-duty or retired personnel from receiving disability pensions.

Military retired pay is compensation for longevity of honorable military service. Department of Veterans Affairs (VA) service-connected disability compensation is for medical conditions incurred or aggravated while on active duty. These payments to a veteran are thus made for two distinct and different reasons.

Traditionally, getting Disabled Veterans’ Tax language included in the annual National Defense Authorization Act (NDAA) seemed automatic because of the support of longtime advocate, Senator Harry Reid (NV), Majority Leader of the Senate. Over the past five years, the NDAA has included at least some Senator Reid-proposed initiatives to reduce the remaining number of service-connected disabled military retirees affected by the dollar-for-dollar offset of retired pay. All of those initiatives resulted in progress toward the goal of totally eliminating this unfair offset.

In 2009, Senator Reid proposed two separate amendments to the Defense authorization bill. One would implement President Obama’s budget proposal to phase out the offset for all Chapter 61, title 10, United States Code (USC) (medically retired with less than 20 years of service) military retirees, regardless of their length of service. Starting January 2010, the plan would eliminate the offset for Chapter 61 retirees with 90-percent or 100-percent disability ratings (including individual unemployable) with less than 20 years of service. Between 2011 and 2014, it would phase out the offset for all remaining Chapter 61 retirees. Senator Reid’s other amendment would fix a glitch in the statutory calculation formula for Combat-Related Special Compensation (CRSC) which currently underpays certain combat-disabled retirees.

Unfortunately, neither provision was included in the Fiscal Year (FY) 2010 National Defense Authorization Act. In the case of Senator Reid’s Disabled Veterans’ Tax amendments, Senator Tom Coburn (OK) objected to its inclusion.
in the Defense authorization bill, effectively stymieing the amendments just before the final vote on the bill. Senator Coburn felt that the amendments “would have risen mandatory spending by $5 billion over 10 years, with no proposed spending reduction to pay for it.”

Disabled Veterans’ Tax progress in this year’s FY 2011 Defense authorization bill is still a very strong possibility, despite the failure of the Senate amendments last year. That is because the version of the FY 2010 Defense authorization bill passed by the House of Representatives in 2009 (H.R. 2647) included virtually the same plan for Chapter 61 retirees. House leaders found cost offsets for the first year’s spending requirement and pledged to find them for the remaining years. On October 28, 2009, the National Commander wrote a letter to Chairman Ike Skelton (MO), House Committee on Armed Services discussing this matter and The American Legion followed up that letter with a request that The American Legion be allowed to testify on this issue at the FY 2011 Defense authorization hearings. In addition, on December 9, 2009, the Commander wrote a letter to Speaker of the House Nancy Pelosi (CA) requesting that unspent Troubled Asset Relief Program funds be used to correct this injustice.

There were additional bills put in Congress regarding this issue. On January 8, 2009, Representative Gus Bilirakis (FL) introduced H.R. 303, the Retired Pay Restoration Act. This legislation would: a) allow the receipt of both military retired pay and veterans’ disability compensation with respect to any service-connected disability, b) repeal provisions phasing in the full concurrent receipt of such pay through December 31, 2013, and c) make eligible for the full concurrent receipt of both veterans’ disability compensation and either military retired pay or combat-related special pay those individuals who were retired or separated from military service due to a service-connected disability. The measure currently has 119 cosponsors.

A companion measure, introduced the same day, was by Representative Jim Marshall (GA). It is H.R. 333, the Disabled Veterans Tax Termination Act. The bill currently has 121 cosponsors. H.R. 333 amends federal military retired pay provisions to: (1) permit veterans with a service-connected disability of less than 50 percent to concurrently receive both retired pay and disability compensation; (2) eliminate provisions requiring a phase in between January 1, 2004, and December 31, 2013, of concurrent receipt of retired pay and disability compensation; (3) eliminate the four-year phase-in of concurrent receipt of retired pay and disability compensation for disabled veterans determined to be individually unemployable; and (4) require a limited reduction in retired pay for combat-related disability retirees with less than 20 years of retirement-creditable
service. This legislation supports National Security resolution 119-08. No Senate companion bills to either bill have been introduced.

On January 26, 2010, Representative Joe Wilson (SC) introduced H.R. 4525 to expand concurrent receipt to all retirees including Chapter 61 retirees. This bill included provisions for retired pay and disability compensation for those Chapter 61 retirees with less than 20 years of service based upon a five-year sliding schedule of their level of disability; all retirees would receive both their retired pay and their disability compensation regardless of rating percentage by January 1, 2015. This bill has no cosponsors.

However, Senator Reid (NV) introduced S. 546, a bill to amend title 10, USC, to permit certain retired members of the uniformed services who have a service-connected disability to receive both disability compensation from the VA for their disability and either retired pay by reason of their years of military service or Combat-Related Special Compensation. This proposal has 44 cosponsors.

On June 23, 2009, House Armed Services Committee Chairman Ike Skelton (MO) introduced H.R. 2990, the Disabled Military Retiree Relief Act of 2009. This legislation would make more disabled veterans eligible to receive both military retired pay and VA disability compensation. On June 24, 2009, the House passed H.R. 2990 by a vote of 404-0.

It is important we continue to make the case that retired pay and disability compensation are for two entirely different things. A veteran may receive other Federal and non-Federal benefits, in addition to VA service-connected disability compensation, either in part or in full. Currently, a veteran can receive service-connected disability compensation without any offsets, reductions or limits with:

- unemployment compensation;
- Social Security;
- Federal civil service pay;
- pay from a private sector job;
- Federal civil service retirement (including disability retirement);
- retirement pension from non-federal employment; and,
- Federal workers compensation (benefits for work-caused disability or illness provided under FECA).

Since these other income sources are not offset, as a matter of public policy as well as fairness, it is hard to justify that military retired pay should be offset.

Proponents argue that simple, equitable justice is one reason to end the Disabled Veterans’ Tax. Military retirees are the only Federal employees who must offset
Disabled Veterans’ Tax – continued

their retired pay with their VA disability compensation. Proponents also argue that the unique nature of military service, given its sacrifices and hardships, merits retirees receiving both military retired pay and VA disability compensation.

VA service-connected disability compensation is awarded for disabilities that cannot be equated with disabilities incurred in civilian life. Military service rendered in defense, and on behalf, of the Nation deserves special consideration in determining policy toward benefit offsets. It is a moral and ethical responsibility to award preferential treatment to the needs of any veteran, given their sacrifices and hardships incurred during their honorable military service.

Three years ago, then-President George Bush signed Public Law (P.L.) 108-136 to allow certain service-connected disabled military retirees, with at least 20 years of service, to concurrently receive both their military retired pay and their VA disability compensation without the dollar-for-dollar offset. This created two different programs, the Combat Related Special Compensation (CRSC) and the Concurrent Retirement and Disability Pay (CRDP). CRSC allows eligible military retirees to receive both their military retired pay and VA disability compensations without any offsets and tax-free. Initially, CRDP would be phased in over a 10-year period for military retirees whose service-connected disabilities are rated at 50 percent or greater (military retired pay is taxable and VA disability compensation is tax-free, but there is no offset). P.L. 108-375 contained a provision to repeal the 10-year phase-in for eligible 100 percent service-connected disabled military retirees.

The FY 2008 NDAA, P.L. 110-181, included two significant Disabled Veterans’ Tax provisions. It authorized full, immediate concurrent receipt for service-connected disabled retirees with at least 20 years of service deemed "unemployable" by the VA, with payment retroactive to January 1, 2005. Payments began October 1, 2008. The second provision extended eligibility for CRSC to all military disability retirees (Chapter 61) with less than 20 years of service who suffer from combat- or operations-caused medical conditions.

The Administration has proposed in the FY 2011 Defense authorization budget request to give full payment of retired and disability pay to all disabled military retirees by Jan. 1, 2015. It is very similar to a proposal that was rejected last year, but this time the Administration has put in funding. The request adds $408 million to the military retirement trust fund in order to begin phasing in concurrent receipt benefits in 2011 for severely disabled veterans who spent less than 20 years in the service. The $408 million is part of almost $5 billion earmarked in
the budget for the military retirement trust fund to pay for future retired pay specifically as a result of concurrent receipt legislation.

However, the House of Representatives has strict rules covering changes in mandatory spending, which require that an increase in one place must be offset by either a cut somewhere else or a revenue increase — a budgeting process known as “pay-go”. It is this process that, in part, has prevented allowing disabled retirees to concurrently receive full military retired pay and veterans disability compensation if they are eligible for both.

The first indicator the Administration’s proposal might prevail will come in April when the House and Senate budget committees prepare a FY 2011 spending and revenue guide, known as a concurrent budget resolution, which provides the allocation of funds to various congressional committees. If the budget resolution includes language adopting the concurrent receipt funding, that would be sufficient for the House and Senate Committees on Armed Services to include the Administration’s plan in the FY 2011 defense budget.

A White House statement describing the concurrent receipt initiative does not clearly explain the details. It includes just two sentences: “For the first time, highly disabled veterans who are medically retired from service will be eligible for concurrent receipt of disability benefits from VA in addition to Department of Defense (DoD) retirement benefits. All medically retired service members will be eligible for concurrent receipt of VA and DoD benefits by 2015.” Congressional and administration sources have indicated they expect the concurrent receipt plan, which will be in legislative initiatives provided to Congress by DoD, will be modeled on last year’s proposal that died for lack of funding.

The initiative is aimed, at first, at providing retired pay and disability pay without any offsets to retirees who served less than 20 years and are receiving military disability retired pay under Chapter 61, title 10, USC. Those people are not now eligible for concurrent receipt, although Chapter 61 retirees who served 20 or more years have been covered. Here is how the plan would work:

- Beginning Jan. 1, 2011, concurrent receipt would be provided to all Chapter 61 retirees whose retired pay is based on a disability rating of 90 percent or more.
- On Jan. 1, 2012, concurrent receipt would be extended to all Chapter 61 retirees with retired pay based on a disability rating of 70 percent or more.
- On Jan. 1, 2013, concurrent receipt would be extended to all Chapter 61 retirees with retired pay based on ratings of 50 percent or more.
• On Jan. 1, 2014, concurrent receipt would be extended to Chapter 61 retirees with retired pay based on a rating of 30 percent or more.
• On Jan. 1, 2015, all disabled veterans drawing both military retired pay and veterans disability benefits would be eligible for concurrent receipt of both payments. This final phase of the plan would, for the first time, provide full concurrent receipt to retirees whose disabilities are not related to combat or combat training and are rated at less than 50 percent.

The American Legion will continue to seek the complete repeal of the prohibition on receiving payments from both programs. All service-connected disabled military retirees should be eligible to participate regardless of length of service or VA disability rating.