

Date: August 5, 1993

O.G.C. Precedent 5-93

From: General Counsel (022)

Subject: Just-Debts Exclusion for Improved-Pension Income Purposes

To: Deputy Under Secretary for Benefits (201)

QUESTION PRESENTED:

In determining the surviving spouse's income for improved-pension purposes, may amounts expended by the survivor in prepayment of obligations jointly incurred by the survivor and the veteran be excluded under the "just-debts" exclusion in 38 U.S.C. § 1503(a)(3)?

COMMENTS:

1. Under the facts as presented, a veteran's surviving spouse used the proceeds of the veteran's life insurance to make prepayments (accelerated repayments) of secured home and car loans for which the couple had been jointly obligated. We conclude that the amount of the prepayments may not be excluded in determining the surviving spouse's income for improved-pension purposes.

2. Section 1503(a) of title 38, United States Code, provides, inter alia, that, in determining annual income for improved-pension purposes, "all payments of any kind or from any source . . . shall be included except . . . (3) amounts equal to amounts paid by a . . . surviving spouse or child of a deceased veteran for--(A) such veteran's just debts." (Emphasis added.) Applicable statutes and regulations do not define "just debts" for purposes of section 1503. The term first appeared in the pension statutes when Congress enacted the Veterans Pension Act of 1959, Pub. L. No. 86-211, § 2, 73 Stat. 432. The legislative history of Pub. L. No. 86-211 sheds no light on the meaning of the term.

3. Shortly after enactment of Pub. L. No. 86-211, the Chief Benefits Director approved DVB Information Bulletin 21-27 (April 15, 1960), which specifically addressed whether a veteran's debt on a house or an automobile should be considered the veteran's "just debt" upon the veteran's death. The Information Bulletin stated:

Generally, any debt which would be recognized by a probate court will be considered a just debt. However, any indebtedness secured by a home or

other property is primarily against the property and only secondarily against the person. Therefore, such a debt should not be considered a "just debt" of the deceased veteran except to the extent it is established that the amount of the indebtedness exceeds the market value of the property.

This policy was continued in Program Guide 21-1, section E-1 (March 20, 1963), which contained identical language.

4. Typically, courts grant considerable deference to an agency's contemporaneous construction of a statute the agency is charged to administer, especially where, as here, the agency was actively involved in the development of the legislation. See, e.g., 2B N.J. Singer, Sutherland Statutory Construction § 49.05 (5th ed. 1992). Further, in this instance, the subsequent actions of Congress confirm the validity of VA's interpretation.

5. On January 31, 1967, President Lyndon B. Johnson, in a message to Congress, directed the Administrator of Veterans Affairs to establish an advisory commission on veterans' affairs to reassess veterans' programs with respect to both quality and fiscal responsibility. The President's Message to Congress on America's Servicemen and Veterans, 3 Weekly Comp. Pres. Doc. 150, 154 (Jan. 31, 1967). In its March 18, 1968, report, the resulting U.S. Veterans Advisory Commission observed that proceeds from commercial life insurance, paid to VA pension beneficiaries and used for mortgage-debt satisfaction, were included as income for pension purposes. The Commission noted that, in contrast, mortgage-insurance proceeds payable to the mortgagee, and thus not received by the beneficiary, were not included as income. The Commission concluded that it was inconsistent to count one type of insurance proceeds as income while excluding another, when both were utilized to discharge mortgage debts. The Commission recommended a change in law to exclude the amount of mortgage prepayments from pension-income calculation, if the prepayments were made in the year of the veteran's death or the succeeding year. In doing so, the Commission tacitly acknowledged VA's policy of not including prepayments of mortgages under the "just-debts" exclusion.

6. In 1970, Congress adopted the Commission's recommendation by adding a new paragraph (14) to 38 U.S.C. § 503 (now § 1503) to exclude from pension income:

amounts equal to prepayments on an indebtedness secured by a mortgage, or similar type security instrument, on real property (which was prior to death the principal residence of a veteran and spouse) made by the veteran or such veteran's surviving spouse, after the death of the spouse, during the year of death and the succeeding year, if said indebtedness was in existence at the time of death[.]

Pub. L. No. 91-588, § 7, 84 Stat. 1580, 1584 (1970). VA had opposed this amendment, asserting that it would result in unequal treatment among like-circumstanced pension recipients. H.R. Rep. No. 1448, 91st Cong., 2d Sess. 1, 17 (1970).

7. It must be inferred that Congress, by specifically excluding mortgage prepayments from pension income, did not consider them covered under the already existing "just-debts" exclusion. This follows from the presumption that the legislature has a definite purpose in every enactment and has adopted and formulated it in harmony with that purpose. Markham v. Cabell, 326 U.S. 404 (1945); United States v. Otherson, 637 F.2d 1276 (9th Cir. 1980). Further, a statute should be construed so that effect is given to all of its provisions and no part is superfluous. 2A N.J. Singer, Sutherland Statutory Construction § 46.06 (5th ed. 1992), citing King v. Alaska State Housing Authority, 633 P.2d 256 (Alaska 1981), and McGlynn v. New Jersey Public Broadcasting Authority, 439 A.2d 54 (N.J. 1981). If Congress had intended that prepayment of secured loans upon a veteran's death would be included under the "just-debts" exclusion, section 7 of Pub. L. No. 91-588 would have been superfluous.

8. The specific exclusion of mortgage prepayments for pension-income purposes did not survive the reforms of the pension program under the Veterans' and Survivors' Pension Improvement Act of 1978, Pub. L. No. 95-588, 92 Stat. 2497 (1978), although the "just-debts" exclusion was retained. In enacting that legislation, Congress specifically acknowledged that amounts used for prepayment of secured debts on a residence would no longer be excluded in computing a surviving spouse's income for pension purposes. H.R. Rep. No. 1225, 95th Cong., 2d Sess. 1, 38 (1978).

HELD:

In determining a surviving spouse's income for improved-pension purposes, amounts expended by the survivor in prepayment of secured obligations jointly incurred by the survivor and the veteran for the purchase of real or

personal property may not be excluded under 38 U.S.C. § 1503(a)(3)(A), which provides that amounts paid by a surviving spouse or child of a deceased veteran for the veteran's "just-debts" may be excluded from income.

Mary Lou Keener

(This opinion, previously issued in the form of a letter to the VA District Counsel (311/02) on March 12, 1985, is reissued as a precedent opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion is generally unchanged from the original except for certain format and editorial changes.)