



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-179578

October 4, 1973

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Mr. Joseph T. Walbran  
4624 Washburn Avenue South  
Minneapolis, Minnesota 55410

Dear Mr. Walbran:

Reference is made to your letter dated December 15, 1972, with enclosure, addressed to our Transportation and Claims Division concerning your indebtedness to the United States in the amount of \$537.03 which arose as a result of a duplicate payment of pay and allowances made to you for the month of June 1967 incident to your service in the United States Army. You make application for waiver of this indebtedness under the provisions of 10 U.S.C. 2774.

Our file shows that this matter was the subject of a letter dated March 6, 1972, from our Transportation and Claims Division, advising you of the amount of your indebtedness to the United States, that the indebtedness had been reported here for collection and requested that payment be made by you. By letter of October 16, 1972, to our Transportation and Claims Division, you recognized that you were overpaid pay and allowances and offered to settle that indebtedness for 50 percent of the amount certified as due. You also inquired about H.R. 7614, a bill to authorize waiver of certain claims of the United States.

By letter of November 8, 1972, our Transportation and Claims Division accepted your offer to settle your debt for 50 percent of the amount due, in round figures, \$270. Also, with that letter you were sent a copy of the act of October 2, 1972, Public Law 92-453, 86 Stat. 758 (H.R. 7614), which added 10 U.S.C. 2774, authorizing the Comptroller General or the Secretary concerned (when the claim aggregates \$500 or less) to waive a claim of the United States against a person arising out of an erroneous payment of pay or allowances other than travel and transportation allowances, made before or after the effective date of that law, to or on behalf of a member or former member of the uniformed services, the collection of which would be against equity and good conscience and not in the best interests of the United States. However, it was pointed out in that letter that the 1972 act was inapplicable to your situation since the erroneous payment in your case was discovered in 1968, more than three years prior to the enactment of Public Law 92-453.

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In your letter of December 15, 1972, you indicate that you disagree with that interpretation of 10 U.S.C. 2774 and express the view that it may be interpreted to show the intent of Congress to relieve Vietnam veterans of erroneous payment debts altogether. And, you make application under 10 U.S.C. 2774 for waiver of your debt.

Subsection 2774(a) of title 10, United States Code authorizes the waiver of a claim of the United States against a person arising out of an erroneous payment made "before or after the effective date of this section," under certain conditions. However, subsection 2774(b)(2) limits that authority by providing in part that the Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority under section 2774 to waive any claim "if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment \* \* \* was discovered."

As you indicate, no application for waiver under 10 U.S.C. 2774 could be made prior to October 2, 1972, the date that provision was enacted, since it is the general rule that a statute is effective on and after the date of its enactment unless it is clear from its language or necessary implication that a different effective date was intended. See 34 Comp. Gen. 404, 406 (1955) and 39 Comp. Gen. 286, 290 (1959).

With reference to the application of 10 U.S.C. 2774(b)(2), the Honorable Spencer J. Schedler, Assistant Secretary of the Air Force, in a letter dated April 6, 1971, to the Speaker of the House of Representatives, submitting the draft legislation which became H.R. 7614 and was eventually enacted as Public Law 92-453, stated that, "Exercise of the waiver authority would be restricted to erroneous payments discovered three years prior to and any time after the date the proposal is enacted." See House Judiciary Committee Report No. 92-195, 92nd Congress, 1st session, pages 5, 6, and 10, which report accompanied H.R. 7614 in the House of Representatives. That statement is also included in the Senate Judiciary Committee Report No. 92-1165, 92nd Congress, 1st session, page 6, which accompanied H.R. 7614 in the Senate.

Therefore, it remains our view that since Public Law 92-453 became effective on October 2, 1972, any erroneous payment which otherwise would come within the purview of 10 U.S.C. 2774 as added by that act, which was discovered prior to October 2, 1969 (three years prior to the date of enactment), may not be considered for waiver under that law. Our file shows that the erroneous payment out of which your indebtedness arose was discovered in May 1968. Consequently, it may not be considered for waiver under 10 U.S.C. 2774.

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Accordingly, your compromise offer of \$270 which was accepted by our Transportation and Claims Division letter of November 8, 1972, in settlement of your debt should be promptly transmitted here. Payment should be made by check or money order payable to the United States General Accounting Office and forwarded to Post Office Box 2610, Washington, D.C. 20013.

The Honorable Walter F. Mondale, United States Senate, who has expressed interest in your case is being advised of this decision.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States