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DECISION



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

FILE: B-213231

DATE: December 16, 1983

MATTER OF: James F. Tierney

DIGEST:

The deduction from civilian pay in the amount of increases in retired pay of a "member or former member of a uniformed service" as required by subsection 301(d) of the Omnibus Budget Reconciliation Act of 1982 is applicable to an individual who is a retired officer of an Army Reserve component.

Is an employee of the Federal Communications Commission who is also a retired officer of the Army Reserve subject to the salary deduction required by subsection 301(d) of the Omnibus Budget Reconciliation Act (Act) of 1982, as amended?¹ This provision is applicable to any person receiving retired or retainer pay regardless of component of a uniformed service, who occupies a civilian position in the Government with only two exceptions which are not relevant here.

The Commission has made deductions from the civilian pay of Administrative Law Judge James F. Tierney pursuant to subsection 301(d) of the Act, as amended, in the amount of the increase in his military retired pay resulting from cost-of-living adjustments made pursuant to 10 U.S.C. § 1401a(b). Mr. Tierney, who is a retired officer of the Army Reserve, contends that the pay reduction required by subsection 301(d) applies only to retired members of regular components of the Armed Forces and not to retired members of Reserve components. He also argues that subsection 301(d) is not applicable to him because members of Reserve components are not members of the uniformed services. Furthermore he cites the dual compensation provisions of chapter 55 of title 5, United States Code, and the provision at 10 U.S.C. § 1336, pertaining to service credits for retired pay benefits, in support of his argument that retired members of Reserve components are not subject to the deduction

¹This question was submitted as a request for an advance decision by Mr. Wayne B. Leshe, Chief, Financial Services Branch of the Federal Communications Commission.

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required by subsection 301(d). We find that the arguments presented by him are without merit.

Subsection 301(d) of the Omnibus Budget Reconciliation Act of 1982, Public Law 97-253, September 8, 1982, 96 Stat. 763, 791, as amended by Public Law 97-346, October 15, 1982, 96 Stat. 1647, 1648, 5 U.S.C. § 5532 note (1982), requires each Federal agency to make deductions from the civilian pay equal to any increase in an individual's retired or retainer pay pursuant to section 1401a(b) of title 10, United States Code, for fiscal years 1983, 1984, and 1985, of "any member or former member of a uniformed service" who holds a civilian position. Only individuals whose retired or retainer pay is computed in whole or in part based on disability resulting from injury or disease received in the line of duty as a result of armed conflict or caused by an instrumentality of war during a period of war, are exempted.

Mr. Tierney is receiving his retired pay as a result of his service in the Army Reserve. See 10 U.S.C. § 1331 et seq. Increases in this retired pay are based on the operation of 10 U.S.C. § 1401a(b). Thus, on this basis alone, it is clear that he is subject to the reduction in the pay for his civilian position required by the Act, since his retired pay is not based on the disabilities referred to in the Act.

Additionally, a member of the Army Reserve is a member of a uniformed service. Subsection 301(d)(2) provides:

"For the purpose of this subsection -

(A) the term 'uniformed service' has the meaning given that term by section 2101 of title 5, United States Code
* * *."

Uniformed services include the Armed Forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration. See 5 U.S.C. § 2101(3). Armed Forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard. See 5 U.S.C. 2101 (2). The Army Reserve is a part of the Army. See 10 U.S.C. § 3062(c). Since Mr. Tierney is receiving his retired pay by virtue of his service in the

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Army Reserve, he must be considered a "member or former member of a uniformed service."

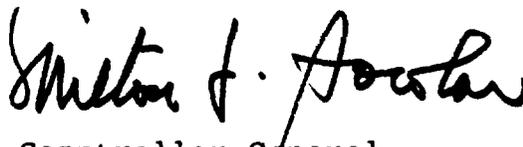
Mr. Tierney also points out that section 301(d) of the Act appears as a note to 5 U.S.C. § 5532 which he states relates to the compensation of only retired officers of a regular component.

The only relationship between section 301(d) of the Act and Chapter 55 of title 5, is that the same definition of civilian position is used in both provisions. There is no reference in section 301(d) of the Act, either directly or by reference to a regular component of a uniformed or armed service.

Likewise, 10 U.S.C. § 1336, cited by Mr. Tierney, which provides in part that service creditable for retired pay on account of non-Regular military service may if otherwise proper be creditable for other retirement benefits payable on account of civilian Federal employment or otherwise is also unrelated to the deduction required by subsection 301(d) of the Act.

It is our view that the language of section 301(d) of the Act was drafted in broad terms to include all those individuals holding civilian positions in the Government who are in receipt of retired or retainer pay from a uniformed service, with the only exceptions being those who receive such pay on account of disabilities received in certain circumstances.

Accordingly, we conclude that subsection 301(d) of the Act applies to retired members of Reserve components of the Armed Forces as well as to other retired members of the uniformed services. Thus, the Commission has properly deducted the amount of the increase in Mr. Tierney's military retired or retainer pay from his civilian salary and he is not entitled to a refund of those deductions.

for 
Comptroller General
of the United States