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DECISION



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

FILE: B-223069

DATE: July 3, 1986

MATTER OF: Military Retirees Holding Civil Service
Employment--Effect of Public Laws 97-253
and 98-369

DIGEST:

The Deficit Reduction Act of 1984, Public Law 98-369, repealed subsection 301(d) of Public Law 97-253, which required that for fiscal years 1983-1985 deductions be made from the civilian pay of retired members of the uniformed services who were employed as civilians by the Government, in amounts equal to the amounts of their military retired pay cost-of-living increases. Since the repealing legislation is not retroactive, collection action should be taken on the amounts still due under subsection 301(d) for the period during which the subsection was in effect. In addition, there is no authority to refund amounts that were previously and correctly deducted pursuant to subsection 301(d).

This action is in response to a request for an advance decision from the Department of Commerce regarding the deduction of cost-of-living increases from the civil service salary of military retirees during the period from October 1982 to July 1984.^{1/} Agency officials indicate that several inquiries have been made by employees who are concerned about whether reductions will be made retroactively from their salaries or, if the deductions were made, whether those amounts will be refunded.

Legislative Background

Subsection 301(d) of the Omnibus Budget Reconciliation Act of 1982, Public Law 97-253, September 8, 1982, 96 Stat. 763, 791, requires that during fiscal years 1983, 1984, and 1985 deductions be made from the civilian salaries of members or former members of the uniformed services who

^{1/} The request was made by Mr. Auke Hart, Certifying Officer, Central Administrative Support Center, Department of Commerce, Kansas City, Missouri.

receive military retired or retainer pay and hold civilian positions with the Federal Government. The required deductions equal the cost-of-living increases received by the member or former member in his military retired or retainer pay. The terms and history of the provision indicate that it was designed as an economy measure for those fiscal years, and the Congress noted that the individuals affected would no longer receive both an annual civil service pay increase and a cost-of-living adjustment in their military retired pay.^{2/} The agency began making the appropriate deductions at the beginning of fiscal year 1983 on October 1, 1982.

However, the Deficit Reduction Act of 1984, Public Law 98-369, July 18, 1984, 98 Stat. 494, 1059, states in pertinent part:

"Subsection (d) of section 301 of the Omnibus Budget Reconciliation Act of 1982 * * * is repealed, effective with respect to pay periods beginning after the date of enactment of this Act."

Thus, the agency ceased making the deductions in pay periods beginning after July 18, 1984.

After subsection 301(d) had been repealed, the agency found that it had been implemented erroneously within the agency and that salary deductions had been made from the salaries of some retired service members, but not from the salaries of others. In response to a number of inquiries from the members involved, the agency in turn requests our decision on the question of whether it must now make retroactive deductions from the salaries of those employees who, due to administrative error, did not have the deduction made at the time the law was in effect. Alternately, the agency asks whether a refund may be made to those employees who had the correct amounts deducted from their salaries.

Analysis and Conclusion

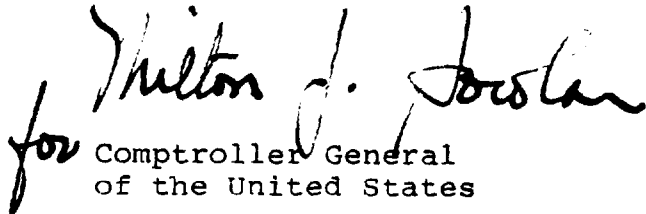
Under the plain and clear wording of the repealing legislation at issue, quoted above, the repeal of subsection 301(d) is not retroactive and thus does not waive the deductions of amounts due while the provision was in effect.

^{2/} See H.R. Rep. No. 759 (Conference), 97th Cong., 2d Sess. 75-76, reprinted in 1982 U.S. CODE CONG. & AD. NEWS 1846, 1870-71.

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Therefore, it is our view that the agency is required to begin action to collect the appropriate amounts for the period during which the law was in effect in the case of those employees for whom the necessary salary deductions were previously omitted due to error. Those employees, in effect, received overpayments of their civilian pay. With regard to those individuals from whom the appropriate collection was made, we find no basis which would allow a refund to those employees, since the collection was made under valid authority.

The question presented is answered accordingly.

for 
Comptroller General
of the United States