

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

FILE: B-184213

DATE: ²⁹⁶³ JUL 31 1975

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MATTER OF: Waiver of overpayment of retired pay -
Colonel Randall H. Bryant, USA, Retired

DIGEST: Indebtedness which arose as a result of overpayment of retired pay cannot be waived under the provisions of 10 U.S.C. 2774 when such indebtedness was discovered July 23, 1969, more than three years prior to October 2, 1972, the date of enactment of Public Law 92-453.

This action is in response to a congressional request that we reconsider the application for waiver of indebtedness of Colonel Randall H. Bryant, USA, Retired, based on his letter of April 26, 1975. Waiver of that debt, which arose through the overpayment of retired pay, was denied by the Transportation and Claims Division of this Office by letter of April 11, 1975.

The record shows that the member retired from the Army effective May 1, 1965, and has been employed in a civilian capacity by the United States Government since January 3, 1966. Under the provisions of 5 U.S.C. 5532(b), a retired officer of any Regular component is entitled to receive the full salary of any Federal civilian office held, but during the period he receives that salary, his retired pay must be reduced so that each year he receives retired pay in an amount equal to the first \$2,000 of such pay plus one-half of the remainder. The U.S. Army Finance and Accounting Center discovered that Colonel Bryant's retired pay had not been properly reduced and notified him on July 23, 1969, that he had been overpaid in the amount of \$15,171.67.

On March 10, 1975, Colonel Bryant requested waiver consideration under the provisions of 10 U.S.C. 2774 (Supp. II, 1972), as added by Public Law 92-453, October 2, 1972. Since more than three years had elapsed from the date Public Law 92-453 was enacted to the date Colonel Bryant requested waiver of his debt, our Transportation and Claims Division, by letter dated April 11, 1975, denied waiver on the basis of 10 U.S.C. 2774(b)(2).

Colonel Bryant contends that his indebtedness should be waived even though his application for waiver was made more than three years after the overpayment was discovered because he was in Vietnam when he learned of the overpayment and was never notified, even after his return, of his right to appeal.

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Subsection 2774(a) of title 10, United States Code, authorizes the waiver of a claim of the United States 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."

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 a general rule that a statute is effective on and after its enactment date 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. Shedler, 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, discussed the retroactive application of the then proposed law and stated that, "Exercise of the waiver authority would be restricted to erroneous payments discovered three years prior to and anytime after the proposal is enacted." See House Judiciary Committee Report No. 92-195, 92d Cong., 1st Sess., 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, 92d Cong., 1st Sess., page 6, which accompanied H.R. 7614 in the Senate. We find no provision of law under which the circumstances mentioned by Colonel Bryant—his absence from the United States and his lack of knowledge concerning the enactment of the waiver provision—would provide a basis for disregarding the specific provision limiting the waiver authority based upon the date of discovery of the overpayment.

The erroneous payments to Colonel Bryant were discovered on or before July 23, 1969, more than three years prior to the enactment of Public Law 92-453. Therefore, it is our view

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that these overpayments never came within the purview of
10 U.S.C. 2774 and Colonel Bryant's indebtedness may not be
waived.

R.F. KELLER

Deputy Comptroller General
of the United States