

Form Number: IRS Form 3520.

Type of Review: Extension.

Title: Creation of or Transfers to Certain Foreign Trusts.

Description: Form 3520 is filed by U.S. persons who create a foreign trust or transfer property to a foreign trust. IRS uses Form 3520 to establish the identity of the U.S. person and to determine if the transfer is subject to the excise tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping—5 hr., 44 min.

Learning about the law or the form—35 min.

Preparing and sending the form to the IRS—43 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Reporting Burden: 3,525 hours.

OMB Number: 1545-0196.

Form Number: IRS Form 5227.

Type of Review: Revision.

Title: Split-Interest Trust Information Return.

Description: The data reported is used to verify that the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the split-interest trust is not subject to private foundation tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 53,303.

Estimated Burden Hours Per

Respondent/Recordkeepers:

Recordkeeping—46 hr., 38 min.

Learning about the law or the form—3 hr., 30 min.

Preparing the form—10 hr., 0 min.

Copying, assembling, and sending the form to the IRS—1 hr., 37 min.

Frequency of Response: Annually.

Estimated Total Reporting/Reporting Burden: 3,290,927 hours.

Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

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DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. These summaries are published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulations or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above. As of January 1, 1995, General Counsel precedent opinions are cited as VAOPGCPREC XX-XX (Number and Year), e.g., VAOPGCPREC 1-95.

O.G.C. Precedent 23-94

Question Presented

You have indicated you wish to instruct VA Regional Offices to adjudicate those pending 1151 claims which can be allowed on the basis of the

U.S. Supreme Court's precedential decision in *Brown v. Gardner*, No. 93-1128 (S. Ct., Dec. 12, 1994), and seek advice as to the proper criteria for so doing.

Held

Pending an opinion from the U.S. Attorney General on the meaning of a footnote in the U.S. Supreme Court's opinion in *Brown v. Gardner*, U.S. Sup. Ct. No. 93-1128 (Dec. 12, 1994), VA may, based on the Supreme Court's opinion, allow claims for benefits under 38 U.S.C. 1151 if: (1) an injury resulting from VA treatment caused additional disability or death and the injury is not a risk of which the veteran was informed before consent to undergo the treatment, or (2) indicated fault on the part of VA care-providers or the occurrence of an accident resulted in additional disability or death. No claim for benefits under 38 U.S.C. 1151 should be denied because no fault on the part of VA care-providers or the occurrence of an accident was shown.

Effective date: December 27, 1994.

VAOPGCPREC 1-95

Question Presented

a. Is the Department of Veterans Affairs Adjudication Procedure Manual M21-1, part IV, ¶ 20.46b., inconsistent with applicable law and regulation insofar as the manual directs that a surviving spouse's improved-pension award shall reflect the dependency of a child who is not in the surviving spouse's custody, but who receives a protected apportionment of the surviving spouse's pension under section 306 of Public Law No. 95-588?

b. If the manual provision is consistent with the law and regulations, must it be applied uniformly regardless of whether it is to the surviving spouse's advantage?

Held

a. The provision in VA Adjudication Procedure Manual M21-1, part IV, ¶ 20.46b., requiring payment of increased improved-pension to a surviving spouse when a veteran's child not in the spouse's custody receives a protected apportionment, is inconsistent with the provision of 38 U.S.C. 1541 (b) and (c) which authorize payment of the increased rate only when the veteran's child is in the surviving spouse's custody.

b. In view of the holding in paragraph a., above, the second question presented is moot.

Effective date: January 4, 1995.

VAOPGPCREC 2-95*Question Presented*

Do the provisions of 38 U.S.C. § 5503(b)(1)(A) requiring withholding of compensation and pension payments to certain incompetent veterans apply in the case of a veteran who is being provided hospital care in a non-government facility outside the United States, with the cost of such care being paid by the Department of Veterans Affairs (VA)?

Held

The provisions of 38 U.S.C. 5503(b)(1)(A), which require withholding of compensation and pension payments to certain institutionalized, incompetent veterans whose estates equal or exceed \$1,500, are applicable to veterans hospitalized in any hospital, including a private facility outside the United States, when care is provided at the expense of the United States.

Effective date: January 25, 1995.

VAOPGPCREC 3-95*Question Presented*

What is the effect on entitlement to Department of Veterans Affairs (VA) dependency and indemnity compensation (DIC) during a period of remarriage, where a remarried spouse obtains an annulment which, under state law, renders the remarriage void ab initio?

Held

For purposes of entitlement to dependency and indemnity compensation, a voidable marriage may be considered to have been valid until the date on which it was declared void by judicial action, even though under state law the annulment renders the marriage void ab initio. Thus, although entitlement to dependency and indemnity compensation may be restored upon annulment of the remarriage of the surviving spouse of a veteran, the annulment does not give rise to entitlement for the period of the remarriage.

Effective date: February 1, 1995.

VAOPGPCREC 4-95*Question Presented*

Has a veteran, who has been notified that he or she has met the basic eligibility requirements for a specially adapted housing grant because he or she has a permanent and total service-connected disability due to one of the conditions enumerated in 38 U.S.C. 2101 and that it is medically feasible for the veteran to reside in the proposed

housing unit, been "granted assistance" for purposes of Veterans' Mortgage Life Insurance under 38 U.S.C. 2106(a)?

Held

A determination of whether a veteran, who has been notified that he or she has met the basic eligibility requirements for a specially adapted housing grant because he or she has a permanent and total service-connected disability based upon one of the conditions enumerated in 38 U.S.C. 2101 and that it is medically feasible for the veteran to reside in the proposed housing unit, has been "granted assistance" for purposes of Veterans' Mortgage Life Insurance (VMLI) under 38 U.S.C. 2106(a) depends upon whether a specially adapted housing grant for the veteran was approved by the Department of Veterans Affairs, which is a factual matter requiring adjudication by the Veterans Benefits Administration based upon applicable statutory provisions and regulations and the evidence of record.

Effective date: February 6, 1995.

VAOPGPCREC 5-95*Question Presented*

Do the provisions of 38 U.S.C. 110 and 38 C.F.R. 3.951, as interpreted by the Court of Veterans Appeals (CVA) in *Salgado v. Brown*, 4 Vet. App. 316 (1993), protect a disability rating established over twenty years ago, where compensation was discontinued upon the veteran's reentry into active service shortly after the rating was established and was not reinstated upon the veteran's discharge from service?

Held

Under 38 U.S.C. 110, a disability which has been continuously rated at or above a particular evaluation for twenty or more years for compensation purposes cannot thereafter be rated at less than that evaluation, in the absence of fraud. The protection provided by this statute, however, is dependent upon the disability being "continuously rated" at or above the level in question. Where compensation is discontinued following reentry into active service in accordance with the statutory prohibition on payment of compensation for a period in which an individual receives active-service pay, the continuity of the rating is interrupted for purposes of the rating-protection provisions of 38 U.S.C. 110 and the disability cannot be considered to have been continuously rated during the period in which compensation is discontinued.

Effective date: February 6, 1995.

VAOPGPCREC 6-95*Question Presented*

Whether service consisting solely of attendance at the United States Military Academy Preparatory School or United States Naval Academy Preparatory School may be considered "active duty" for purposes of title 38, United States Code.

Held

The analysis of O.G.C. Prec. 18-94 regarding characterization of service while attending the United States Air Force Academy Preparatory School applies equally to service consisting of attendance at the United States Military Academy Preparatory School or the United States Naval Academy Preparatory School. Accordingly, persons transferred to these schools from active duty remain on active duty status while in attendance at the schools. For members entering the USMAPS and the USNAPS from reserve components and the Army National Guard, attendance at the schools may generally be characterized as active duty for training. However, in adjudication of individual claims of persons who enrolled in the USNAPS from the Naval Reserve or Marine Corps Reserve, it may be necessary to confirm from service records that such persons attended the USNAPS in the status of reserves called to active duty for training purposes. In addition, it may be necessary in individual cases of persons entering the USMAPS and USNAPS from civilian life to examine the pertinent service records to confirm that such persons entered the service in reserve status in order to attend the preparatory school.

Effective date: February 10, 1995.

VAOPGPCREC 7-95*Questions Presented*

1. In light of 38 U.S.C. 5106, may the National Archives and Records Administration (NARA) charge a fee for providing the Department of Veterans Affairs (VA) with copies of documents for its records?

2. Does VA's statutory duty to assist claimants under 38 U.S.C. 5107(a) require that VA pay fees charged by Federal, state, or local agencies or private sources to obtain copies of records maintained by those sources?

Held

1. The National Archives and Records Administration may charge a fee for providing the Department of Veterans Affairs with copies of records requested in connection with a benefit claim, notwithstanding 38 U.S.C. 5106, which requires that the head of any Federal

agency provide information to VA upon request for the purpose of determining benefit eligibility.

2. Under 38 U.S.C. 5107(a), which establishes the Secretary of Veterans Affairs' duty to assist claimants in developing the facts pertinent to their claims, the Secretary may require claimants to assume responsibility for payment of any fees associated with obtaining copies of records maintained by Federal, state, or local agencies or private sources.

Effective date: March 6, 1995.

VAOPGCPREC 8-95

Questions Presented

1. Must a veteran affirmatively seek a change of program of education?

2. If the answer to that question is yes, does affirmatively seeking a change of program of education require that the veteran submit an application for the change in the form prescribed by the Secretary?

3. If the answer to the first question is yes, must VA withhold payments pending receipt of a request for a change of program?

4. If the answer to the first question is yes, does the Secretary have statutory authority to eliminate this requirement by regulation?

Held

1. An individual must affirmatively seek a determination of his or her eligibility to make any change of his or her approved program of education.

2. The request for a determination of eligibility for a change of program must be made by the individual and, under the applicable regulations, may be in any form prescribed by VA. The form of the communication to VA may include the individual's telephonic confirmation of third-party information and even a third-party document bearing the individual's signature from which a

reasonable inference of his or her intent to change programs may be discerned.

3. VA may not pay benefits to an individual for pursuit of a program other than the one currently approved until a request from the individual for a determination of his or her entitlement to pursue a particular new program has been received and approved by VA.

4. The Department may not legally implement, by regulation, procedures to administer determinations of eligibility to pursue a change of program that do not require the individual seeking approval of such a change to communicate to VA his or her intent to do so.

Effective date: March 24, 1995.

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

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