CITATION: VAOPGCPREC 4-89
Vet. Aff. Op. Gen. Couns. Prec. 4-89

DATE: 3-14-89

TEXT:

Gifts and Inheritances of Property as Improved-Pension Income

1. This responds to your request for an opinion as to whether a gift of a $2,400 savings bond received by a veteran should be counted as income for improved-pension purposes, and, if so, how it should be valued. Additionally, you ask, in general: Whether gifts and inheritances should be treated as income for improved-pension purposes; if so, whether there is a distinction between gifts and inheritances of money and those of other personal property; if there is such a distinction, how various securities should be classified for improved-pension purposes; and, if there is not, how the value of tangible and intangible property should be determined for income-counting purposes.

2. Title 38, U.S. Code, section 503(a), provides, with certain specified exceptions, that, ' i n determining annual income for improved-pension purposes, all payments of <u>any kind</u> or from <u>any source</u> . . . shall be included.' None of the ten exceptions enumerated in that section specifically exempts gifts and inheritances, nor are such payments specifically addressed in implementing regulations at 38 C.F.R. § 3.272. It is clear from the language used in section 503(a) that Congress intended to broadly cover 'payments of any kind or from any source' (emphasis added) in counting income for improved- pension purposes, unless such payments were specifically excluded.

3. The legislative history of the improved-pension statutes further indicates Congress' purpose 'that a pensioner's total annual non-pension income shall be included in determining the amount of pension payable, unless a specific exclusion from such income is authorized by law.' S. Rep. No. 95- 1329, 95th Cong., 2d Sess. 22 (1978). The House report on the legislation explained ' generally, with limited exceptions, no distinction is made as to the source of non-pension income and all such available income will be calculated in determining the amount of pension the veteran will receive under the needs-based program.' H.R. Rep. No. 95-1225, 95th Cong., 2d Sess. 28, <u>reprinted in</u> 1978 U.S. Code Cong. & Admin. News 5583, 5609. Exclusions were limited 'in order to align pension payments more closely to a pensioner's available resources, and, hence, to actual need.' Id. Thus, inclusion of the value of gifts and inheritances in computing pension income is consistent with the terms and objectives of the improved-pension laws.

4. Before proceeding any further, we believe it would be helpful to briefly clarify the legal characterization of various types of property. The law normally distinguishes between real and personal property. Real property consists of land and the buildings and other structures permanently erected upon the land and the appurtenances attached thereto. All other property is called personal property. Personal property can be tangible or intangible. Tangible personal property generally consists of 'movable . . . things such as animals, ships, furniture, merchandise, etc.' Black's Law Dictionary 1096 (rev. 5th ed. 1979). Intangible personal property 'consists of such rights as personal annuities, stocks, shares, patents, and copyrights.' Id.

5. As to whether gifts and inheritances must be of money rather than of other types of property to be considered income for improved-pension purposes, the controlling statute itself, section 503(a), does not distinguish between money and non-money gifts and inheritances. It states that 'payments of any kind' will be counted as income. Payment is generally recognized as including 'the delivery of money or other value,' or 'a delivery of money or its equivalent in . . . specific property.' Black's Law Dictionary 1016 (rev. 5th ed. 1979). Thus, the term 'payment' is, in our view, broad enough to include transactions involving both money and other property.

6. We recently stated in Op. G.C. 3-88 (6-14-88):

The legislative history of the improved pension program indicates that the term 'income,' for purposes of determining pension eligibility, was only intended to refer to income available to meet the subsistence needs of the beneficiary and the beneficiary's dependents. The House committee report on legislation which became Pub. L. No. 95-588, 92 Stat. 2497, the Veterans' and Survivors' Pension Improvement Act of 1978, referred to calculation based on 'all . . . available' non-pension income. H.R. Rep. No. 95-1225, 95th Cong., 2d Sess. 28 (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 5583,5609. The committee report on the Senate version of the measure contained references to consideration of 'the aggregate income available to the household for its basic requirements,' . . . S. Rep. No. 95-1016, 95th Cong., 2d Sess. 68, 69 (1978).

That opinion involved a case where the beneficiary owned an Individual Retirement Account. The issue was whether interest accruing on the account was to be counted as income for improved-pension purposes. We concluded that it was not to be counted as income because:

[T]he amounts credited were not available to the claimant . . . without imposition of a substantial penalty which would result in loss of much of the accrued interest . . . that the sums in question were not actually . . . received by the claimant and could not be considered payments within the meaning of section 503(a).

However, we did also note that as the account could 'be converted to cash through surrender, albeit at a loss, the surrender value may, we believe, be considered in determining net worth.'

7. This 'substantial penalty' standard for determining whether an item received by the beneficiary should be counted as income for improved-pension purposes is essentially indistinguishable from one of the factors to be considered under 38 C.F.R. § 3.275(d) ' i n determining whether some part of the claimant's estate . . . should be consumed for the claimant's maintenance,' that is, ' whether the property can be readily converted into cash at no substantial sacrifice.' Generally, a U.S. Savings Bond can be readily converted into cash at no substantial sacrifice to the claimant. 1/ While the interest rate may not be as high as if the bond were held to maturity, no penalty would be imposed for its early redemption. We conclude, therefore, that the value of a U.S. Savings Bond received by gift or inheritance should normally be considered income for improved-pension purposes in the amount of its cash value when received unless the circumstances of its ownership or receipt bring it within one of the exclusions enumerated in 38 C.F.R. § 3.272. The same reasoning would apply generally to gifts and inheritances of property, and, accordingly, such payments are countable as income for improved-pension purposes if their value is readily available 2/ to the claimant without the claimant's incurring a substantial penalty to obtain it.

8. Regarding the distinction between 'money and property' and between 'tangible and intangible property,' for includability in income for improved- pension purposes, it is not the legal characterization of the property, but whether it can be turned into cash without substantial sacrifice which is determinative. It follows that the value of the property may be determined by its cash or market value, if any, as of the date it is received. Gifts and inheritances of property with no ready market value, such as used furniture, tools, etc., would not add to income.

9. To summarize, the answer to your first question is that, under the factual situation presented, the $2,400 savings bond may be included in the veteran's income for improved-pension purposes in the amount of its cash value when received or when it first becomes redeemable. As to your general questions, gifts and inheritances are includable in income for improved-pension purposes unless they fall within one of the ten exceptions enumerated in § 3.272. The criteria for determining whether the beneficiary has received current income as the result of a gift or inheritance is not whether the payment was received as money or as other personal property, but whether it is available to the claimant without substantial sacrifice in its value to the claimant. Therefore, gifts and bequests of marketable bonds, stocks, and similar instruments would normally be considered income. Other items such as unmatured certificates of deposit, which are not generally marketable or which involved a significant penalty for early withdrawal, would normally not be countable as income, but would be

includable in the veteran's net worth. Cash or market value provides the basis for determining value for income computation purposes. Property with no market value would not add to either the claimant's income or net worth.

HELD:

A $2,400 savings bond received as a gift is includable in a claimant's income for improved-pension purposes in the amount of its cash value when received or when it first becomes redeemable. Gifts and inheritances are includable in income for improved-pension purposes unless they fall within one of the ten exceptions enumerated in § 3.272. The criteria for determining whether the beneficiary has received current income as the result of a gift or inheritance is not whether the payment was received as money or as other personal property, but whether it is available to the claimant without substantial sacrifice in its value to the claimant. Therefore, gifts and bequests of marketable bonds, stocks, and similar instruments would normally be considered income. Other items such as unmatured certificates of deposit, which are not generally marketable or which involve a significant penalty for early withdrawal, would normally not be countable as income, but would be includable in the veteran's net worth. Cash or market value provides the basis for determining value for income computation purposes. Property with no market value would not add to either the claimant's income or net worth.

NOTE: This opinion was released in the form of a memorandum to the Chief Benefits Director, on March 14, 1989.

1 The new Series EE bonds, however, cannot be redeemed at any price until six months after the date of issue, with some exceptions.

2 E.g., under the Supplemental Security Income program, 'nonliquid resources' are not considered income. 20 C.F.R. § 416.1103(j). These are defined as property that is not cash and which cannot be converted to cash within (generally) 20 days. 20 C.F.R. § 416.1201(c). The regulation provides that ordinarily 'loan agreements, household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land' are to be considered nonliquid resources. Id.

VETERANS ADMINISTRATION GENERAL COUNSEL
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