

RETIRED PAY WAIVER BY RESERVISTS

MARCH 17, 1958.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 1140]

The Committee on Finance, to whom was referred the bill (H. R. 1140) to amend Public Law 85-56 to permit persons receiving retired pay for nonregular service to waive receipt of a portion of that pay to receive pensions or compensation under laws administered by the Veterans' Administration, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

GENERAL STATEMENT

The purpose of the proposed legislation, is to extend to retired members of the Reserve components of the uniformed services the provisions of existing law which permit personnel of the Regular components who are receiving retired pay to waive a portion of that retired pay in order to draw compensation from the Veterans' Administration.

Thus, the proposed legislation will grant to reservists, enlisted and officer alike, a privilege that is now applicable only to regulars. The advantage, of course, is that a person who can draw compensation from the Veterans' Administration is allowed to exclude that compensation from his income for tax purposes whereas all retirement pay, other than retirement pay for disability, is taxable.

In the event the proposed legislation becomes law, regulars and reserves alike, who qualify for retired or retirement pay, and who are eligible to receive pensions or compensation from the Veterans' Administration, will be allowed to receive that compensation or pension from the Veterans' Administration, which is not taxable, and waive a like amount in retired pay. This benefit will not increase the amount of compensation they will receive from the Government but will reduce their taxable income.

COST ESTIMATE

The following information relating to cost estimate is excerpted from the report of the House Committee on Armed Services:

While neither the Bureau of the Budget nor the Department of the Army could arrive at a cost estimate, the committee ascertained the following information which allows the committee to estimate an approximate cost:

At present there are 12,530 non-Regular officers and enlisted personnel of the Army drawing retirement pay for reasons other than disability.

In the Air Force there are approximately 3,200 non-Regular officers and enlisted personnel drawing retirement pay for reasons other than disability; in the Navy 2,047, and in the Marine Corps approximately 115.

Thus, there are less than 18,000 non-Regular personnel drawing retirement pay for reasons other than disability.

A survey of Regular personnel of the Marine Corps retired for reasons other than disability furnishes the following information:

Of 3,618 Regulars drawing retirement pay for reasons other than disability, 48, or slightly over 1 percent, have requested a waiver in order to draw a portion of their compensation from the Veterans' Administration.

A survey of 1,300 regulars of the Navy, retired for reasons other than disability, discloses that 48 have waived a portion of their retired pay in order to draw compensation from the Veterans' Administration.

This survey indicates that approximately 3.7 percent of the officers and enlisted personnel sampled took advantage of existing law which permits regulars to waive a portion of their retired pay to accept compensation from the Veterans' Administration.

Thus, in the case of the Marine Corps, a little over 1 percent of the personnel involved exercised their waiver rights, while in the sample cases in the Navy, less than 4 percent exercised their waiver rights.

Using the highest figure, if 4 percent of the 18,000 individuals who would be affected by the proposed legislation elect to waive a portion of their retired pay to draw compensation from the Veterans' Administration, there would be less than 720 individuals who would benefit by the proposed legislation.

And if the average compensation paid by the Veterans' Administration is approximately \$34 per month, it will be seen that the amount of compensation that individuals would receive from the Veterans' Administration that would be nontaxable would be less than \$25,000 a month.

Assuming that taxes on this amount would be approximately 20 percent, it can be concluded that the proposed legislation would result in a tax loss of less than \$5,000 a month. Even if the number of retired reservists should double or triple in the years ahead, it is reasonable to assume

that the maximum tax loss as a result of the proposed legislation would not exceed \$15,000 monthly, or \$180,000 annually.

DEPARTMENTAL REPORTS

The following reports on this bill were received by the Committee on Finance from the Department of the Army, Veterans' Administration, and the Bureau of the Budget.

DEPARTMENT OF THE ARMY,
November 14, 1957.

HON. HARRY FLOOD BYRD,
Chairman, Committee on Finance,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H. R. 1140, 85th Congress, the bill to amend Public Law 85-56 to permit persons receiving retired pay for nonregular service to waive receipt of a portion of that pay to receive pensions or compensation under laws administered by the Veterans' Administration. The Secretary of Defense has delegated to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

The purpose of this bill is to extend to members and former members of the Reserve components of the uniformed services who are receiving retired pay for reasons other than disability the benefits of section 1005 of the Veterans' Benefits Act of 1957 (Public Law 85-56, 71 Stat. 123), which permits retired members of the Regular components and members and former members of the Reserve components entitled to retired pay for disability to waive a portion of their retired pay in order to draw pensions or compensation from the Veterans' Administration.

The Department of the Army, on behalf of the Department of Defense, has no objection to the above-mentioned bill.

The above act, which goes into effect on January 1, 1958, provides in part that "Any person who is receiving pay pursuant to any provision of law relating to the retirement of persons in the Regular military, naval, or air service, or relating to retirement from any Reserve component of the military, naval, or air service for disability will be allowed to waive a portion of his retired pay to draw compensation or pension from the Veterans' Administration.

Accordingly, reservists retired for reasons other than disability rare not in as favorable a position as retired regulars or reservists retired for disability who are permitted to receive a pension or compensation in lieu of an equivalent portion of their retired pay and hence are able to exclude such pension or compensation from gross income for income-tax purposes under the provisions of section 104 of title 26, United States Code. H. R. 1140 would, therefore, correct this inequity with respect to members and former members of the Reserve components receiving retired pay for reasons other than disability who could qualify for pensions or compensation.

In view of the foregoing, the Department of the Army on behalf of the Department of Defense would interpose no objection to enactment of H. R. 1140 as passed by the House of Representatives on August 22, 1957.

It is not possible to estimate the cost of this legislative proposal if it should be enacted into law, as there are so many unknown factors.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has advised that it is opposed to the enactment of H. R. 1140 because it would, in effect, further extend special tax benefits to a limited group of individuals, thereby running counter to current Administration tax policies.

Sincerely yours,

S/ WILBER M. BRUCKER,
Secretary of the Army.

VETERANS' ADMINISTRATION,
March 14, 1958.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance,
United States Senate, Washington, D. C.*

DEAR SENATOR BYRD: Further reference is made to your request for a report by the Veterans' Administration on H. R. 1140, 85th Congress, an act to amend Public Law 85-56 to permit persons receiving retired pay for non-Regular service to waive receipt of a portion of that pay to receive pensions or compensation under laws administered by the Veterans' Administration. As passed by the House of Representatives on August 22, 1957, H. R. 1140 would amend section 1005 of the Veterans' Benefits Act of 1957 to read as follows (underlining indicates new language; bracketed language would be deleted):

The bill's purpose to treat retired members of Regular and Reserve components equally in this respect appears to merit serious consideration. However, an important question of Federal taxing policy is involved and the committee will doubtless desire the views of the Treasury Department.

The enactment of H. R. 1140 would also provide some extension of benefits in the area of hospitalization and medical care furnished by the Veterans' Administration. The Veterans' Benefits Act of 1957 contains certain liberalizations with respect to the availability of these benefits to persons retired from the Armed Forces, so that their status in this regard is equated with that of veterans discharged or released from the service. A person retired from the service is eligible, like a discharged veteran, for hospitalization or outpatient treatment of a disability incurred in the military service in one of the war periods, and a retired member who had war service may be provided hospitalization for any disability by the Veterans' Administration upon the same showing as that required of other veterans concerning inability to defray the cost of such care, provided a bed is available. Moreover, retirement for disability incurred in the service in line of duty meets another basic eligibility requirement for hospitalization or medical care which, under certain conditions, may be provided for those discharged or released from the military service for disability incurred in line of duty.

However, there are some situations in which eligibility for hospitalization or outpatient treatment from the Veterans' Administration must be based upon receipt of compensation. For example, a retiree desiring hospital care for a disability incurred in peacetime service may be unable to establish eligibility except through receipt of com-

compensation. This assumes perhaps greater importance in relation to outpatient treatment, which can only be provided for service-connected conditions, so that a retired member requiring outpatient treatment for a peacetime service-connected disability would not qualify in the absence of receipt of compensation, unless he was retired for disability incurred in the service. It is apparent, therefore, that in some circumstances members of Reserve components retired for reasons other than disability are at a disadvantage by comparison to regulars retired for any reason or reservists retired for disability, in relation to the availability of hospital and medical benefits from the Veterans' Administration. They do not enjoy the same privilege of partial waiver of retirement pay in order to receive compensation. There appears to be no justification for this existing discrimination, which to a more limited extent exists also with respect to burial benefits based on receipt of compensation at time of death.

It should be mentioned that these inequalities in the area of Veterans' Administration benefits could be eliminated legislatively without expanding the privilege concerning waiver of retirement pay. The alternative could take the form of an amendment to the hospital, medical care, and burial benefit provisions (secs. 510 (a) (3), 512 (a), and 802 (a) (3)) of the Veterans' Benefits Act of 1957 to confer basic eligibility for these benefits if the person would be entitled to compensation but for the receipt of retirement pay. H. R. 9700, 85th Congress, a bill to consolidate all laws administered by the Veterans' Administration, which passed the House of Representatives on February 17, 1958, contains an amendment which would accomplish this latter type of liberalization, if enacted.

The Veterans' Administration is unable to indicate the loss of tax revenues which would result from enactment of H. R. 1140. From available information, it would appear that at the present time approximately 1,000 retired personnel who have been retired from Reserve components for reasons other than disability might take advantage of the waiver privilege. The number of this group who would avail themselves of Veterans' Administration benefits as a result and the extent to which those benefits would be provided are speculative matters concerning which no reliable estimate can be made. In any event, it is believed that any increased costs from the provision of medical and burial benefits would be very small.

"WAIVER OF RETIRED PAY

"SEC. 1005. Any person who is receiving *retired or retirement pay under* [pursuant to] any provision of law [relating to the retirement of persons in the regular military, naval, or air service, or relating to retirement from any reserve component of the military, naval, or air service for disability] *providing retired or retirement pay to persons in any of the components of the Army, Navy, Marine Corps, Air Force, Coast Guard, Coast and Geodetic Survey, or Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Veterans' Administration if he were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of this retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of pay-*

ments, the department with which any such waiver is filed shall notify the Veterans' Administration of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay."

Section 2 of the bill would establish an effective date of January 1, 1958 (the general effective date of the Veterans' Benefits Act of 1957), or the first day of the month following enactment, whichever is later.

The purpose of this measure is to extend to members of Reserve components retired from the Armed Forces for reasons other than disability the same opportunity to waive a portion of their retirement pay, in order to receive an equivalent amount of disability compensation or pension, as now provided for those retired for any reason from Regular service in the Armed Forces or from the Reserve components for disability.

The bill also specifically includes members of the Coast and Geodetic Survey and the Public Health Service. For precision, the language should be limited to those in these services for whom this privilege is presumably intended, namely, commissioned officers of the Coast and Geodetic Survey or the Public Health Service.

Section 1005 of the Veterans' Benefits Act of 1957 was derived from Public Law 314, 78th Congress, May 27, 1944 and subsection 402 (i) of the Career Compensation Act of 1949 (now title 10, U. S. C., sec. 1215). Public Law 314 granted this privilege of waiving retired pay to the extent it equals compensation or pension to persons retired from the Regular components of the Armed Forces. Subsection 402 (i) of the Career Compensation Act provided that members of Reserve components retired or granted retirement pay because of physical disability would be entitled to the same rights, benefits, and privileges provided for retired members of the Regular services. This had the effect of extending the authority to waive retirement pay in favor of pension or compensation to members of Reserve components retired or granted retirement pay for disability. However, Reserve component members retired for other reasons can only receive compensation or pension from the Veterans' Administration if they elect to receive that benefit in lieu of the total amount of their retirement pay. In the absence of partial waiver authority, the basic law precludes concurrent payment to such retirees of pension or compensation and retirement pay (sec. 1004, Veterans' Benefits Act of 1957).

A principal advantage to the veteran in permitting partial waiver of retirement pay and receipt of an amount of disability compensation or pension equal to the waived portion of the retirement pay lies in the fact that compensation and pension payments are tax exempt (sec. 1001 (a), Veterans' Benefits Act of 1957), whereas retirement pay based on length of service or attained age is not.

While the Veterans' Administration would not object to the enactment of this proposal, it is recognized that the primary purpose is the extension of tax exemption to the groups concerned, and that more definitive comments on this aspect should be obtained from the Department of the Treasury.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee and that the Bureau recommends against favorable consideration of H. R. 1140.

Sincerely yours,

SUMNER G. WHITTIER,
Administrator.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
March 14, 1958.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance, United States Senate,
Senate Office Building, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This will acknowledge your letter of August 27, 1957, requesting our views on H. R. 1140, a bill to amend Public Law 85-56 to permit persons receiving retired pay for non-regular service to waive receipt of a portion of that pay to receive pensions or compensation under laws administered by the Veterans' Administration.

This bill would allow members of the Reserve components retired from the Armed Forces for reasons other than disability to waive a portion of their taxable military retirement pay in order to receive an equal amount of tax-free disability compensation or pension from the Veterans' Administration if they would be entitled to such compensation or pension except for the receipt of retirement pay. This would accord such individuals the same privileges as are now available to individuals retired from the regular service or from the Reserve components for disability.

The main justification for the waiver privilege in the past appears to have been the fact that retired military personnel could qualify to receive medical treatment in VA facilities for their service-connected disabilities only if they were receiving VA compensation. Since the enactment of Public Law 85-56 in June 1957, the receipt of VA compensation is no longer a condition to service-connected medical care from the VA for all regulars and most reservists. H. R. 9700, which passed the House of Representatives on February 17, 1958, would solve this problem of medical care eligibility for the relatively small remaining group of reservists without extending the waiver and tax privileges proposed in H. R. 1140.

The individuals affected by H. R. 1140 are receiving benefits based on years of service rather than disability. In view of the fact that they are already eligible to receive needed medical treatment for their service-connected disabilities or are likely to be made eligible in the near future through the enactment of H. R. 9700, the Bureau of the Budget considers the enactment of H. R. 1140, to involve only the further extension of an unnecessary special tax benefit to a limited group of individuals. Accordingly, we recommend against favorable consideration of the measure.

Sincerely yours,

ROBERT MERRIAM,
Assistant Director.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

"WAIVER OF RETIRED PAY

SEC. 1005. Any person who is receiving *retired or retirement* pay *under* [pursuant to] any provision of law [relating to the retirement of persons in the regular military, naval, or air service, or relating to retirement from any reserve component of the military, naval, or air service for disability] *providing retired or retirement pay to persons in any of the components of the Army, Navy, Marine Corps, Air Force, Coast Guard, Coast and Geodetic Survey, or Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Veterans' Administration if he were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of this retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Veterans' Administration of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.*

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