

Compensation Act of 1949, there is no indication that an exception to the basic law relating to appointments in commissioned grades was intended.

Subsection (d)(3) is made applicable to members without component status, since the words “reserve component” are defined in section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (e), the words “rank” and “rating” are omitted as surplusage.

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2001—Subsec. (e). Pub. L. 107-107 inserted “an approved all-fully-qualified-officers list,” after “a promotion list.”

1985—Subsec. (c). Pub. L. 99-145 inserted “and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title,” after “proposed under subsection (a) or (b),” and inserted “and the member shall be discharged” after “as soon as practicable”.

1980—Subsec. (a)(1). Pub. L. 96-513 substituted “active-duty list” for “active list of his regular component”.

1962—Subsec. (d). Pub. L. 87-651 substituted “subsection (b)(1) or (2)” for “subsection (b)(1), (2), or (3)” in cl. (1), and “subsection (b)(4)” for “subsection (b)(5)” in cl. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) the member’s years of service computed under section 1208 of this title (subject to the minimum and maximum years of service provided for in subsection (c)), by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of

the military department or the Secretary of Homeland Security, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c)(1) The minimum years of service of a member for purposes of subsection (a)(1) shall be as follows:

(A) Six years in the case of a member separated from the armed forces for a disability incurred in line of duty in a combat zone (as designated by the Secretary of Defense for purposes of this subsection) or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

(B) Three years in the case of any other member.

(2) The maximum years of service of a member for purposes of subsection (a)(1) shall be 19 years.

(d)(1) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Department of Veterans Affairs.

(2) No deduction may be made under paragraph (1) in the case of disability severance pay received by a member for a disability incurred in line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense.

(3) No deduction may be made under paragraph (1) from any death compensation to which a member’s dependents become entitled after the member’s death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 98; Pub. L. 96-513, title V, §511(43), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 101-189, div. A, title XVI,

§ 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 107-107, div. A, title V, § 593(a), Dec. 28, 2001, 115 Stat. 1126; Pub. L. 107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110-181, div. A, title XVI, § 1646(a), (b), Jan. 28, 2008, 122 Stat. 472.)

HISTORICAL AND REVISION NOTES

| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|--------------------------------------|--|
| 1212(a) | 37:273 (less 1st and last provisos). | Oct. 12, 1949, ch. 681, § 403, 63 Stat. 820. |
| 1212(b) | 37:273 (1st proviso). | |
| 1212(c) | 37:273 (last proviso). | |

In subsection (a), the words “Upon separation” are inserted for clarity. The words “his years of service * * * computed under section 1208 of this title” are substituted for the words “a number of years equal to the number of years of active service to which such member is entitled under the provisions of section 282 of this title”. The words “but not more than 12” are substituted for the words “but not to exceed a total of two years’ basic pay”, to simplify the necessary calculation. The substituted words produce the same result. The word “rating” is omitted as covered by the words “grade” and “rank”.

In clause (2)(A)–(D), the words “Twice the amount of monthly” are substituted for the words “An amount equal to two months”. The words “if his name was not carried on that list” are substituted for the words “whichever is earlier”, since the member might be separated without ever being carried on the list. The word “rating” is omitted as surplusage.

In clause (2)(B), the words “the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction over the armed force from which he is separated” are substituted for the words “the Secretary concerned” for clarity.

In clause (2)(C), the words “regular or reserve” are inserted, since they are the only “permanent” grades.

Clause (2)(D) is based on that part of the third proviso of 37:273 relating to promotions other than regular or reserve.

In subsection (b), the words “and a part of a year that is less than six months is disregarded” are inserted to reflect the legislative history of the rule (see Senate Hearings on H.R. 5007, 81st Cong., page 313). The words “for himself or his dependents” are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-181, § 1646(a)(1), substituted “the member’s years of service computed under section 1208 of this title (subject to the minimum and maximum years of service provided for in subsection (c))” for “his years of service, but not more than 12, computed under section 1208 of this title”.

Subsec. (c). Pub. L. 110-181, § 1646(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110-181, § 1646(b), designated existing provisions as par. (1), struck out “However, no deduction may be made from any death compensation to which his dependents become entitled after his death.” at end, and added pars. (2) and (3).

Pub. L. 110-181, § 1646(a)(2), redesignated subsec. (c) as (d).

2002—Subsec. (a)(2)(B). Pub. L. 107-296 substituted “Secretary of Homeland Security” for “Secretary of Transportation”.

2001—Subsec. (a)(2)(C), (D). Pub. L. 107-107 struck out “for promotion” after “physical examination”.

1989—Subsec. (c). Pub. L. 101-189 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1980—Subsec. (a). Pub. L. 96-513 substituted “Secretary of Transportation” for “Secretary of the Treasury”.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title XVI, § 1646(d), formerly § 1646(c), Jan. 28, 2008, 122 Stat. 472, renumbered § 1646(d) by Pub. L. 110-389, title I, § 103(a)(1), Oct. 10, 2008, 122 Stat. 4148, provided that: “The amendments made by this section [amending this section and section 1161 of Title 38, Veterans’ Benefits] shall take effect on the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to members of the Armed Forces separated from the Armed Forces under chapter 61 of title 10, United States Code, on or after that date.”

[Amendment by Pub. L. 110-389, § 103(a)(1), redesignating section 1646(c) as 1646(d) of Pub. L. 110-181, set out above, effective Jan. 28, 2008, as if included in the Wounded Warrior Act, title XVI of Pub. L. 110-181, to which such amendment relates, see section 103(b) of Pub. L. 110-389, set out as an Effective Date of 2008 Amendment note under section 1161 of Title 38, Veterans’ Benefits.]

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, § 593(b), Dec. 28, 2001, 115 Stat. 1126, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to members separated under section 1203 or 1206 of title 10, United States Code, on or after date of the enactment of this Act [Dec. 28, 2001].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

COMBAT-INJURED VETERANS TAX FAIRNESS

Pub. L. 114-292, Dec. 16, 2016, 130 Stat. 1500, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Combat-Injured Veterans Tax Fairness Act of 2016’.

“SEC. 2. FINDINGS.

“Congress makes the following findings:

“(1) Approximately 10,000 to 11,000 individuals are retired from service in the Armed Forces for medical reasons each year.

“(2) Some of such individuals are separated from service in the Armed Forces for combat-related injuries (as defined in section 104(b)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 104(b)(3)]).

“(3) Congress has recognized the tremendous personal sacrifice of veterans with combat-related injuries by, among other things, specifically excluding from taxable income severance pay received for combat-related injuries.

“(4) Since 1991, the Secretary of Defense has improperly withheld taxes from severance pay for wounded veterans, thus denying them their due compensation and a significant benefit intended by Congress.

“(5) Many veterans owed redress are beyond the statutory period to file an amended tax return because they were not or are not aware that taxes were improperly withheld.

“SEC. 3. RESTORATION OF AMOUNTS IMPROPERLY WITHHELD FOR TAX PURPOSES FROM SEVERANCE PAYMENTS TO VETERANS WITH COMBAT-RELATED INJURIES.

“(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Dec. 16, 2016], the Secretary of Defense shall—

“(1) identify—
 “(A) the severance payments—
 “(i) that the Secretary paid after January 17, 1991;
 “(ii) that the Secretary computed under section 1212 of title 10, United States Code;
 “(iii) that were not considered gross income pursuant to section 104(a)(4) of the Internal Revenue Code of 1986 [26 U.S.C. 104(a)(4)]; and
 “(iv) from which the Secretary withheld amounts for tax purposes; and
 “(B) the individuals to whom such severance payments were made; and

“(2) with respect to each person identified under paragraph (1)(B), provide—

“(A) notice of—
 “(i) the amount of severance payments in paragraph (1)(A) which were improperly withheld for tax purposes; and
 “(ii) such other information determined to be necessary by the Secretary of the Treasury to carry out the purposes of this section; and
 “(B) instructions for filing amended tax returns to recover the amounts improperly withheld for tax purposes.

“(b) EXTENSION OF LIMITATION ON TIME FOR CREDIT OR REFUND.—

“(1) PERIOD FOR FILING CLAIM.—If a claim for credit or refund under section 6511(a) of the Internal Revenue Code of 1986 [26 U.S.C. 6511(a)] relates to a specified overpayment, the 3-year period of limitation prescribed by such subsection shall not expire before the date which is 1 year after the date the information return described in subsection (a)(2) is provided. The allowable amount of credit or refund of a specified overpayment shall be determined without regard to the amount of tax paid within the period provided in section 6511(b)(2) [26 U.S.C. 6511(b)(2)].

“(2) SPECIFIED OVERPAYMENT.—For purposes of paragraph (1), the term ‘specified overpayment’ means an overpayment attributable to a severance payment described in subsection (a)(1).

“SEC. 4. REQUIREMENT THAT SECRETARY OF DEFENSE ENSURE AMOUNTS ARE NOT WITHHELD FOR TAX PURPOSES FROM SEVERANCE PAYMENTS NOT CONSIDERED GROSS INCOME.

“The Secretary of Defense shall take such actions as may be necessary to ensure that amounts are not withheld for tax purposes from severance payments made by the Secretary to individuals when such payments are not considered gross income pursuant to section 104(a)(4) of the Internal Revenue Code of 1986 [26 U.S.C. 104(a)(4)].

“SEC. 5. REPORT TO CONGRESS.

“(a) IN GENERAL.—After completing the identification required by section 3(a) and not later than 1 year after the date of the enactment of this Act [Dec. 16, 2016], the Secretary of Defense shall submit to the appropriate committees of Congress a report on the actions taken by the Secretary to carry out this Act.

“(b) CONTENTS.—The report submitted under subsection (a) shall include the following:

“(1) The number of individuals identified under section 3(a)(1)(B).

“(2) Of all the severance payments described in section 3(a)(1)(A), the aggregate amount that the Secretary withheld for tax purposes from such payments.

“(3) A description of the actions the Secretary plans to take to carry out section 4.

“(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services, the Committee on Veterans’ Affairs, and the Committee on Finance of the Senate; and

“(2) the Committee on Armed Services, the Committee on Veterans’ Affairs, and the Committee on Ways and Means of the House of Representatives.”

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 99; Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, §511(44), Dec. 12, 1980, 94 Stat. 2924.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 1213 | 37:280. | Oct. 12, 1949, ch. 681, §410, 63 Stat. 823. |

The words “a person who has received disability severance pay” are substituted for the words “Any former member who has been separated for physical disability from any of the uniformed services and paid disability severance pay”. The words “any payment * * * for” are substituted for the words “for any monetary obligation provided under any provision * * * on account of”. The words “this section does not prohibit” are substituted for the words “shall not operate to bar”. The words “the payment of money to * * * if the money was due him” are substituted for the words “from receiving or the service concerned from paying any moneys due and payable”. The words “valid”, “processed”, and “pursuant to any provisions of law” are omitted as surplusage.

AMENDMENTS

1980—Pub. L. 96-513 substituted “National Oceanic and Atmospheric Administration” for “Environmental Science Services Administration”.

1966—Pub. L. 89-718 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97-295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)