



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

February 5, 2009

The Honorable Daniel K. Akaka  
Chairman  
Committee on Veterans' Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter concerning offset of Department of Defense (DoD) Special Separation Benefit (SSB) payments from Department of Veterans Affairs (VA) disability compensation. We contacted the Veteran mentioned in your letter and made adjustments to reduce his recoupment amount.

Section 1174, title 10, United States Code, provides for separation pay upon involuntary discharge or release from active duty. Section 1174a of the same title provides for a "Special Separation Benefits (SSB) program" based on voluntary discharge. Section 3.700(a)(5), title 38, Code of Federal Regulations, provides that if payment of separation pay or SSB was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of separation pay or SSB, less the amount of Federal income tax withheld from the payment. On June 9, 1998, Public Law 105-178 changed the effective date for withholding the after-tax amount to an earlier date of December 5, 1991, for SSB only; therefore, recoupment calculations for separation pay and SSB differ by statute.

To comply with Public Law 105-178, the Veterans Benefits Administration (VBA) issued Circular 20-98-05, dated August 4, 1998, to all field stations directing use of the after-tax rate for all SSB recoupments. To reiterate this mandate, VBA issued Fast Letter 99-23, *Recoupment of the Special Separation Benefit (SSB) under 10 U.S.C. 1174a*, dated March 10, 1999. In addition, VBA revised procedures manual, M21-1MR, Part III, Subpart V, Chapter 4, Section B (III. v.4.B), *Recoupment of Readjustment, Separation, and Severance Pay*. Regarding separation pay, the manual properly instructs VA employees to recoup the pre-tax amount if paid before October 1, 1996, or the after-tax amount if paid on or after October 1, 1996. In compliance with Public Law 105-178, the manual specifically requires using the effective date of December 5, 1991, for computing the after-tax amount of the SSB payment to recoup from VA compensation. Guidance on how to execute the new law was timely provided to VA field personnel responsible for processing claims involving a SSB payment.

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Additionally, VBA matched SSB data from the Defense Manpower Data Center against the Compensation and Pension Master Record. This match identified 181 cases for potential adjustment as a result of the change in law. VBA issued Fast Letter 00-83 on October 27, 2000, outlining requirements for adjusting awards identified through this data match.

To make our regulations comport with Public Law 105-178, we are amending section 3.700(a)(5) by creating a new section 3.700(a)(5)(iii) that specifically addresses SSB payments, and removing SSB references from the current section 3.700(a)(5)(i). In addition, we are amending the language to clarify that the amount of Federal income tax withheld is at the "flat withholding rate" for Federal income tax withholding for both SSB payments and separation pay.

Based on information obtained from the Defense Finance and Accounting Service, we corrected the recoupment amount for the Veteran mentioned in your letter whose compensation was withheld at the pre-tax rate. Recoupment action at the pre-tax rate was initiated following the Veteran's original award of disability compensation benefits in August 1995, prior to the change in law. We sincerely regret that the Veteran's award was not identified for adjustment subsequent to passage of Public Law 105-178. We contacted the Veteran to inform him of the adjustments made to reduce his recoupment amount.

We are working with DoD to obtain a sample of the accounts of other Veterans who received SSB during the period December 5, 1991 to September 30, 1996. We will review these cases to determine if there are other accounts that were not previously identified for adjustment in the match conducted with the Defense Manpower Data Center. If additional cases are identified, we will undertake a broad review of the accounts of all Veterans who received SSB during this period to properly adjust the accounts and pay any retroactive benefits due.

We will advise you of the results of our review. Thank you for bringing this issue to my attention.

Sincerely,



Eric K. Shinseki