

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC on June 16, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2010 0059]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HARBOR LIGHTS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2010-0059 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 22, 2010.

ADDRESSES: Comments should refer to docket number MARAD-2010-0059. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140,

1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov> <http://smses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HARBOR LIGHTS is: INTENDED COMMERCIAL USE OF VESSEL: "Maritime History cruises and charter fishing." GEOGRAPHIC REGION: "Wisconsin."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

By the Order of the Maritime Administrator.

Dated: June 18, 2010.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010-15110 Filed 6-21-10; 8:45 am]

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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 Office of General Counsel involving Veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future

claim matters involving the same legal issues. The summary is published to provide the public, and, in particular, Veterans' benefits claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

FOR FURTHER INFORMATION CONTACT:

Susan P. Sokoll, Law Librarian, Department of Veterans Affairs, 810 Vermont Avenue, NW., (026H), Washington, DC 20420, (202) 461-7623.

SUPPLEMENTARY INFORMATION: A VA regulation at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential and 38 CFR 14.507(b) specifies that precedential opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees, not only in the matter at issue, but also in future adjudications and appeals involving the same legal issues, in the absence of a change in controlling statute or regulation 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 that must be followed in future benefit matters and to assist Veterans' benefits 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 or by accessing the opinions on the Internet at <http://www.va.gov/ogc/precedentopinions.asp>.

VAOPGCPREC 2-2010

Questions Presented:

1. Does the decision of the United States Court of Appeals for Veterans Claims (Veterans Court) in *Osborn v. Nicholson*, 21 Vet. App. 223 (2007), that interest received from the redemption of a Series EE U.S. Savings Bond is excludable from income in determining annual income for improved pension purposes, invalidate or change VAOPGCPREC 4-89 (O.G.C. Prec. 4-89), VAOPGCPREC 23-90 (O.G.C. Prec. 23-90), VAOPGCPREC 1-93 (O.G.C. Prec. 1-93), VAOPGCPREC 1-97, VAOPGCPREC 10-97, or VAOPGCPREC 15-97?

2. Does the holding of *Osborn* apply to annual income determinations for purposes of parents' dependency and indemnity compensation (DIC), section 306 pension, or old-law pension?

3. Does the holding of *Osborn* apply to interest received from Series HH U.S. Savings Bonds, on which interest payments are made semi-annually rather than upon redemption?

4. Does the holding of *Osborn* extend to state, municipal, or other political subdivision investment bonds?

Held:

1. The holding of *Osborn v. Nicholson*, 21 Vet. App. 223 (2007), that interest received from the redemption of a Series EE U.S. Savings Bond is excludable from annual income computations under 38 U.S.C. 1503(a)(6) (excluding from income “profit realized from the disposition of real or personal property other than in the course of a business”) for improved pension purposes, does not invalidate or change VAOPGCPREC 4–89, VAOPGCPREC 23–90, VAOPGCPREC 1–97, VAOPGCPREC 10–97, or VAOPGCPREC 15–97. However, the *Osborn* holding conflicts with VAOPGCPREC 1–93, in which we held that: (1) Proceeds of a life insurance policy that is surrendered for cash should not be considered income for purposes of determining entitlement to improved pension under title 38, United States Code, to the extent that such proceeds consist of return of sums paid as part of the insurance premiums; but (2) interest on the policy holder’s monetary contribution should be considered income. Applying the reasoning of *Osborn*, the interest received from the surrender of a life insurance policy is excluded from income as profit realized from the disposition of personal property other than in the course of a business.

2. *Osborn’s* exclusion of interest received from the redemption of Series EE U.S. Savings Bonds from annual income calculations applies also to parents’ dependency and indemnity compensation and section 306 pension, but not to annual income calculations for old-law pension.

3. Because a holder of a Series HH U.S. Savings Bond is paid interest semiannually without the redemption of the bond, any profit realized is not from the disposition of real or personal property necessary for the exclusion in 38 U.S.C. 1503(a)(6) to apply. Therefore, the interest is appropriately counted as income for purposes of improved pension, section 306 pension, old-law pension, and parents’ dependency and indemnity compensation.

4. Because debt obligations issued by states, municipalities, or other political entities can vary, it is not possible to provide a single definitive answer as to

whether *Osborn* applies to all municipal bonds. However, as a general rule, if a bond requires redemption for the payment of accrued interest, as with a Series EE U.S. Savings Bond, then the statutory exclusion for profit realized from the disposition of real or personal property applies. If accrued interest is payable on the bond without redemption, then it does not qualify for the exclusion.

Effective Date: May 10, 2010.

VAOPGCPREC 4–2010

Questions Presented:

a. Does a veteran’s return to active duty status terminate the individual’s status as a veteran under 38 U.S.C. 101(2) for purposes of Department of Veterans Affairs (VA) benefits?

b. If the answer to Question a. is no, does the clothing allowance benefit provided by 38 U.S.C. 1162 qualify as prohibited “compensation” under 38 U.S.C. 5304(c) to a person receiving active service pay?

c. If the answer to Question b. is no, if a person meets the statutory definition of “veteran” and is eligible for the clothing allowance, may that person receive the clothing allowance in addition to active service pay upon return to active duty?

d. May an individual on active duty who has not yet been discharged receive a clothing allowance?

Held:

a. Section 101(2) of title 38, United States Code, defines the term “veteran” to mean “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.” This term includes individuals who have returned to active duty after previously meeting the definition of “veteran.”

b. Section 1162 of title 38, United States Code, provides a clothing allowance for each veteran who, “because of a service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the clothing of the veteran,” or who “uses medication which (A) a physician has prescribed for a skin condition which is due to a service-connected disability, and (B) the Secretary determines causes irreparable damage to the veteran’s outer garments.” This clothing allowance is not “compensation” within the meaning of that term as it is used in 38 U.S.C. 5304(c), which prohibits payment of “[p]ension, compensation, or retirement pay on account of any

person’s own service * * * for any period for which such person receives active service pay.” Section 101(13) of title 38, United States Code, defines “compensation” as “a monthly payment made by the Secretary to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957.” The clothing allowance is an annual benefit that does not constitute compensation within this statutory definition of “compensation,” which specifies that “compensation” is a “monthly payment.”

c. Because the clothing allowance is not “compensation” (and is not “[p]ension” or “retirement pay”) within the meaning of section 5304(c), section 5304(c) does not prohibit the payment of the clothing allowance to a veteran who is eligible for the allowance while the veteran is receiving active service pay.

d. A non-veteran serving on active duty cannot receive a clothing allowance prior to discharge because that person is not yet a veteran and therefore does not meet the eligibility criteria for a clothing allowance under section 1162.

Effective Date: May 25, 2010.

VAOPGCPREC 1–1993 Superseded in Part

VAOPGCPREC 1–1993 is superseded in part by VAOPGCPREC 2–2010. The holding in *Osborn v. Nicholson*, 21 Vet. App. 223 (2007), conflicts with VAOPGCPREC 1–93, in which we held that: (1) Proceeds of a life insurance policy that is surrendered for cash should not be considered income for purposes of determining entitlement to improved pension under title 38, United States Code, to the extent that such proceeds consist of return of sums paid as part of the insurance premiums; but (2) interest on the policy holder’s monetary contribution should be considered income. Applying the reasoning of *Osborn*, the interest received from the surrender of a life insurance policy is excluded from income as profit realized from the disposition of personal property other than in the course of a business.

Effective Date: May 10, 2010.

Dated: June 16, 2010.

By direction of the Secretary.

Will A. Gunn,

General Counsel.

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