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Director of Retirement Claims

Associate General Counsel

The Amended Disability Work Restrictions

The answers to the questions on the manner of applying the disability work restrictions provided by the new amendments (Public Law 86-28, 86th Congress) are as follows:

1. The disability annuitant (under age 65) who earns \$180 in January, which he failed to report until June of the same year, and no more than \$100 in each of the remaining months of the same calendar year, with earnings totaling \$1280, for the year, and whose annuity rate remained unchanged during the year, would lose one month's annuity for excess earnings and an annuity equal to one month's annuity would have to be deducted from annuities due him as a penalty for failing to report earnings over \$100 in the calendar month of January if he did not report such earnings before receiving the annuity payable to him for March of that year.

The amendment to the disability annuity work restrictions in section 2(d), added by Public Law 86-28, 86th Congress, made no change whatever in the language previously in effect requiring the loss of an annuity for each month the annuitant had outside earnings of "more than \$100" or in the penalty loss of an amount equal to the annuity for failing to report such excess earnings "before receipt and acceptance of an annuity for the second month following the month of such payment [earnings over \$100]". The amendment merely provided for a return, if the outside earnings of the annuitant did not total \$1200 in the calendar year, of all annuities and amounts withheld during the calendar year whether because of excess earnings in a month or as penalty for failing to report such earnings, and limited the loss of such annuities and amounts "by reason of such third [excess earnings provision] and fifth [penalty provision] sentences" to not more than "one month for each \$100 of such excess [over \$1200 in the year], treating the last \$50 or more of such excess as \$100". Plainly then, since¹⁴ the case cited the annuitant had earnings over \$1200 in the year, but only \$80 in excess, his loss of annuity for excess earnings would come to just one month. He would also, however, suffer the penalty of losing an "amount equal to the amount of annuity for" the month of excess earnings in view of the specific

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language in the amendment to "the number of months . . . with respect to which an annuity is not payable by reason of such third and fifth sentences" (emphasis supplied). The provision plainly contemplates the continuance of the penalty provision under the circumstances in effect before the amendment but with a limit to the number of penalties to not more than one for each \$100 of earnings exceeding \$1200 in the year, that is, in the case given, the one month's penalty for failing to report in time the earnings in January over \$100.

2. In the case of the disability annuitant who also had earnings of just \$1280 in the calendar year although he had earned over \$100 in each of two months and so, on a current basis, would lose his annuities for those months, and for failure to report these excess earnings in time would suffer the additional loss of an amount equal to the annuities for the two months, my opinion is that he would lose, upon consideration of his earnings on a calendar year basis under the amended provisions, one month's annuity for the \$80 earnings over \$1200 in the year and a penalty equal to one month's annuity for failure to report in time the excess earnings in the two months. The penalty, which would otherwise have been of an amount totaling two months' annuities, is limited by the amendment, as explained in the answer on case 1, to an amount equal to not more than one month's annuity since the excess earnings for the year are only \$80.

3. The answer to case 3 is the same as to case 2, that is, one month's loss of annuity for excess earnings, and loss of an amount equal to one month's annuity as a penalty for not reporting. The situation here is exactly the same as in case 2 (including the circumstance that no change in the annuity rate has occurred in the year) but with the exception that only one penalty was assessable in the first instance because only one of the two months of excess earnings was not reported for within the prescribed time. The fact that the penalty relates only to one month does not affect the conclusion, however, since the amendment, as indicated, does no more than place a limitation on the number of penalties and does not indicate that any other change is to be made in the original provision. While it is provided that in the case in which the "amount of the annuity has changed during such year, any payments of annuity which become payable solely by reason of the limitation contained in this sentence shall be made first with respect to the month or months for which the annuity is larger", that provision can have no effect on the penalty imposed. For the penalty is not in terms of an annuity itself but only of an "amount equal to the amount of the annuity" with respect to which it is imposed. ^{In} the provision in the amendment spelling out what happens when the year's earnings exceed \$1200, which in terms of "annuity . . . not payable by reason of such . . . fifth sentence," that reference to "annuity" must be understood in the light of the preceding provision which sets forth explicitly that the penalty is part of an "amount equal to the amount of the annuity."

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4. The answer to case 4 is the same as to case 3. The facts are the same except that here the amount of annuity became larger for June, the month for which a penalty was imposed for late reporting of excess earnings. But, as indicated in the answer in case 3, the penalty provision, because not a provision for the loss of an annuity itself but only for a deduction equal to an annuity, is not directly affected by the provision that "payments of annuity which become payable solely by reason of the limitation contained in this sentence shall be made first with respect to the month or months for which the annuity is larger". Although by that provision the annuity restored would be that for June because it is the larger annuity, the penalty deduction made in an amount equal to the annuity for June because of the failure to report the excess earnings for that month would not be restored since, as indicated, the excess of \$80 over \$1200 earnings in the year does not permit remission of all penalties as is the result in the case of earnings in the year of not more than \$1200.

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