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ALLOWANCES AND DIFFERENTIALS - RESIDENTS OF PLACE OF EMPLOYMENT - PROPOSED DEFENSE DEPARTMENT APPROPRIATION ACT, 1954 THE RESTRICTIONS IN SECTION 640 OF THE PROPOSED DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954, AGAINST THE PAYMENT OF FOREIGN DUTY ALLOWANCES TO UNITED STATES CITIZENS RESIDENT IN TERRITORIES OR POSSESSIONS, ARE APPLICABLE ONLY TO PERSONNEL PAID FROM FUNDS PROVIDED FOR IN THE PROPOSED DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954. INASMUCH AS SECTION 615 OF THE PROPOSED DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954, PROVIDES A 25 PERCENT FOREIGN DUTY ALLOWANCE FOR CITIZENS OF THE UNITED STATES AND PANAMA RENDERING CERTAIN SERVICES IN THE CANAL ZONE FOR THE DEFENSE DEPARTMENT, THE LIMITATIONS IN SECTION 640 OF THE 1954 ACT AGAINST THE PAYMENT OF FOREIGN DUTY ALLOWANCES TO UNITED STATES CITIZENS RESIDENT IN THE TERRITORIES OR POSSESSIONS ARE NOT APPLICABLE TO EMPLOYEES PAID FROM FUNDS ENUMERATED IN THE DEPARTMENT OF DEFENSE APPROPRIATION ACT OF 1954 WHO ARE STATIONED IN THE CANAL ZONE. EMPLOYEES OF THE DEFENSE ESTABLISHMENTS STATIONED IN THE CANAL ZONE WHO ARE PAID FROM FUNDS ENUMERATED IN THE PROPOSED CIVIL FUNCTION APPROPRIATION ACT, 1954 ARE LIMITED TO THE 10 PERCENT FOREIGN DUTY DIFFERENTIAL AUTHORIZED FOR CANAL ZONE EMPLOYEES BY THAT ACT, WHILE DEFENSE ESTABLISHMENT EMPLOYEES STATIONED IN THE CANAL ZONE WHO ARE PAID FROM FUNDS ENUMERATED IN THE PROPOSED DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954, MAY BE PAID THE 25 PERCENT FOREIGN DUTY DIFFERENTIAL AUTHORIZED FOR DEFENSE DEPARTMENT CANAL ZONE EMPLOYEES BY THAT ACT. THE TERM "RESIDENT" AS USED IN SECTION 640 OF THE PROPOSED DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954, PROHIBITING THE PAYMENT OF FOREIGN DUTY ALLOWANCES TO UNITED STATES CITIZENS RESIDENT IN TERRITORIES OR POSSESSIONS, APPLIES TO ALL UNITED STATES CITIZENS WHOSE RESIDENCE IN THE TERRITORY OR POSSESSION IS NOT ATTRIBUTABLE TO THEIR EMPLOYMENT.

ACTING COMPTROLLER GENERAL FISHER TO THE SECRETARY OF DEFENSE, JULY 10, 1953:

REFERENCE IS MADE TO LETTER OF JULY 3, 1953, FROM THE ASSISTANT SECRETARY OF DEFENSE, PRESENTING SEVERAL QUESTIONS CONCERNING THE APPLICATION AND EFFECT OF SECTION 640 OF H.R. 5969 AS PASSED BY THE HOUSE OF REPRESENTATIVES ON JULY 2, 1953, AND GIVEN LEGAL EFFECT BY VIRTUE OF SECTION 1 (C) OF PUBLIC LAW 91, APPROVED JUNE 30, 1953, 67 STAT. 118.

SECTION 640 OF H.R. 5969 IS AS FOLLOWS:

SEC. 640. NO PART OF THE FUNDS APPROPRIATED IN THIS OR ANY OTHER ACT SHALL BE AVAILABLE FOR THE PAYMENT TO ANY UNITED STATES CITIZEN RESIDENT IN ONE OF ITS TERRITORIES OR POSSESSIONS, OF ANY STATION, SUBSISTENCE, QUARTERS, OR OTHER FOREIGN DUTY ALLOWANCES OVER AND ABOVE THE AUTHORIZED PAY AND ALLOWANCES FOR COMPARABLE GRADE OR RATING IN THE CONTINENTAL UNITED STATES UNLESS SUCH PERSON

IS SERVING OUTSIDE THE TERRITORY OR POSSESSION IN WHICH HE IS RESIDENT.

PUBLIC LAW 91 PROVIDES TEMPORARY APPROPRIATIONS FOR VARIOUS DEPARTMENTS AND AGENCIES OF THE GOVERNMENT FOR THE FISCAL YEAR 1954 WHICH ARE TO REMAIN AVAILABLE UNTIL " (A) ENACTMENT INTO LAW OF AN APPROPRIATION FOR ANY PROJECT OR ACTIVITY PROVIDED FOR HEREIN, OR (B) ENACTMENT OF THE APPLICABLE APPROPRIATION ACT BY BOTH HOUSES WITHOUT ANY PROVISION FOR SUCH PROJECT OR ACTIVITY, OR (C) JULY 31, 1953, WHICHEVER FIRST OCCURS.' VIEW THEREOF THIS DECISION IS TO BE REGARDED AS APPLICABLE ONLY SO LONG AS THE PRESENT PROVISIONS OF PUBLIC LAW 91 REMAIN IN EFFECT.

BY VARIOUS SUBSECTIONS OF SECTION 1 OF PUBLIC LAW 91 SET FORTH THE EXTENT, MANNER, AND CONDITIONS UNDER WHICH MONEYS MADE AVAILABLE BY PUBLIC LAW 91 MAY BE EXPENDED BY EACH OF THE VARIOUS DEPARTMENTS AND AGENCIES INCLUDED THEREIN. FOR INSTANCE, CERTAIN OF THE DEPARTMENTS AND AGENCIES MAY CONTINUE PROJECTS AND ACTIVITIES UPON THE BASIS OF THE LOWER OF THE AMOUNTS PROVIDED IN APPLICABLE 1954 APPROPRIATION ACTS AS PASSED BY THE HOUSE OR SENATE, RESPECTIVELY, WHEREAS, IN THE CASE OF CERTAIN OTHER AGENCIES, OPERATIONS ARE AUTHORIZED TO BE CONTINUED AT CURRENT RATES (FISCAL YEAR 1953 RATES) OR THE RATES PROVIDED IN 1954 BUDGET ESTIMATES OR UNDER THE AMOUNTS SPECIFIED IN PUBLIC LAW 91, WHICHEVER IS LOWEST.

WITH RESPECT TO CONTINUED OPERATIONS OF THE DEPARTMENT OF DEFENSE, SECTION 1 (C) OF PUBLIC LAW 91 PROVIDES:

(C) SUCH AMOUNTS, REAL PROPERTY (AND THE USE THEREOF), COMMODITIES AND SERVICES, AS MAY BE NECESSARY FOR CONTINUING PROJECTS OR ACTIVITIES WHICH WERE CONDUCTED IN THE FISCAL YEAR 1953 AND FOR WHICH APPROPRIATIONS, FUNDS, OR OTHER AUTHORITY WOULD BE MADE AVAILABLE IN THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954 (H.R. 5969), TO THE EXTENT AND IN THE MANNER WHICH WOULD BE PROVIDED FOR BY SAID H.R. 5969 AS THAT BILL WAS REPORTED TO THE HOUSE ON JUNE 27, 1953.

THE VARIOUS SUBSECTIONS OF SECTION 1 OF PUBLIC LAW 91 ARE MUTUALLY EXCLUSIVE, AND SINCE SUBSECTION (C) THEREOF, INCORPORATING INTO LAW SECTION 640 OF THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954, 67 STAT. 356, (H.R. 5969), AS REPORTED TO THE HOUSE ON JUNE 27, 1953, IS APPLICABLE ONLY TO THE DEFENSE ESTABLISHMENT, THE RESTRICTIONS IN THE SAID SECTION 640 AGAINST THE PAYMENT OF FOREIGN DUTY ALLOWANCES TO CITIZENS RESIDENT IN TERRITORIES OR POSSESSIONS IS APPLICABLE AT THIS TIME ONLY TO PERSONNEL PAID FROM FUNDS PROVIDED FOR IN THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954. YOUR FIRST QUESTION IS ANSWERED ACCORDINGLY.

WITH RESPECT TO YOUR SECOND QUESTION, NAMELY, WHAT APPLICATION SECTION 640 HAS TO EMPLOYEES OF THE DEPARTMENT OF DEFENSE IN THE PANAMA CANAL ZONE, THERE IS FOR CONSIDERATION--- AS NOTED IN YOUR LETTER--- SECTION 615 OF H.R. 5969 IN PART AS FOLLOWS:

* * * ALL CITIZENS OF PANAMA AND THE UNITED STATES RENDERING SKILLED, TECHNICAL, CLERICAL, ADMINISTRATIVE, EXECUTIVE, OR SUPERVISORY SERVICE ON THE CANAL ZONE UNDER THE TERMS OF THIS ACT * * * (B) MAY RECEIVE AS COMPENSATION EQUAL RATES OF PAY BASED UPON RATES PAID FOR SIMILAR EMPLOYMENT IN THE CONTINENTAL UNITED STATES PLUS 25 PERCENTUM; * * *

THAT PROVISION IS INCONSISTENT WITH SECTION 640 OF H.R. 5969. HOWEVER, SINCE IT IS A SPECIAL OR LIMITED PROVISION WITH RESPECT TO THE CLASS OF PERSONS COVERED THEREBY--- AS DISTINGUISHED FROM THE MORE GENERAL PROVISIONS APPEARING IN

SECTION 640--- THERE MAY BE APPLIED THE GENERALLY ACCEPTED RULE OF STATUTORY CONSTRUCTION TO THE EFFECT THAT WHERE A GENERAL AND SPECIAL PROVISION IN THE SAME OR DIFFERENT STATUTES ARE IN APPARENT CONFLICT, THE SPECIAL PROVISION QUALIFIES THE GENERAL PROVISION AND SUPPLIES AN EXCEPTION THERETO. TO RULE OTHERWISE VIRTUALLY WOULD NULLIFY THE EXPRESSED INTENTION OF THE CONGRESS AS SET FORTH IN SECTION 615 OF THE ACT. ACCORDINGLY, IT REASONABLY MAY BE CONCLUDED THAT THE LIMITATIONS CONTAINED IN SECTION 640 ARE NOT APPLICABLE TO EMPLOYEES PAID FROM FUNDS ENUMERATED IN THE DEPARTMENT OF DEFENSE APPROPRIATION ACT OF 1954 (H.R. 5969) WHO ARE STATIONED IN THE CANAL ZONE.

THE FURTHER QUESTION PRESENTED IN CONNECTION WITH EMPLOYEES OF THE DEPARTMENT OF DEFENSE IN THE CANAL ZONE IS WHETHER THEY MAY BE PAID THE 25 PERCENT DIFFERENTIAL AUTHORIZED UNDER SECTION 615 OF H.R. 5969 AS REPORTED TO THE HOUSE ON JUNE 27, 1953, OR ARE LIMITED TO A 10 PERCENT DIFFERENTIAL IN ACCORDANCE WITH H.R. 5376 (CIVIL FUNCTIONS APPROPRIATION ACT, 1954) AS PASSED BY THE HOUSE OF REPRESENTATIVES ON MAY 27, 1953. THE ANSWER TO THAT QUESTION WOULD SEEM TO DEPEND UPON WHETHER SUCH EMPLOYEES ARE PAID FROM FUNDS PROVIDED IN THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954, (H.R. 5969) OR IN THE CIVIL FUNCTIONS APPROPRIATION ACT, 1954, (H.R. 5376). IT IS NOTED THAT THE LATTER ACT IS ENUMERATED IN SECTION 1 (A) OF PUBLIC LAW 91 WHICH PROVIDES " THAT IN ANY CASE WHERE THE AMOUNT WHICH WOULD BE MADE AVAILABLE OR THE AUTHORITY WHICH WOULD BE GRANTED UNDER SUCH ACT AS PASSED BY THE HOUSE IS DIFFERENT FROM THAT WHICH WOULD BE MADE AVAILABLE OR GRANTED UNDER SUCH ACT AS PASSED BY THE SENATE, THE PERTINENT PROJECT OR ACTIVITY SHALL BE CARRIED OUT UNDER THE LESSER AMOUNT OR THE MORE RESTRICTIVE AUTHORITY.' ACCORDINGLY, EMPLOYEES OF THE DEFENSE ESTABLISHMENT STATIONED IN THE CANAL ZONE WHO ARE PAID FROM FUNDS ENUMERATED IN THE CIVIL FUNCTIONS APPROPRIATION ACT, 1954, ARE LIMITED TO A 10 PERCENT DIFFERENTIAL WHILE EMPLOYEES PAID FROM FUNDS ENUMERATED IN H.R. 5969 MAY UNDER SECTION 615 THEREOF, 67 STAT. 352, RECEIVE A 25 PERCENT DIFFERENTIAL.

THE MEANING AND SCOPE OF THE TERM,"RESIDENT IN ONE OF ITS TERRITORIES OR POSSESSIONS," APPEARING IN SECTION 640 OF H.R. 5969 IS NOT CLEAR. REASONABLY CANNOT BE DETERMINED FROM THE LANGUAGE OF THE SECTION WHETHER THE RESTRICTION CONTAINED THEREIN WAS INTENDED TO APPLY TO ALL PERSONS RESIDING IN THE TERRITORY OR POSSESSION AT THE TIME OF THEIR EMPLOYMENT BY THE UNITED STATES REGARDLESS OF THE NATURE AND TENURE OF SUCH RESIDENCE, OR WHETHER IT WAS TO APPLY BOTH TO NATIVE RESIDENTS AND OTHER UNITED STATES CITIZENS PERMANENTLY RESIDING IN THE TERRITORY OR POSSESSION. MOREOVER, THERE IS LITTLE IN THE LEGISLATIVE HISTORY OF THE ACT EVIDENCING THE INTENTION ON THE PART OF CONGRESS AS TO THE SCOPE OF SUCH TERM. HOWEVER, ON PAGE 21 OF HOUSE REPORT NO. 680 ON H.R. 5969 IT IS STATED THAT A CERTAIN DECREASE IN APPROPRIATION IS RECOMMENDED UPON THE "* * * PROPOSED GENERAL PROVISION ELIMINATING SPECIAL ALLOWANCES FOR UNITED STATES CITIZENS RESIDENT OF TERRITORIES WHO BECOME FEDERAL EMPLOYEES IN THEIR NATIVE TERRITORY.' IN CERTAIN AREAS, FOR EXAMPLE, PUERTO RICO AND THE VIRGIN ISLANDS, NATIVE RESIDENTS WHEN APPOINTED TO CLASSIFIED POSITIONS UNDER VARIOUS GOVERNMENT AGENCIES ARE PAID, IN ADDITION TO THEIR BASIC COMPENSATION, A COST OF LIVING ALLOWANCE EVEN THOUGH THEIR BASIC COMPENSATION ITSELF IS GREATLY IN EXCESS OF THE COMPENSATION APPLICABLE TO SIMILAR UNCLASSIFIED POSITIONS IN THE AREA. IN SUCH CASES THE PAYMENT OF THE COST OF LIVING ALLOWANCE IS NOT ASSOCIATED WITH ANY INCREASE IN COST OF LIVING INCURRED BY SUCH NATIVES INCIDENT TO THEIR EMPLOYMENT AND NEITHER IS IT NECESSARY AS AN INDUCEMENT TO RECRUITMENT. WITH THAT CONDITION IN MIND, AND HAVING REGARD FOR THE QUOTED PORTION OF THE HOUSE REPORT NO. 680, IT REASONABLY APPEARS THAT THE PRIMARY OBJECTIVE SOUGHT TO BE ACCOMPLISHED BY THE RESTRICTION CONTAINED IN SECTION 640 OF THE DEFENSE APPROPRIATION ACT, 1954, IS TO PRECLUDE THE PAYMENT OF THE ADDITIONAL ALLOWANCES

REFERRED TO IN THAT SECTION TO NATIVES RESIDING IN THE TERRITORY IN WHICH THEY ARE EMPLOYED. HOWEVER, IN VIEW OF THE BROAD LANGUAGE--- RESIDENT IN ONE OF ITS TERRITORIES OR POSSESSIONS--- USED IN THE SAID SECTION, IT WOULD APPEAR THAT CONGRESS ALSO INTENDED TO COVER CERTAIN OTHER CITIZENS OF THE UNITED STATES--- IN ADDITION TO NATIVES--- RESIDING IN SUCH TERRITORIES. IN VIEW THEREOF, AND IN THE ABSENCE OF ANY INDICATION ON THE PART OF CONGRESS AS TO THE EXACT SCOPE OF THE PROHIBITION IT IS NOT UNREASONABLE TO CONCLUDE THAT THE PERSONS AS TO WHOM SUCH RESTRICTION IS DIRECTED ARE CITIZENS WHOSE RESIDENCE IN THE TERRITORY OR POSSESSION IS NOT ATTRIBUTABLE TO THEIR EMPLOYMENT BUT WHO WERE RESIDING IN SUCH AREAS PRIOR TO THEIR APPOINTMENTS AS A MATTER OF CHOICE. IN VIEW THEREOF, THIS OFFICE WILL NOT OBJECT TO THE UTILIZATION BY VARIOUS DEPARTMENTS OF THE CRITERION ESTABLISHED IN EXECUTIVE ORDER NO. 10,000, SEPTEMBER 16, 1948, AS IMPLEMENTED BY THE APPLICABLE REGULATIONS OF THE CIVIL SERVICE COMMISSION GOVERNING THE PAYMENT OF TERRITORIAL POST DIFFERENTIAL IN DETERMINING WHICH EMPLOYEES ARE SUBJECT TO THE RESTRICTIONS OF SECTION 640 OF THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1954, (H.R. 5969). THE CONCLUDING QUESTION PRESENTED IN YOUR LETTER IS ANSWERED ACCORDINGLY.