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B-168796, Feb. 2, 1970

Number: B-168796

Date: 1970-02-02

B-168796, FEB. 2, 1970

CIVIL PAY--RETIRED--INCREASE DECISION TO ADMINISTRATIVE OFFICER OF THE TAX COURT CONCERNING RETIRED PAY OF JUDGE UNDER PUBLIC LAW 91-172, WHICH AMENDED 26 U.S.C. 7447 (D). A TAX COURT JUDGE WHO WAS RECEIVING RETIRED PAY AT ONE-HALF RATE OF SALARY OF A JUDGE PRIOR TO AMENDMENTS ENACTED IN PUBLIC LAW 91-172, APPROVED DECEMBER 30, 1969, IS REQUIRED TO BE INCREASED TO $40,000 THE FULL SALARY OF A JUDGE. PAYMENT OF SUCH HIGHER RETIRED PAY WILL NOT CONSTITUTE A VIOLATION OF THE ANTI-DEFICIENCY LAW, 31 U.S.C. 665 (A).

TO MR. WILLIAM F. HUFFMAN:

YOUR LETTER OF JANUARY 12, 1970, POINTS OUT THAT PUBLIC LAW 91-172, APPROVED DECEMBER 30, 1969, CONTAINS IN TITLE IX, MISCELLANEOUS PROVISIONS, SUBTITLE D, CERTAIN AMENDMENTS CONCERNING THE UNITED STATES TAX COURT. FURTHER YOU POINT OUT THAT JUDGE ALLIN H. PIERCE HAS BEEN RECEIVING RETIRED PAY AT ONE-HALF THE RATE OF THE SALARY OF A JUDGE UNDER THE PROVISIONS OF 26 U.S.C. 7447 (D) PRIOR TO SUCH AMENDMENTS, SINCE HE SERVED AS A JUDGE OF THE COURT FOR APPROXIMATELY 12 YEARS--MARCH 21, 1955, TO APRIL 30, 1967--WHEN HE ATTAINED THE MANDATORY RETIREMENT AGE OF 70 YEARS. THE COURT'S INTERPRETATION OF SECTIONS 954 (B) AND 962 (D) (2) OF THE FOREGOING PUBLIC LAW IS THAT JUDGE PIERCE'S RETIRED PAY IS REQUIRED TO BE INCREASED TO $40,000, THE FULL SALARY OF A JUDGE OF THE COURT. YOU ASK WHETHER WE AGREE WITH SUCH INTERPRETATION AND IF SO WILL PAYMENT OF THE HIGHER RETIRED PAY CONSTITUTE A VIOLATION OF THE ANTI-DEFICIENCY LAW--31 U.S.C. 665 (A).

SECTION 954 (B) OF PUBLIC LAW 91-172 AMENDED 26 U.S.C. 7447 (D) TO READ, IN PERTINENT PART, AS FOLLOWS:

"(D) RETIRED PAY.---ANY INDIVIDUAL WHO---

"(1) RETIRES * * * SHALL RECEIVE RETIRED PAY DURING ANY PERIOD AT A RATE WHICH BEARS THE SAME RATIO TO THE RATE OF THE SALARY PAYABLE TO A JUDGE DURING SUCH PERIOD AS THE NUMBER OF YEARS HE HAS SERVED AS JUDGE BEARS TO 10; EXCEPT THAT THE RATE OF SUCH RETIRED PAY SHALL NOT BE MORE THAN THE RATE OF SUCH SALARY FOR SUCH PERIOD * * *"

SECTION 962 (D) (2) OF PUBLIC LAW 91-172 PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"(D) THE AMENDMENTS MADE BY SUBSECTIONS * * * (B) * * * OF SECTION 954 SHALL APPLY TO---

"(2) ALL INDIVIDUALS * * * RECEIVING RETIRED PAY PURSUANT TO SECTION 7447 (D) ON THE DAY PRECEDING THE DATE OF ENACTMENT OF THIS ACT."

WE AGREE WITH THE INTERPRETATION OF THE TAX COURT AS TO THE MEANING OF THE LANGUAGE OF THE AMENDING LEGISLATION QUOTED ABOVE.

WITH RESPECT TO YOUR SECOND QUESTION, WE NOTE THAT THE PROHIBITION CONTAINED IN 31 U.S.C. 665 (A) IS SPECIFICALLY MADE NOT APPLICABLE TO AN OBLIGATION AUTHORIZED BY LAW. SINCE THE INCREASE IN THE JUDGE'S RETIRED PAY IS AN OBLIGATION AUTHORIZED BY LAW THE PAYMENT THEREOF IS NOT PROHIBITED. SEE ALSO 31 U.S.C. 665 (E). YOUR QUESTIONS ARE ANSWERED ACCORDINGLY.