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TAXATION - EXEMPTION OF VETERANS' BENEFITS

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TAXATION — EXEMPTION OF VETERANS' BENEFITS — In a statutory proceeding,¹ the guardian of an incompetent World War veteran sought to recover taxes assessed upon bank deposits which consisted of the proceeds of federal war benefits checks. The Supreme Court of North Carolina² denied these funds the protection of the exemption created by Congress³ on the ground that they were analogous to investments, rather than to moneys in the hands of the guardian. The United States Supreme Court adopted the latter analogy and reversed the decision. *Lawrence v. Shaw*, (U. S. 1937) 57 S. Ct. 443.

The awarding of war benefits, a phase of the war power,⁴ has generally been accompanied by special provisions designed to protect the interests of the beneficiaries so as to give a maximum of effect to the constitutional power. This protection has taken diverse forms. The fees of agents and attorneys for services in obtaining awards have been prescribed.⁵ The misappropriation of the funds by agents, attorneys or guardians has been made subject to punishment as an offense against the United States.⁶ Claims have been rendered non-assignable and immune to creditors' process.⁷ The World War benefits have by act of Congress been declared exempt from state and federal taxation.⁸ Merely by virtue of their status as a federal instrumentality, an exemption from state taxation would exist.⁹ In order to reduce uncertainty as to the bounds of the

¹ N. C. Code (1931), § 626.

² 210 N. C. 352, 186 S. E. 504 (1936).

³ Act of August 12, 1935, § 3, 49 Stat. L. 607, 38 U. S. C., § 454a.

⁴ *United States v. Hall*, 98 U. S. 343, 25 L. Ed. 180 (1878); *De Baum v. Hulett Undertaking Co.*, 169 Miss. 488, 153 So. 513 (1934); See also *In re Opinion of the Justices*, 175 Mass. 599, 57 N. E. 675, 49 L. R. A. 564 (1900).

⁵ 38 U. S. C., §§ 111, 196, 206, 326, 244, 551; Act of May 20, 1918, c. 77, 40 Stat. L. 555; Act of June 27, 1890, c. 634, 26 Stat. L. 182; *Margolin v. United States*, 269 U. S. 93, 46 S. Ct. 64 (1925); *Calhoun v. Massie*, 253 U. S. 170, 40 S. Ct. 474 (1920); *Frisbie v. United States*, 157 U. S. 160, 15 S. Ct. 586 (1895); *United States v. Moyers*, (C. C. Tenn. 1882) 15 F. 411; *Hall v. Kimmer*, 61 Mich. 269, 28 N. W. 96, 1 Am. St. Rep. 575 (1886); *Morgan v. Davis*, 47 Vt. 610 (1874); *United States v. Van Leuven*, (D. C. Iowa 1894) 62 F. 52; *Smart v. White*, 73 Me. 332, 40 Am. Rep. 356 (1882); *Christie v. Steger's Admr.*, 21 Ky. L. Rep. 1799, 56 S. W. 521 (1900).

⁶ 38 U. S. C., § 127; *United States v. Hall*, 98 U. S. 343, 25 L. Ed. 180 (1878); *United States v. McCreedy*, (C. C. Tenn. 1882) 11 F. 225; *United States v. Irvine*, 98 U. S. 450, 25 L. Ed. 193 (1879); *Ballew v. United States*, 160 U. S. 187, 16 S. Ct. 263 (1895); *United States v. Summers*, (D. C. 1927) 19 F. (2d) 627.

⁷ 38 U. S. C., § 454a; *Christenson v. Christenson*, (D. C. N. Y. 1926) 14 F. (2d) 475; *Payne v. Jordan*, 36 Ga. App. 787, 138 S. E. 262 (1927); *Purvis v. Walls*, 184 Ark. 887, 44 S. W. (2d) 353 (1931); *Yake v. Yake*, (Md. 1936) 183 A. 555; *Bostrom v. Bostrom*, 60 N. D. 792, 236 N. W. 732 (1931); *In re Gardner*, 220 Wis. 493, 264 N. W. 643 (1936); *Liles v. Mulford*, 52 Ga. App. 674, 184 S. E. 396 (1936); *In re Schwall's Estate*, 123 Cal. App. 106, 10 P. (2d) 1013 (1932); *Wilson v. Sawyer*, 177 Ark. 492, 6 S. W. (2d) 825 (1928); *Hollis v. Bryan*, 166 Miss. 874, 143 So. 687 (1932); *Hines v. McKenzie*, 216 Iowa 1388, 250 N. W. 687 (1933); *Derzis v. Vafes*, 227 Ala. 471, 150 So. 461 (1933).

⁸ 38 U. S. C., § 454 and § 454a.

⁹ The cases are collected in 26 R. C. L. 95 et seq. (1920).

exemption, however, Congress has attempted to define its scope.¹⁰ The original provision¹¹ was in terms limited to benefits that were "payable" under the act. This was sometimes construed to refer to moneys already received from the Government, rather than to moneys yet unpaid.¹² Some state cases, moreover, extended the exemption to investments of the funds.¹³ In 1935 Congress attempted to clarify the law by amending the exemption provision.¹⁴ The amendment provides that the exemption is to apply to payments both before and after receipt by the beneficiary. On the other hand, it is equally explicit that the exemption does not apply to "property purchased in part or wholly out of such payments."¹⁵ The status of a bank account, the problem in the principal case, yet remained in doubt.¹⁶ The fact that the deposit, as in the principal case, is in the name of the guardian appears to be irrelevant. Although the guardian is subject to punishment by the Federal Government for misfeasance, this does not render him an agent of that Government so as to preclude a finding that the money had been received by the veteran.¹⁷ The view

¹⁰ *Mid-Northern Oil Co. v. Walker*, 268 U. S. 45, 45 S. Ct. 440 (1925); *Swarts v. Hammer*, 194 U. S. 441, 24 S. Ct. 695 (1904).

¹¹ "That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively . . . shall be exempt from all taxation. . . ." World War Veterans' Act of 1924, § 22, 43 Stat. L. 606 at 613, 38 U. S. C., § 454.

¹² *Payne v. Jordan*, 152 Ga. 367, 110 S. E. 4 (1921); *In re Murphy's Committee*, 134 Misc. 683, 236 N. Y. S. 343 (1929); *Wilson v. Sawyer*, 177 Ark. 492, 6 S. W. (2d) 825 (1928); *Derzis v. Vafes*, 227 Ala. 471, 150 So. 461 (1933); *Speer v. Pierce*, 18 Tenn. App. 351, 77 S. W. (2d) 77 (1934). *Contra*: *Re Schaeffer*, 130 Misc. 436, 224 N. Y. S. 305 (1927); *Arcese v. Commonwealth*, 160 Va. 116, 168 S. E. 465 (1933); *Arms' Committee v. Arms*, 260 Ky. 634, 86 S. W. (2d) 542 (1935); *State v. Board of Commrs. of Shawnee County*, 132 Kan. 233, 294 P. 915 (1931), cert. denied 283 U. S. 855, 51 S. Ct. 648 (1931).

¹³ *Rucker v. Merck*, 172 Ga. 793, 159 S. E. 501 (1931); *Atlanta v. Stokes*, 175 Ga. 201, 165 S. E. 270 (1932); *Payne v. Jordan*, 36 Ga. App. 787, 138 S. E. 262 (1927).

Contra: *Martin v. Guilford County*, 201 N. C. 63, 158 S. E. 847, 76 A. L. R. 978 (1931); *Lambert v. Guilford County*, 201 N. C. 67, 158 S. E. 849 (1931); *State v. Wright*, 224 Ala. 357, 140 So. 584 (1932); *Johnson v. Yankton County*, 61 S. D. 372, 249 N. W. 683 (1933); *Raburn v. McIntosh County*, 168 Okla. 4, 31 P. (2d) 840 (1934); *Saxe v. Board of Revision*, 311 Pa. 545, 166 A. 853 (1933); *Ford v. Harrington*, 189 Ark. 48, 70 S. W. (2d) 49 (1934); *Trotter v. Tennessee*, 290 U. S. 354, 54 S. Ct. 138 (1933).

¹⁴ S. Rep. 1072, 74th Cong., 1st sess. (1935), Report of Committee on Finance of the Senate.

¹⁵ "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation . . . either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments." Act of Aug. 12, 1935, § 3, 49 Stat. L. 609, 38 U. S. C., § 454a.

¹⁶ This problem was raised, but left undecided, by Justice Cardozo in *Trotter v. Tennessee*, 290 U. S. 354, 54 S. Ct. 138 (1933).

¹⁷ Although the cases on this question were at one time in conflict, 83 A. L. R.

taken by the United States Supreme Court, that benefits in the form of a bank deposit are analogous to moneys in the hands of the beneficiary, is eminently practical. The argument of Chief Justice Hughes adequately disposes of the construction of the statute by the state court. Since the exemption by the terms of the amendment continues after the receipt of the payments, the usual modes of collection and safeguarding ought to be permitted. The beneficiaries ought not to be forced to undergo the risk and inconvenience of keeping the funds in the form of cash in order to get the benefit of the exemption. The imposition of this burden, it is submitted, would be inconsistent with the general Congressional practice of protecting the beneficiaries. *Jacob L. Keidan*

1089 (1933), it has now been authoritatively settled by *Spicer v. Smith*, 288 U. S. 430, 53 S. Ct. 415, 84 A. L. R. 1530 (1933).