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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-190100

March 14, 1979

Major Robert E. Elmwood, USMC (Retired)
1514 Saint Roch Avenue
New Orleans, Louisiana 70117

Dear Major Elmwood:

Ref.

This letter is in response to your correspondence of November 19, 1978, and January 28, 1979, in which you request a decision of the Comptroller General on various questions concerning the garnishment of your retired pay.

Apparently, your retired pay has been the subject of garnishment proceedings under section 459 of the Social Security Act, 42 U.S.C. 659 (1976), as amended by section 501 of Public Law 95-30, May 23, 1977, 91 Stat. 126, 157-162. You say that in connection with this, a portion of your retired pay was withheld by the Marine Corps. Apparently you have secured the release of these amounts and you now ask why interest on this withholding is not paid by the United States. You note that in connection with tax matters interest is paid by both the United States and the taxpayer in certain instances.

You also question the regulations promulgated under the above-cited law which do not exclude allotments for commercial life insurance from amounts of pay which are subject to garnishment.

Your last question relates to why allotments from Servicemen's Group Life Insurance (SGLI) is excluded under the regulations from amounts which may be the subject of garnishment, whereas National Service Life Insurance (NSLI) allotments are not. In this regard you note that both are, at least, sponsored by the United States Government.

With regard to your first question, it is well established that interest on claims against the United States, even when payment has

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been unreasonably delayed, does not follow automatically upon allowance of the claim. Interest can be recovered against the United States only if expressly provided for by contract or when allowance of interest is specifically directed by statute. United States v. James, 301 F. Supp. 107, 132 (D.C. W.D. Tex., 1969); United States v. Mescalero Apache Tribe, 207 Ct. Cl. 369 (1975). See also 53 Comp. Gen. 824 (1974); id. 264 (1973). We are not aware of any contractual or statutory authority which would authorize payment of interest on the retired pay withheld from you. The payment of interest by both the United States and the individual in tax matters is specifically authorized by statutes. See for example 26 U.S.C. 6601 and 6611 (1976).

Your question concerning the inclusion of allotments for commercial insurance in amounts of pay which are subject to garnishment was the subject of letter B-190100, February 1, 1978, to Congressman Livingston and letter B-190100, November 22, 1977, to you, copies enclosed. It was concluded there that the regulation including commercial life insurance premium allotments in the amount subject to garnishment does not appear to be contrary to the law.

The pertinent provisions of the law are as follows:

"(g) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

"(1) are owed by such individual to the United States,

"(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including but not limited to Federal employment taxes, and fines and forfeitures ordered by court-martial.

"(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was

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entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1954 may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding).

"(4) are deducted as health insurance premiums,

"(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage), or

"(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage)."

Section 462(g), Social Security Act, 91 Stat. 161.

A reading of the foregoing shows that only amounts deducted from pay or remuneration for the stated purposes are to be excluded. Voluntary allotments controlled by the individual for his own purposes (e.g., savings, private insurance, etc.) appear not to be excludable.

Implementing regulations applicable to military pay, paragraph 70710b of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), provide that allotments of retired pay to commercial life insurance premiums are subject to garnishment under section 459.


The proposed regulations of the Civil Service Commission (42 Federal Register 19882-19885, as amended on April 29, 1977, at 21789), indicate that only where a statute or regulation provides for mandatory withholding of life insurance payments, are such payments to be exempt from garnishment under section 459 of the Social Security Act. While these proposed regulations apparently have not yet been formally adopted, they do indicate the policy regarding this matter which appears consistent with the provision in paragraph 70710b, DODPM. Furthermore, this view seems consistent with the language of the law.

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It appears to be the view of those charged with drafting regulations implementing the law, that allotments for life insurance are exempt from garnishment only when a law or regulation mandates the deduction of the premium from pay. In other words, while participation in certain Federal insurance programs is voluntary, if once an individual elects to participate, the law and regulations require that coverage be paid for by deduction from pay, it would not be subject to garnishment. No option for the payment for the coverage is provided. It must be deducted from pay and the individual is not afforded the option of making payment directly to the administering organization. In the case of a commercial life insurance company a member may pay the premiums directly or arrange for a voluntary allotment from his pay.

Apparently, this is the distinction drawn between SGLI, which is to be paid for by deduction from pay, and NSLI, which is considered supplementary since it may be paid either directly or by voluntary allotment. Compare 38 U.S.C. 769 (1976) with 38 U.S.C. 708 (1976). As you know, paragraph 70710, DODPM, specifically provides that amounts deducted from pay for SGLI are not subject to garnishment while amounts deducted for NSLI are subject to garnishment.

Sincerely yours,


Deputy Comptroller General
of the United States

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