

March 30, 1995

VAOPGCPREC 9-95

VA District Counsel (314/02)
210 Franklin Road, S.W.
Roanoke, Virginia 24011

022

Subj: Impact of Inherited Life Estate on Income and
Net Worth for Improved-Pension Purposes

QUESTION PRESENTED:

Must the value of a life estate in real property acquired by inheritance be included in determining annual income and net worth for improved-pension purposes?

COMMENTS:

1. A veteran currently in receipt of improved pension wishes to know whether an inheritance of a life estate in real property would affect the veteran's pension entitlement. For the reasons stated below, we believe that the value of the inherited life estate would not constitute "income" of the veteran for improved-pension purposes. However, the value of the life estate would be countable in determining the veteran's "net worth," unless excluded under 38 C.F.R. § 3.275(b) as the veteran's dwelling.

2. Under 38 U.S.C. § 1503(a), "annual income" for improved-pension purposes includes "all payments of any kind or from any source" except for the classes of payments expressly excluded in section 1503(a)(1)-(10). The statute does not indicate whether the term "payments" refers only to delivery of money or whether it also encompasses delivery of real or personal property. The term "payment" is defined in Black's Law Dictionary 1129 (6th ed. 1990) as referring to "delivery of money or its equivalent in either specific property or services." In O.G.C. Prec. 4-89, we concluded that the term "payment" in what is now 38 U.S.C. § 1503(a) is "broad enough to include transactions involving both money and other property."

3. We further concluded in O.G.C. Prec. 4-89 that property received by gift or inheritance would be considered "income" for improved-pension purposes if the recipient may readily obtain the value of that property, such as through sale or redemption (in the case of savings bonds and similar instruments), without incurring a substantial penalty or decrease in the value of the property. In reaching that conclusion, we observed that the legislative history of the Veterans' and Survivors' Pension Improvement Act of 1978, Pub. L. No. 95-588, 92 Stat. 2497, indicated that the term "income" was intended to refer to income available to meet the subsistence needs of the beneficiary and the beneficiary's dependents. See, e.g., S. Rep. No. 1016, 95th Cong., 2d Sess. 68 (1978) ("it is the aggregate income available to the household for its basic requirements which must be considered in order to make a fair and equitable determination of the need for income-maintenance benefits."). Accordingly, we determined that a transfer of property to an individual would be considered "income" to that individual for improved-pension purposes only if that property could be readily converted, without substantial penalty, into money to meet the individual's subsistence needs. ¹

4. The conclusions reached in O.G.C. Prec. 4-89 are consistent with the dictionary definition of the term "payment" as referring to delivery of money "or its equivalent." In view of the statutory purpose to determine the amount of income available to meet the claimant's subsistence needs, the delivery of property which can be readily converted to money to meet subsistence needs may be considered the equivalent of a money payment. On the other hand, delivery of property which cannot be readily redeemed for money without significant penalty generally would not be the equivalent of a monetary

¹ We note that Veterans Benefits Administration Adjudication Procedures Manual M21-1, part IV, para. 16.41c.(8) states that gifts and inheritances of property will be considered income for improved-pension purposes. To the extent that that provision purports to establish a rule which is inconsistent with governing statutes, as interpreted by the General Counsel, the manual provision may not be applied to the detriment of claimants.

payment for purposes of 38 U.S.C. § 1503(a) because the monetary value of the property would not be available to meet the individual's needs.

5. The property at issue in O.G.C. Prec. 4-89 was a United States savings bond, which we held was countable as "income." In so holding, we reasoned that the savings bond was redeemable for cash without substantial penalty. In O.G.C. Prec. 70-90, we held that interest credited to an individual's annuity accounts was not income at the time it was credited because the individual could not obtain payment of the interest without substantial penalty. We have not previously applied the analysis in O.G.C. Prec. 4-89 to determine whether a gift or inheritance of property other than a financial instrument or account would constitute income for improved-pension purposes. However, we noted in O.G.C. Prec. 4-89 that "[g]ifts and inheritances of property with no ready market value, such as used furniture, tools, etc., would not add to income." Further, we noted that under the Supplemental Security Income program, "nonliquid resources," including loan agreements, household goods, automobiles, buildings and land, and other property which cannot generally be converted to cash within 20 days, are not considered income. See 20 C.F.R. §§ 416.1103(j) and 416.1201(c). These comments suggest that, in determining whether an inheritance of property is income, consideration should be given to whether the property has a determinable market value or redemption value and whether that value can be realized through sale or redemption within a reasonable time.

6. A life estate is an estate which is limited in duration to the life or lives of a particular individual or individuals. Restatement of Property § 18 (1936); O.G.C. Prec. 15-92. The life tenant generally has the exclusive right to possession and control of the property during his or her lifetime, including the right to sell his or her life estate in the property. Restatement of Property §§ 117, 124; 31 C.J.S. Estates § 51 (1964). In the event of such a sale, the purchaser obtains a life estate for the lifetime of the original life tenant. Restatement of Property § 124 and § 124, comment f; 31 C.J.S. Estates § 51. Upon the death of the original life

tenant, the life estate is terminated and the right to possession and control of the property passes to a remainderman or reversioner. See 31 C.J.S. Estates § 30; 1 American Law of Real Property § 2.04 (Arthur R. Gaudio, ed. 1992).

7. Although a life tenant has the right to sell his or her life estate for consideration, we believe it would be purely speculative to conclude that a life tenant can readily realize the value of the life estate by such a sale and thereby obtain funds to meet subsistence needs. Unlike the savings bonds discussed in O.G.C. Prec. 4-89, a life estate does not have a fixed or easily identifiable value, because the duration of the estate cannot be determined. Further, United States savings bonds are debt instruments which are, by their terms, redeemable for cash through established procedures. In contrast, converting a life estate to money is dependent upon the life tenant's ability to sell the estate, and such sale may involve significant time and transaction costs. The uncertain duration of the estate may significantly impair the life tenant's ability to sell the estate or to sell it for a reasonable price. Where the life tenant is a permanently and totally disabled veteran receiving pension under 38 U.S.C. § 1521, the severe nature of the veteran's disabilities may further impair the marketability of the life estate, although the estate may be of significant value to the veteran. Accordingly, we cannot conclude that a life tenant can readily, and without significant penalty, convert a life estate into funds available to meet subsistence needs.²

8. We note further that 38 U.S.C. § 1503(a)(6) provides that profit realized from the sale of real or personal property other than in the course of a business is not considered income. The legislative history of that provision indicates that profits from disposition of real property are not considered income because "moneys so received are generally needed and used to replace the property . . . sold," and that "[w]here those amounts are sizable and are not used to replace the property, they would be considered in the net worth determinations." S. Rep. No. 1016, 95th Cong., 2d Sess. 70 (1978). The income

² Proceeds received by the veteran from use of the real property, in the form, for example, of rent or profits from the sale of crops, would be considered income of the veteran.

exclusion in section 1503(a)(6) thus reflects congressional intent that profits realized through disposition of property should not be considered income because those funds are often needed to replace the property sold. This further suggests that the value of tangible property obtained by gift or inheritance generally should not be considered income for improved-pension purposes. In this regard, a distinction might be made between the types of "property" discussed in O.G.C. Prec. 4-89, such as savings bonds, which function merely to represent a debt or an entitlement to funds, and other property, such as real estate, which may be held for its inherent utility rather than for its cash value.

9. Under 38 U.S.C. § 1522, improved pension is not payable if it is reasonable that some part of a claimant's estate be consumed for the claimant's maintenance. In evaluating the claimant's estate for improved-pension purposes, VA must consider "all real and personal property owned by the claimant, except the claimant's dwelling." 38 C.F.R. § 3.275(b). In O.G.C. Prec. 15-92, we noted that a life tenant is considered the owner of the property during the life tenancy. Accordingly, the value of the life estate would generally be included in determining net worth.³

10. The rules for evaluating a claimant's estate for improved-pension purposes exempt the value of the claimant's dwelling, including a reasonable lot area. 38 C.F.R. § 3.275(b). Accordingly, if the veteran chooses to use the life-estate property as the veteran's principle dwelling, then such portion of the property as represents the dwelling place and a reasonable lot area would be excluded in determining the value of the veteran's estate for pension purposes.

HELD:

The value of a life estate in real property acquired by inheritance generally would not constitute income for improved-pension purposes. The value of a life estate acquired by inheritance would be considered in evaluating a claimant's estate for improved-pension purposes, except to the extent

³ We discussed certain methods for estimating the value of a life estate in O.G.C. Prec. 15-92.

that the property serves as the claimant's dwelling. In determining whether a claimant's estate is a bar to entitlement to improved pension, a determination must be made on all the facts of the individual case as to whether it would be reasonable that a part of the claimant's estate be consumed for his or her maintenance.

Mary Lou Keener