

APR 28 1975

The Honorable Richard L. Roudebush
Administrator of Veterans Affairs
Veterans Administration
Washington, D. C. 20420

Richard L. Roudebush

Dear Mr. Roudebush:

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This letter is in response to your inquiry of November 4, 1974, regarding the application of the Federal tax laws to funds received by the General Post Fund of the Veterans Administration.

The General Post Fund is a Federal trust fund provided for in 31 U.S. Code 725(a)(45). You indicate that two major financial sources of the Fund stem from sections 5101 and 5220 of Title 38 of the United States Code. The first of these gives the Administrator of Veterans' Affairs the authority to accept gifts to the Fund; the latter, also referred to as the Federal Vesting Statute, provides for the vesting in the United States, for the benefit of the General Post Fund, of the personal property of veterans who die intestate and without relatives while receiving treatment from the Veterans Administration.

You have expressed concern regarding the deductibility of donations to the General Post Fund as charitable contributions under sections 170, 2055 and 2522 of the Internal Revenue Code.

Section 170 of the Internal Revenue Code of 1954 allows a limited deduction for contributions or gifts to or for the use of organizations described in section 170(c) of the Code, payment of which is made within the taxable year. Among the organizations described in section 170(c) of the Code are a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.



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Section 2055(a) of the Code provides for a deduction from the value of a decedent's gross estate equal to the value of all bequests, legacies, devises, or transfers included therein passing to or for the use of, among others, the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes.

Similarly, Code section 2522(a) allows a deduction in computing taxable gifts for the calendar quarter of the value of all gifts made during such quarter to or for the use of organizations described therein, including the United States, any State, Territory, or political subdivision thereof, or the District of Columbia, for exclusively public purposes.

The present organization of the General Post Fund was created by the Permanent Appropriations Repeal Act of 1934, 31 USCA 725S, which provides that:

"The funds appearing on the books of the Government and listed in subsections (b) and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are appropriated and shall be disbursed in compliance with the terms of the trust."

Item number (a)(45) of this section designates the General Post Fund, National Homes, Veterans Administration (Ot930) as one of the funds impressed with a trust.

38 USCA 5103 (1958) provides in part that:

"Disbursements from the General Post Fund shall be made on orders by and within the discretion of the Administrator [Veterans Administration] and in the manner prescribed in section 5223 of this title."

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38 USCA 5223 (1958) provides in part that:

"Disbursements from the Fund shall be made by the Division of Disbursements, Treasury Department, upon the order and within the discretion of the Administrator [Veterans Administration] for the benefit of members and patients while being supplied care or treatment by the Veterans Administration in any facility or hospital. The authority contained in the preceding sentence is not limited to facilities or hospitals, under direct administrative control of the Veterans Administration."

Additionally, 38 USCA 1 (1958) provides a legislative history of the Veterans Administration. These provisions provide that the United States Veterans Bureau [predecessor to the Veterans Administration] was established August 9, 1921, by 42 Stat 1471 (1921), as an independent agency under a Director, responsible directly to the President, to handle the major programs affecting veterans of World War I and their dependents.

The Veterans Administration was created by Executive Order of July 21, 1930 under authority of the Act of July 3, 1930, 46 Stat 1016 (1930), authorizing the President to consolidate and coordinate governmental activities affecting war veterans. It was established as an independent agency consolidated under an Administrator of Veterans Affairs responsible directly to the President.

The National Home for Disabled Volunteer Soldiers was consolidated into the Veterans Administration under the Executive Order of July 21, 1930 (above).

Since the General Post Fund in its present form was established by statutory authority of the United States Congress, and since the General Post Fund is administered by the Veterans Administration which is an independent agency of the Executive Branch of the United States Government, and since the General Post Fund has been placed in trust under the care of the United States Department of

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the Treasury, we conclude that the General Post Fund is property belonging to, or an activity of, the Government of the United States.

Accordingly, we conclude that the General Post Fund is an organization described in sections 170(c)(1), 2055(a)(1) and 2522(a)(1) of the Code so that contributions to it for exclusively public purposes are deductible in the manner and to the extent provided in those sections of the Code.

You have inquired whether property passing to the United States under 38 U.S.C. 5220 is includible in the gross estate of the deceased veteran for Federal estate tax purposes. Section 2033 of the Internal Revenue Code states that the decedent's gross estate shall include the value of all property to the extent of the decedent's interest therein at the time of his death. Regulation 20.2033-1(a) requires that the gross estate include all property beneficially owned by the decedent at the time of his death. A decedent whose property descends under 38 U.S.C. 5220 retains all his interests therein until his death. His interests do not expire, but rather, pass to the United States. There could be no prior transfer, else the property would not be subject to the statute. Therefore, whatever property passes must be includible in his gross estate under section 2033.

You also question whether amounts passing to the General Post Fund under 38 U.S.C. 5220 are eligible for deduction under Code section 2055.

We agree that an estate tax deduction is allowable for the funds transferred to the United States under 38 U.S.C. section 5220. However, we believe that the deduction is allowable under Code section 2053 rather than under Code section 2055.

Treas. Reg. section 20.2055-1 states that an estate tax charitable deduction will be allowed only if the decedent actually transferred property during his life or in his will. In situations involving 38 U.S.C. section 5220, the decedent makes no such lifetime or testamentary transfer.

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As noted in Senft v. United States, 319 F. 2d 642 (1963), Treas. Reg. section 20.2055-1 has existed in substantially the same form since 1921 and has been upheld in numerous cases. Since this unambiguous Treasury Regulation has existed continuously since 1921, has been consistently interpreted and applied by courts and has not been voided by legislative changes in the act that it construes, we believe that it has "acquired the force of law" Cammarano v. United States, 358 U.S. 498, 510, (1958), and "bespeaks congressional approval", Corn Products Refining Co. v. Commissioner, 350 U.S. 46, 53 (1955). Accordingly, we believe that Code section 2055 is inapplicable here.

We do, however, believe that Code section 2053, which allows deductions for claims against the estate, is applicable in situations involving 38 U.S.C. section 5220.

38 U.S.C. section 5220(b) states:

"The provisions of subsection (a) are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. The acceptance and the continued acceptance of care or treatment by any veteran (admitted as a veteran to a Veterans Administration facility or hospital) shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the provisions of this subchapter and regulations issued in accordance with this subchapter.

Thus, an agreement in which, in return for care or treatment, the veteran promises to assign his personal property to the United States if he should die intestate and without legal heirs while in a Veterans Administration facility is presumed.

Treas. Reg. section 20.2053-5 allows a deduction for a charitable pledge or subscription under subpart (a) to

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the extent that there is adequate and full consideration in cash or its equivalent and under subpart (b) if a deduction would have been allowable under Code section 2055 if there had been a bequest. By virtue of 38 U.S.C section 5220(b), we believe that the decedent can be deemed to have pledged his property to the United States. Thus, we believe that his estate is entitled to a Treas. Reg. section 20.2053-5(a) deduction to the extent that he received consideration from the United States (care or treatment) and to a Treas. Reg. section 20.2053-5(b) deduction to the extent that the value of the services he received is exceeded by the value of his personal property. Since the value of all of the decedent's personal property would be deductible under the conjunction of subparts (a) and (b) of Treas. Reg. section 20.2053-5, there is no need to determine what portion of the value of the personal property is deductible under each subpart.

I regret any inconvenience caused by the delay in my response. Please contact me if I may be of further assistance.

With kind regards,

Sincerely,



Commissioner