

FOR THE RELIEF OF RICHARD W. SCHAFFERT

OCTOBER 20, 1999.—Referred to the Private Calendar and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1023]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1023) for the relief of Richard W. Schaffert, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1023 would waive the three-year statute of limitations on filing of an amended 1983 tax return for Mr. Richard W. Schaffert so that he could recover a tax refund that would have been due him based on a 1988 disability judgment by the Veterans Administration.

BACKGROUND AND NEED FOR THE LEGISLATION

Mr. Schaffert retired from the Navy in 1983—disabled with injuries he sustained as a fighter pilot in Vietnam. He originally filed for disability compensation in July of 1983. Personal circumstances and appeals delayed the final processing of his application until 1988. At that time, the VA rated Mr. Schaffert with an 80 percent disability retroactive to February 1983. Because the amount of the disability compensation is deducted from his military pension, the only actual benefit from the disability award is that it is non-taxable. Mr. Schaffert filed amended tax returns for all the years prior to 1988. He received a tax refund for each of the years except 1983 because a refund for 1983 was barred by the three-year statute of limitations. The refund would be \$2,133.33 plus interest.

The official Department of the Treasury report on the bill in the 102nd Congress opposed the legislation on the ground that “private relief bills work to undermine public confidence in the tax system” and that waiving the statute of limitations for Mr. Schaffert would set a “highly undesirable precedent” and “jeopardize the efficient administration of the tax laws.” However, the District Director of the Internal Revenue Service sent Mr. Schaffert’s congressman at the time a letter stating “Although we understand that Mr. Schaffert did not cause the delay and we are sympathetic to Mr. Schaffert’s situation, we cannot allow his claim . . . The only solution available to allow a refund to Mr. Schaffert would be the introduction of special legislation”.

Under the subcommittee chairmanship of Congressman Barney Frank, the House bill for Mr. Schaffert passed the House in the 102nd , but died in the Senate.

HEARINGS

The committee’s Subcommittee on Immigration and Claims held no hearings on H.R. 1023.

COMMITTEE CONSIDERATION

On September 30, 1999, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R.1023 without amendment by voice vote, a quorum being present.

On October 5, 1999, the Committee on the Judiciary met in open session and ordered reported favorably the bill H.R. 1023, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 1023, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 1999.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1023, a bill for the relief of Richard W. Schaffert.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

H.R. 1023—A bill for the relief of Richard W. Schaffert.

H.R. 1023 would waive the statute of limitations on an amended tax return for 1983. The waiver would allow Mr. Schaffert to recover an overpayment of taxes that resulted from the Veterans Administration granting him a military disability appeal in 1988. The change in Mr. Schaffert's disability status retroactively lowered his 1983 taxable income, resulting in an overpayment of \$2,133.33. CBO estimates that waiving the statute of limitations for Mr. Schaffert would result in a refund of this overpayment plus interest, thus increasing direct spending in fiscal year 2000 by around \$8,000. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

The CBO staff contact is John R. Righter, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article 1, Section 8 of the Constitution.

AGENCY VIEWS

The comments of the Department of Treasury and the Department of Veterans Affairs in the 102nd Congress are as follows:

DEPARTMENT OF THE TREASURY,
Washington, DC, November 13, 1991.

Hon. JACK BROOKS, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of October 17, 1991, to Secretary Brady requesting comments regarding H.R. 2563, a bill for the relief of Richard W. Schaffert. Your letter was referred to this office because it concerns a matter of tax policy.

The bill would provide an exception for Mr. Schaffert from the statutory period of limitations for claims of refund provided by the tax code. The Treasury Department has historically opposed bills which would grant private exemption or relief from our tax system. We recognize that there are many situations in which taxpayers, whether because of inadvertence or misfeasance, are subject to tax consequences which they did not expect or contemplate. In many cases, the taxpayers involved are ones who would evoke universal sympathy or respect. The Treasury Department believes, however, that private relief bills work to undermine public confidence in the tax system. Our system is premised on the assumption that the tax law will apply equally to all taxpayers, big or small, rich or poor.

The statutory period of limitations on filing claims is essential to ensure finality in tax administration. The statute serves to bar, after the lapse of a reasonable period of time, both the filing of a claim for refund by the taxpayer and the assessment of additional taxes by the government. Granting of special relief would constitute a highly undesirable precedent, encouraging other taxpayers who would seek to file untimely claims for refund. Such a development would jeopardize the efficient administration of the tax laws and would require the government to retain records which could otherwise be destroyed after the statutory period of limitations had expired.

Sincerely,

KENNETH W. GIDEON, *Assistant Secretary.*
(Tax Policy)

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, November 12, 1991.

Hon. JACK BROOKS, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We are pleased to respond to your request for a report on H.R. 2563, 102d Congress, a bill "For the relief of Richard W. Schaffert."

This bill provides that the limitations relating to the filing and allowing of a claim for credit or refund of tax overpayments set forth in sections 6511 and 6514 of the Internal Revenue Code shall be waived for Richard W. Schaffert for the taxable year 1983. The

bill provides that in order for its provisions to apply to Mr. Schaffert, he shall file a claim within one year from the date of enactment of the bill.

Although the relationship of the Department of Veterans Affairs (VA) to Mr. Schaffert is not stated in the bill itself, it is our understanding the relationship is as follows. Mr. Schaffert has been in receipt of military retirement pay since his retirement from the service in 1983. In March 1985 he was awarded VA disability compensation at the 10% rate effective retroactively from February 1983, the month following his discharge from active service. In May 1987, he was awarded VA disability compensation at the 80% rate also effective retroactively from February 1983.

Federal law (38 U.S.C. § 5304) prohibits a veteran from receiving military retirement pay and VA disability compensation concurrently. A veteran, however, pursuant to 38 U.S.C. § 5305 may waive military retirement pay up to the amount of the VA compensation to which the veteran is entitled. Since military retirement pay is taxable and VA compensation is not, it is generally in the veteran's interest to waive as much retirement pay as possible.

Military retirement pay, however, cannot be waived retroactively, and accordingly, Mr. Schaffert received no VA disability compensation until April 1985, at which time he waived a portion of military retirement pay in order to receive VA benefits at the 10% rate. In June 1987 he began to receive VA disability compensation at the 80% rate.

Apparently, when VA disability compensation is awarded retroactively, as in this case, the IRS presumes that a veteran would have waived military retirement pay in order to receive tax-exempt VA compensation. In 1988 Mr. Schaffert filed a claim for a refund for the tax he paid on the amount of military retirement pay which he would have been entitled to waive in order to receive VA disability compensation for years from 1983 to 1987. Although we understand he received refunds for taxes paid in and after 1984, the limitations on refunds imposed by 26 U.S.C. §§ 6511 and 6514 prevent him from receiving a refund for 1983.

In order to permit the Committee to fully consider all aspects of this matter, I have had my staff prepare the enclosed chronology detailing the adjudication of Mr. Schaffert's VA claim. I understand that Mr. Schaffert believes it took VA five years to process his claim and to correctly notify him of his rating. That, however, is not a completely accurate characterization.

Although Mr. Schaffert's original claim was filed in July 1983, he was not available for a medical examination until he returned from Europe in August 1984. After an examination, service connection was granted in March 1985, eight months after his return from Europe. One year later, in March 1986, he appealed the rate of disability awarded in that decision. In May 1987, based on additional medical evidence, he was granted an evaluation of 80% assigned retroactively from the date of his discharge from service. This was considered a full grant of the benefits sought on appeal.

In any event, whether the limitations provided in sections 6511 and 6512 should be waived in this case is a matter within the purview of the Treasury Department. Accordingly, VA defers to that

department, who we understand will be responding to you under separate cover, as to whether this measure is warranted.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report to the Congress.

Sincerely yours,

EDWARD O. DERWINSKI.

CHRONOLOGY OF DISABILITY COMPENSATION CLAIM OF RICHARD W. SCHAFFERT
CSS 507 40 0380

5-18-56	Honorable service.
to	
1-31-83	
7-26-83	Received VA Form 21-526 as a claim for disability compensation for hearing loss and a neurological disease affecting the upper extremities, back, and right leg. Subsequently, requests for service medical records and a VA examination were processed.
9-29-83	Received letter from the veteran stating he was in Europe and would not be able to report for an examination.
10-13-83	Our letter to the veteran explaining that we could not take action on his claim without a VA examination. He was asked to inform us when he returned to the United States.
6-25-84	Received letter from the veteran stating that he was returning to this country and would like an examination to be scheduled between 8-15-84 and 8-21-84 because that would fit into his schedule.
7-12-84	Our letter to the veteran asked for evidence of medical treatment since discharge from service.
7-20-84	A VA examination was requested.
8-20-84	The VA examination form was returned with the statement that the examination was cancelled by the veteran. Apparently, this was a miscommunication by the examining station since the veteran wished to re-schedule his examination.
11-14-84	Received letter from the veteran requesting the status of his claim.
11-19-84	Request for a VA examination was processed.
2-8-85	VA examination was accomplished.
3-27-85	Rating decision granting service connection for myelitis at a 10 percent level and for bilateral hearing loss at a 0 percent level. The combined evaluation of 10 percent was effective 2-1-83, the date after discharge from service.
4-9-85	Award action paying compensation from 4-1-85 because the veteran was receiving retired pay which could not be waived retroactively.

CHRONOLOGY OF DISABILITY COMPENSATION CLAIM OF RICHARD W. SCHAFFERT—Continued
CSS 507 40 0380

- 4-16-85 Letter from the veteran stating that the effective date of his award should have been 2-1-83, the date after discharge from service.
- 5-2-85 Our letter to the veteran explaining that, due to the receipt of retired pay, compensation could not be paid retroactively.
- 3-18-86 Received letter from the veteran appealing our decision granting a 10 percent evaluation for myelitis.
- 5-30-86 Statement of the Case was sent to the veteran outlining our decision and citing the pertinent laws and regulations.
- 6-18-86 Received the veteran's VA Form 1-9 as a substantive appeal. Another VA examination was scheduled to accurately assess the current level of disability. The veteran also submitted additional medical evidence showing increased severity.
- 8-1-86 A complete and extensive VA examination was conducted in Vienna, Austria.
- 5-8-87 After an extensive delay in receiving the completed examination report, rating action was completed granting an increased evaluation of 80 percent which was retroactively effective 2-1-83. This was considered a full grant of benefits sought on appeal.
- 5-22-87 Action taken to award the increase only from 6-1-87 because the veteran was in receipt of retired pay which could not be waived retroactively.
- 7-2-87 Received VA Form 21-686C and a certified copy of the veteran's marriage certificate.
- 10-13-87 Award action adding one dependent to the veteran's award.
- 4-11-91 Received VA Form 21-686C showing the veteran was divorced on 5-14-89 and remarried on 8-30-90.
- 5-30-91 Award action taken to correctly reflect the veteran's reported dependency status.