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1. [38 USCS § 5301](#)

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[38 USCS § 5301](#)

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[United States Code Service - Titles 1 through 54](#) > [TITLE 38. VETERANS' BENEFITS](#) > [PART IV. GENERAL ADMINISTRATIVE PROVISIONS](#) > [CHAPTER 53. SPECIAL PROVISIONS RELATING TO BENEFITS](#)

§ 5301. Nonassignability and exempt status of benefits

(a)

- (1) Payments of benefits **due or to become due** under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, **either before or after receipt by the beneficiary**. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this *title* [[38 USCS §§ 1901](#) et seq.], or of servicemen's indemnity.
 - (2) For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.
 - (3) (A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.
(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act ([15 U.S.C. 1693](#) et seq.).
(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.
- (b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the

38 USCS § 5301

United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)

- (1)** Notwithstanding any other provision of this section, the Secretary may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Secretary the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in chapter 73 of title 10 [[10 USCS §§ 1431 et seq.](#)].
- (2)** If the Secretary concerned (as defined in section 101(5) of title 37 [[37 USCS § 101\(5\)](#)]) has tried under section 3711(a) of title 31 [[31 USCS § 3711\(a\)](#)] to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by that Secretary to the veteran or that the veteran is not receiving any payment from that Secretary, that Secretary may request the Secretary to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.
- (3)** **(A)** A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 [[31 USCS § 3716](#)] for administrative offset collections made after attempts to collect claims under section 3711(a) of such [title \[31 USCS § 3711\(a\)\]](#).
(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31 [[31 USCS § 3716\(a\)](#)]-
 - (i)** the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and
 - (ii)** the term "agency" in clauses (3) and (4) shall be considered to refer to such department.
- (4)** Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10 [[10 USCS §§ 1461 et seq.](#)] or to the Retired Pay Account of the Coast Guard, as appropriate.

(d) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Secretary shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 ([26 U.S.C. 6331](#) et seq.).

(e) In the case of a person who--

- (1)** has been determined to be eligible to receive pension or compensation under laws administered by the Secretary but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and
- (2)** files a waiver of such pay in accordance with section 5305 of this [title \[38 USCS § 5305\]](#) in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Secretary of such person's eligibility for such pension or compensation.

the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

History

38 USCS § 5301

(Sept. 2, 1958, *P.L. 85-857*, § 1, *72 Stat. 1229*; Oct. 15, 1976, *P.L. 94-502*, Title VII, § 701, *90 Stat. 2405*; Oct. 18, 1978, *P.L. 95-479*, Title III, § 301, *92 Stat. 1564*; Oct. 12, 1982, *P.L. 97-295*, § 4(74), *96 Stat. 1310*; Oct. 28, 1986, *P.L. 99-576*, Title V, § 504, Title VII, § 701(68), *100 Stat. 3286*, 3296; Nov. 29, 1989, *P.L. 101-189*, Div A, Title XIV, § 1404(b)(2), *103 Stat. 1586*; April 6, 1991, *P.L. 102-25*, Title VII, § 705(c)(2), *105 Stat. 120*; May 7, 1991, *P.L. 102-40*, Title IV, § 402(b)(1), (d)(1), *105 Stat. 238*, 239; June 13, 1991, *P.L. 102-54*, § 14(d)(2), *105 Stat. 285*; Aug. 6, 1991, *P.L. 102-83*, § 4(a)(1), (2)(A)(vii), (b)(1), (4)(C), *105 Stat. 403-405*; Aug. 14, 1991, *P.L. 102-86*, Title V, § 505(a), *105 Stat. 426*; Dec. 16, 2003, *P.L. 108-183*, Title VII, § 702, *117 Stat. 2671*.)

Annotations

Notes

Amendments:

1976 . Act Oct. 15, 1976 (effective 12/1/76, as provided by § 703(c) of such Act, which appears as [38 USCS § 3693](#) note), in subsec. (a), inserted "For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited."

1978 . Act Oct. 18, 1978 (effective 10/1/78, as provided by § 401 of such Act, which appears as [38 USCS § 1114](#) note), added subsec. (d).

1982 . Act Oct. 12, 1982, in subsec. (c), inserted "of this section", and substituted "([26 U.S.C. 6331](#) et seq.)" for "(relating to seizure of property for collection of taxes)".

1986 . Act Oct. 28, 1986, in subsec. (a) substituted "a" for "his or her" preceding "benefit check"; in subsec. (b) substituted "the beneficiary's" for "his" wherever appearing; redesignated subsecs. (c) and (d) as subsecs. (d) and (e) respectively, and added a new subsec. (c).

1989 . Act Nov. 29, 1989 (effective Oct. 1, 1991, as provided by § 1404(b)(3) of such Act, which appears as [10 USCS § 12731](#) note), as amended by Act April 6, 1991, in subsec. (c)(1), deleted "subchapter I or II of" before "chapter 73".

1991 . Act April 6, 1991 amended the directory language of Act Nov. 29, 1989.

Act May 7, 1991 redesignated this section, formerly [38 USCS § 3101](#), as [38 USCS § 5301](#), and amended the references in this section to reflect the redesignations made by §§ 401(a)(4) and 402(b) of such Act (see Table II preceding [38 USCS § 101](#)).

Act June 13, 1991 (amending this section as in effect immediately before the enactment of Act May 9, 1991, as provided by § 14(d) of Act June 13, 1991), in subsec. (d), substituted "the Internal Revenue Code of 1986" for "the Internal Revenue Code of 1954".

Act Aug. 6, 1991, substituted "administered by the Secretary" for "administered by the Veterans' Administration" wherever appearing, and substituted "Secretary" for "Administrator" wherever appearing.

Such Act further, in subsec. (c)(2), substituted "that Secretary" for "the Secretary" preceding "payable amount", "payment from the", and "may request the Administrator".

Such Act further, in subsec. (e)(2), substituted "Secretary" for "Veterans' Administration".

Act Aug. 14, 1991 (applicable as provided by § 505(b) of such Act, which appears as a note to this section), in subsec. (c)(4), inserted "or to the Retired Pay Account of the Coast Guard, as appropriate".

2003 . Act Dec. 16, 2003, in subsec. (a), inserted "(1)" before "Payments of benefits", inserted "(2)" before "For the purposes of this subsection", and added para. (3).

Transfer of functions:

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see [6 USCS §§ 468\(b\), 551\(d\), 552\(d\)](#), and [557](#), and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, which appears as [6 USCS § 542](#) note.

Other provisions:

Undue hardship; relief. Act Nov. 23, 1977, [P.L. 95-202](#), Title III, § 305(c), [91 Stat. 1444](#) (effective 11/23/77, as provided in § 501 of such Act), provides:

"(1) Where an educational institution--

"(A) has in its possession veterans' or eligible persons' benefit checks made payable to a veteran or eligible person and mailed to such educational institution for a course offered (i) under the provisions of subchapter VI of chapter 34 of title 38, United States Code [[38 USCS §§ 1681](#) et seq.], or (ii) at a location not in a State under the provisions of [section 1676 of title 38, United States Code](#), and which course was commenced by such veteran or eligible person prior to December 1, 1976, and completed not later than June 30, 1977; and

"(B) holds a power of attorney executed by the veteran or eligible person prior to December 1, 1976, authorizing the educational institution to negotiate such benefit check,

the Administrator may, where the Administrator finds there is undue hardship on such educational institution, provide such relief as the Administrator determines equitable pursuant to regulations which the Administrator shall prescribe.

"(2) Where an accredited correspondence school--

"(A) has in its possession veterans' or eligible persons' benefit checks made payable to a veteran or eligible person and mailed to such school for lessons completed by the veteran or eligible person under section 1786 of this title and serviced by the school prior to January 1, 1977; and

"(B) holds a power of attorney executed by the veteran or eligible person prior to December 1, 1976, authorizing the school to negotiate such benefit check,

the Administrator may, where the Administrator finds that there is undue hardship on such educational institution and the courses were taken by veterans or eligible persons residing in a State, provide such relief as the Administrator determines equitable pursuant to regulations which the Administrator shall prescribe."

Application of Aug. 14, 1991 amendment of subsec. (c)(4). Act Aug. 14, 1991, [P.L. 102-86](#), Title V, § 505(b), [105 Stat. 426](#), provides: "The amendment made by subsection (a) [amending subsec. (c)(4)] shall apply with respect to funds collected after September 30, 1991."

Case Notes

I. IN GENERAL

1. Generally
2. Relationship to other laws
3. --State laws
4. Constitutional considerations
5. Purpose
6. Practice and procedure
7. --Evidence and burden of proof
8. Miscellaneous

II. ASSIGNMENT OF BENEFITS**A. In General****9. Generally****B. Insurance****10. Beneficiaries and change thereof****11. --Court orders****12. --Other particular cases****13. Proceeds of insurance****14. --Constructive trust****III. EXEMPTION FROM TAXATION****15. Estate and inheritance taxes****16. --Transfer taxes****17. Income taxes****18. --Payments to guardian****19. Taxation of interest on benefit payments****20. Taxation of property purchased with benefit payments****21. Miscellaneous****IV. EXEMPTION FROM CLAIMS OF CREDITORS AND PROCESS****A. In General****22. Generally****23. Construction and interpretation****24. What constitutes "benefits"****25. Who are "creditors"****26. --Guardians****27. --Spouses****28. Duration of exemption****29. Bankruptcy of recipient of benefits and effect thereof****30. Attorney fee claims****31. Miscellaneous****B. Application of Exemption to Funds in Possession of Particular Persons or Entities****32. Administrators and executors****33. Guardians or committees****34. Designated beneficiaries or distributees****35. Estate of decedent****36. Miscellaneous****C. Application of Exemption to Particular Dispositions of Funds****37. Deposits in financial institutions****38. Investments and purchases****39. --Bonds or notes****40. --Real or personal property****D. Application of Exemption to Claims for Support or Maintenance****1. Veteran****41. Governmental entities' claims****42. Miscellaneous****2. Dependents of Veteran****43. Generally****44. Governmental entities' claims****45. Court orders****46. Miscellaneous****V. COLLECTION OF CLAIMS OF UNITED STATES****47. Generally****48. Fines****49. Insurance and payments thereon**

50. --Dividends and premiums**51. Loan guarantees****52. Miscellaneous****I. IN GENERAL****1. Generally**

Legislation making benefits paid by Veterans' Administration [now Department of Veterans Affairs] exempt from taxation and creditors' claims should be liberally construed to protect funds granted by Congress for maintenance and support of beneficiaries of such legislation. [Porter v Aetna Casualty & Surety Co. \(1962\) 370 US 159, 8 L Ed 2d 407, 82 S Ct 1231.](#)

Those who deal with War Risk Insurance Bureau [now Department of Veterans Affairs] are assumed to know statutes and regulations which govern it. [Jewell v United States \(1939, DC Ky\) 27 F Supp 836.](#)

Congress clearly has power to provide for exemption of servicemen's or veterans' benefits. [Derzis v Vafes \(1933\) 227 Ala 471, 150 So 461; Gaskins v Security-First Nat'l Bank \(1939\) 30 Cal App 2d 409, 86 P2d 681.](#)

2. Relationship to other laws

[42 USCS § 659](#) authorizes assignment of benefits, which would otherwise be not assignable, under [38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)]. [Sturgell v Creasy \(1981, CA6 Ohio\) 640 F2d 843.](#)

[38 USCS § 5301\(a\)](#) provides federal right that is enforceable under [42 USCS § 1983](#). [Higgins v Beyer \(2002, CA3 NJ\) 293 F3d 683.](#)

Because [38 USCS § 5301\(a\)\(1\)](#), when read in combination with pertinent regulations such as [38 CFR § 13.71](#), did not prohibit direct payments of VA benefits to a state hospital for ongoing veteran patient care, a committed inmate/veteran's suit against a state hospital's trust officer for using his VA benefits was properly dismissed on summary judgment. [Gossett v Czech \(2009, CA9 Cal\) 581 F3d 891.](#)

"Anti-attachment" provisions of Veterans Act, [38 USCS § 5301\(a\)\(1\)](#), closely parallel "anti-attachment" provisions of Social Security Act, [42 USCS § 407\(a\)](#). [Bianconi v Preston \(2005, DC Mass\) 383 F Supp 2d 276.](#)

National Service Life Insurance is contract made in pursuance of federal law and must be construed with reference to [38 USCS § 717](#) and [§ 3101](#) [now [§ 5301](#)], regulations promulgated thereunder, and decisions applicable thereto, rather than by laws and decisions governing private insurance companies. [In re Estate of Pechman \(1974, Colo App\) 532 P2d 385.](#)

3. --State laws

To extent New Jersey statute authorizes prison officials to deduct funds derived from prisoner's Veteran's Administration disability benefits check to pay fine assessed to compensate victims of violent crimes, it conflicts with purpose and objectives of Congress in enacting [38 USCS § 5301\(a\)](#) and is void under [Supremacy Clause](#). [Higgins v Beyer \(2002, CA3 NJ\) 293 F3d 683.](#)

[38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)] was not intended to remove benefits from application of marital property laws of several states, including community property laws of Texas. [Ex parte Johnson \(1979, Tex Civ App Waco\) 583 SW2d 660.](#)

38 USCS § 5301

Although failure to include within [10 USCS § 1408\(c\)\(1\)](#) disability payments received in accordance with waiver executed pursuant to [28 USCS § 3105](#) arguably leads to conclusion that Congress' intent was to preclude states from recognizing community interest in such payments, neither [38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)] prohibition against assignments of Veterans' benefits nor any other federal law directly or positively precludes application of Louisiana's community property law to disability payments received pursuant to [38 USCS § 3105](#) [now [38 USCS § 5305](#)] election. [Campbell v Campbell \(1985, La App 2d Cir\) 474 So 2d 1339](#), cert den (1985, La) [478 So 2d 148](#).

Award of federal death benefits for death of child to non-beneficiary spouse, husband, conflicted with [38 USCS §§ 1970\(g\)](#) and [5301\(a\)\(1\)](#) because anti-attachment provisions preempted court's award made under state law, [Minn. Stat. § 518.58](#), subd. 2; award was division of property and not award of spousal support. [Angell v Angell \(2010, Minn\) 791 NW2d 530](#).

4. Constitutional considerations

To extent New Jersey statute authorizes prison officials to deduct funds derived from prisoner's Veteran's Administration disability benefits check to pay fine assessed to compensate victims of violent crimes, it conflicts with purpose and objectives of Congress in enacting [38 USCS § 5301\(a\)](#) and is void under [Supremacy Clause](#). [Higgins v Beyer \(2002, CA3 NJ\) 293 F3d 683](#).

Act of Congress exempting veterans' benefits is not unconstitutional on ground that it enlarges exemption from creditors' claims to sum in excess of that fixed by state constitution. [Purvis v Walls \(1931\) 184 Ark 887, 44 SW2d 353](#).

Predecessor to [38 USCS § 5301](#), exempting veterans' benefits from taxation, was authorized by war power of Congress. [Atlanta v Stokes \(1932\) 175 Ga 201, 165 SE 270](#) (criticized in [Trotter v Tennessee \(1933\) 290 US 354, 78 L Ed 358, 54 S Ct 138](#)) and (criticized in [City Council of Augusta v Ransom \(1934\) 179 Ga 179, 175 SE 497](#)) and (criticized in [Porter v Watson \(1935\) 51 Ga App 848, 181 SE 680](#)) and (criticized in [Liles v H. K. Mulford Co. \(1935\) 52 Ga App 674, 184 SE 396](#)).

5. Purpose

Purpose of predecessor to [38 USCS § 5301](#) was to safeguard payments made to, or for benefit of, soldier and beneficiary. [Pagel v Pagel \(1934\) 291 US 473, 78 L Ed 921, 54 S Ct 497](#).

Purpose of [38 USCS § 3101](#) [now [38 USCS § 5301](#)] is to protect not only recipient of benefits but also to afford some degree of security to recipient's family and dependents. [Surplus v Remmele \(1949\) 194 Misc 1036, 87 NYS2d 651; State ex rel. Eastern State Hospital v Beard \(1979, Okla\) 600 P2d 324](#).

[38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)] was designed by Congress to place benefits beyond reach and anticipation of creditors by assignment and from seizure under process issued for collection of debts. [Ex parte Johnson \(1979, Tex Civ App Waco\) 583 SW2d 660](#).

Purpose of exemption is protection of veteran, and exemption should not be extended to deceased veteran's estate. [In re Buxton's Estate \(1944\) 246 Wis 97, 16 NW2d 399, 33 AFTR 294](#).

6. Practice and procedure

District court erred in dismissing [42 USCS § 1983](#) claim brought by inmate against prison employees who deducted funds derived from inmate's Veteran's Administration disability benefits check to pay fine to New Jersey Victims of

38 USCS § 5301

Crime Compensation Board pursuant to [N.J. Stat. Ann. § 2C:43-3.1](#), as employees' action was levy or seizure of benefits prohibited by [38 USCS § 5301\(a\)](#). [Higgins v Beyer \(2002, CA3 NJ\) 293 F3d 683](#).

Veterans Administration [now Department of Veterans Affairs] was not equitably estopped from arguing that tuition arrangement was prohibited by [38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)] by statements of its officials which might have indicated approval of tuition funding arrangement for direct payment; such approval was erroneous and beyond scope of authority vested in Veterans Administration [now Department of Veterans Affairs] by Congress. [American Training Services, Inc. v Veterans Admin. \(1977, DC NJ\) 434 F Supp 988](#).

Proper measure of damages for wrongful garnishment of exempt proceeds, was six per cent interest on money while wrongfully impounded. [Purvis v Walls \(1931\) 184 Ark 887, 44 SW2d 353](#).

Supreme Court of Appeals of West Virginia holds that, in determining amount of spousal support to be awarded pursuant to factors enumerated in [W. Va. Code § 48-6-301\(b\)\(1\)-\(20\)](#), federal, service-connected veterans disability benefits received by payor spouse may be considered by family court as resource, along with payor's other income, in assessing ability of payor to pay spousal support; such consideration by family court is not precluded by [10 USCS § 1408](#) or [38 USCS § 5301](#) concerning nonassignability of veterans benefits. [In re Zickefoose \(2012, W Va\) 724 SE2d 312](#).

7. --Evidence and burden of proof

Rule that he who claims exemption bears burden of establishing it means no more than that one who seeks exemption must show that he is as matter of fact within class which is as matter of law exempt. [Williams v United States Fidelity & Guaranty Co. \(1939\) 71 App DC 9, 107 F2d 210](#).

Affidavits showing source of funds used to purchase real estate were admissible on issue of exemption from taxation. [Atlanta v Stokes \(1932\) 175 Ga 201, 165 SE 270](#) (criticized in [Trotter v Tennessee \(1933\) 290 US 354, 78 L Ed 358, 54 S Ct 138](#)) and (criticized in [City Council of Augusta v Ransom \(1934\) 179 Ga 179, 175 SE 497](#)) and (criticized in [Porter v Watson \(1935\) 51 Ga App 848, 181 SE 680](#)) and (criticized in [Liles v H. K. Mulford Co. \(1935\) 52 Ga App 674, 184 SE 396](#)).

8. Miscellaneous

Statute does not constitute limitation on Secretary's obligation with regard to payment of attorney's fees from appellant's past due benefits; that payment to appellant and appellant's attorney are to be calculated in accordance with existing regulations. [Aronson v Derwinski \(1992\) 3 Vet App 162](#).

[38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)] is not unconditional and does not prevent state from placing reasonable burden on debtor to claim exemption. [Phillips v Bartolomie \(1975, 1st Dist\) 46 Cal App 3d 346, 121 Cal Rptr 56](#).

II. ASSIGNMENT OF BENEFITS

A. In General

9. Generally

38 USCS § 5301

Agreement whereby disabled veteran assigned share of his compensation to wife to whom he was married while mentally incompetent, which marriage was subsequently annulled, was void though incorporated in annulment decree. [Yake v Yake \(1936\) 170 Md 75, 183 A 555.](#)

Provisions of [38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)], both before and after 1976 amendment, prohibit arrangement whereby veteran has educational benefit check sent directly to educational institution which, upon previous power of attorney given by veteran, endorses check and deposits it to institution's account; even though Veterans Administration [now Department of Veterans Affairs] for some period of time recognized such activity, absent affirmative misconduct by agency or its officers, agency is not bound by statements of officials which may have indicated approval of such tuition funding arrangement. [American Training Services, Inc. v Veterans Admin. \(1977, DC NJ\) 434 F Supp 988.](#)

Veterans Administration [now Department of Veterans Affairs] is precluded by [38 USCS § 3101](#) [now [38 USCS § 5301](#)] from giving any effect to purported assignment of benefit payments, but Veterans Administration [now Department of Veterans Affairs] lacks authority to withhold benefit payment checks from beneficiaries merely because beneficiary has attempted to assign such benefits, and Administration [now Department] is required to mail such checks to payee's last known address of record, regardless of disposition beneficiary may make of such payment. 1972 ADVA 993.

Verbal promise by pension claimant to pay debt when he receives his pension, or out of his pension, is not such pledge, mortgage, assignment, transfer, or sale of pension claim as is forbidden. [Crane v Linneus \(1884\) 77 Me 59.](#)

Agreement between widow of soldier of revolution, entitled to pension under Act of 1848, c. 120, and agent that latter was to receive certain part of pension money for his services in obtaining it was void, and money received under such agreement could be recovered by pensioner in action of assumpsit. [Powell v Jennings \(1856\) 48 NC 547.](#)

B. Insurance

10. Beneficiaries and change thereof

Congress has declared public policy of nation by enactment of [38 USCS § 717\(a\)](#) [now § 1917(a)] and § 3101(a) [now § 5301(a)] and if veteran could contract to surrender his right to change beneficiary, or assign proceeds of National Service Life Insurance policy, and then be held liable in damages for breach of such contract, public policy would be frustrated. [McJunkin v Estate of McJunkin \(1973, Tex Civ App Dallas\) 493 SW2d 278.](#)

Absent language restricting right to execute later changes in beneficiary designations, insured's motive for beneficiary designation change is not questionable as improper assignment. VA GCO 15-76.

Provisions of [38 USCS §§ 717\(a\)](#) [now § 1917(a)], 749 [now § 1949], and 3101 [now § 5301] guarantee decedent's absolute right to determine beneficiary of policy. [Sessions v Sessions \(1974, Okla App\) 525 P2d 1269.](#)

11. --Court orders

Courts do not have jurisdiction to make an order regarding permanent change of beneficiary under National Service Life Insurance policy. [Reed v Reed \(1971\) 29 Colo App 199, 481 P2d 125.](#)

State court had no jurisdiction to enter judgment requiring irrevocable designation of beneficiary of any part of proceeds. [Sessions v Sessions \(1974, Okla App\) 525 P2d 1269.](#)

12. --Other particular cases

Agreement by insured with his mother that, in consideration of her advancing money for payment of premiums and other purposes, he would continue her as beneficiary under policy was in effect assignment of insurance. [Von Der Lippi-Lipski v United States \(1925\) 55 App DC 202, 4 F2d 168.](#)

Where, two days before his death, insured executed change of beneficiary form designating his mother (whom at time he owed \$ 4000) as primary beneficiary and his brother as contingent beneficiary, and in "Remarks" section of form wrote: "This to take care of unpaid debts to mother in case of her death brother is to take care of all unpaid debts," such action does not constitute assignment or "in the nature of an assignment." [Stafford v United States \(1955, DC La\) 128 F Supp 435.](#)

Community property settlement agreement, executed by father who agreed to name son as irrevocable beneficiary of National Service Life Insurance policy and to surrender right to change beneficiary of policy, was illegal and unenforceable and estate of father was not liable to son for damages for breach of contract after father changed beneficiary. [McJunkin v Estate of McJunkin \(1973, Tex Civ App Dallas\) 493 SW2d 278.](#)

13. Proceeds of insurance

Prohibition against assignment has no application to proceeds of insurance after payment to beneficiary; contract by beneficiary agreeing to pay proceeds to another is enforceable against him. [Bostrom v Bostrom \(1931\) 60 ND 792, 236 NW 732.](#)

Congress has declared public policy of nation by enactment of [38 USCS § 717\(a\)](#) [now § 1917(a)] and § 3101(a) [now § 5301(a)] and if veteran could contract to surrender his right to change beneficiary, or assign proceeds of National Service Life Insurance policy, and then be held liable in damages for breach of such contract, public policy would be frustrated. [McJunkin v Estate of McJunkin \(1973, Tex Civ App Dallas\) 493 SW2d 278.](#)

By clear terms of [38 USCS § 717](#) [now § 1917] and § 3101 [now § 5301], one who was not designated as beneficiary of National Service Life Insurance policy at time of insured's death, was precluded from recovering proceeds of such policy in suit initiated directly against United States or against the designated beneficiary, including any attempt to impress trust upon the proceeds in hands of beneficiary. [Will of Hilton \(1976\) 88 Misc 2d 760, 388 NYS2d 985.](#)

14. --Constructive trust

Trust in proceeds of National Service Life Insurance policies, in which deceased's parents were designated beneficiaries, could not be established in favor of insured's children whom he had agreed to designate as beneficiaries in property settlement with his wife. [Sehrt v Sehrt \(1960, 1st Dist\) 179 Cal App 2d 167, 3 Cal Rptr 555.](#)

To impress trust upon proceeds of National Service Life Insurance policy would result in an evasion of intent of Congress. [Lefrak v Lefrak \(1975, 2d Dept\) 47 App Div 2d 912, 366 NYS2d 672.](#)

By clear terms of [38 USCS § 717](#) [now § 1917] and § 3101 [now § 5301], one who was not designated as beneficiary of National Service Life Insurance policy at time of insured's death, was precluded from recovering proceeds of such policy in suit initiated directly against United States or against the designated beneficiary, including any attempt to impress trust upon the proceeds in hands of beneficiary. [Will of Hilton \(1976\) 88 Misc 2d 760, 388 NYS2d 985.](#)

Where decedent was insured under National Service Life Insurance and at time of divorce from plaintiff was ordered to make plaintiff beneficiary of balance due on alimony judgment until judgment was paid, but decedent

later married defendant and made her beneficiary of policy, proceeds of policy were not subject to constructive trust in favor of former wife. [Sessions v Sessions \(1974, Okla App\) 525 P2d 1269.](#)

III. EXEMPTION FROM TAXATION

15. Estate and inheritance taxes

Inasmuch as predecessor to [38 USCS § 3101](#) [now [38 USCS § 5301](#)] relating to exemption from taxation of proceeds of war risk insurance did not purport to exempt such proceeds from death duties, veteran's contract with government under Act was not unconstitutionally impaired by inclusion of such proceeds in computing total amount of his insurance for purposes of Federal estate tax. [United States Trust Co. v Helvering \(1939\) 307 US 57, 59 S Ct 692, 83 L Ed 1104, 39-1 USTC P 9466, 22 AFTR 327.](#)

Proceeds of war risk insurance were part of decedent's gross estate subject to federal tax. [Bankers Trust Co. v Commissioner \(1935, BTA\) 33 BTA 746.](#)

Proceeds of government life insurance cannot be used by bank as trustee to collect amount of estate tax paid by bank as trustee from inter vivos trust fund in its hands as such proceeds are declared by statute to be immune from taxes. [In re Roosevelt's Estate \(1947\) 191 Misc 840, 77 NYS2d 252.](#)

Heirs at law, who received war risk insurance from deceased service man, took as beneficiaries, and insurance money they received was exempt from state inheritance tax. [Succession of Geier \(1924\) 155 La 167, 99 So 26, 32 ALR 353.](#)

Proceeds of war risk insurance policy were not subject to state inheritance tax. [In re Harris' Estate \(1930\) 179 Minn 450, 229 NW 781.](#)

State could not levy succession tax upon proceeds of war risk insurance which will be distributed to aunts and uncles of insured. [Tax Com. of Ohio v Rife \(1927, Hamilton Co\) 27 Ohio App 516, 162 NE 398, affd \(1928\) 119 Ohio St 83, 6 Ohio L Abs 385, 162 NE 390.](#)

State inheritance tax was an excise tax on the succession to property at or by reason of death and was not tax on property; accordingly, proceeds of National Service Life Insurance policy were subject to state inheritance tax. [In re Estate of Super \(1968\) 428 Pa 476, 239 A2d 380.](#)

Commutated value of war risk insurance policy, turned over by government to estate of deceased soldier for distribution to beneficiaries, was not subject to state inheritance tax. [Watkins v Hall \(1929\) 107 W Va 202, 147 SE 876.](#)

16. --Transfer taxes

Amount payable to estate of insured on death of beneficiary before receipt of all installments was subject to state transfer tax. [In re Schaeffer's Estate \(1927\) 130 Misc 436, 224 NYS 305.](#)

Statute did not exempt from New York state transfer tax transfers of proceeds from estate of deceased insured to those who took in distribution of estate. [In re Dean's Estate \(1927\) 131 Misc 125, 225 NYS 543.](#)

Adjusted service bonds were not such part of veteran's estate as would make them subject to state transfer inheritance tax; Congress directed payment of adjusted service bonds to estate of veteran, not as asset thereof, but merely for purpose of ascertaining veteran's next of kin, and expressly relieved bonds from taxation. [In re Schmuckli's Estate \(1941, Pa\) 17 A2d 876.](#)

17. Income taxes

Amounts of retired pay received by master sergeant, retired from regular army of United States after thirty years of meritorious service, were properly included in his gross income, although taxpayer claimed that such retirement pay was exempt from taxation, where his retirement was solely pursuant to statutes relating generally to retired army personnel. [Hoeppe v Westover \(1948, SD Cal\) 79 F Supp 794, 48-2 USTC P 9418, 37 AFTR 367.](#)

Compensation received by veteran as part of therapeutic work program under [38 USCS § 1718\(b\)](#) constitutes veterans' medical benefit rather than wages for services, and thus such compensation is excluded from veteran's income for tax purposes under [38 USCS § 5301\(a\)](#) and former I.R.C. § 139(a)(3) (now [I.R.C. § 140\(a\)\(3\)](#)). [Wallace v Comm'r \(2007\) 128 TC 132.](#)

Exemption from taxation ceased as soon as money was paid to veteran, it not being then "payable", and payment to his guardian was payment to veteran and has same effect. [Arcese v Commonwealth \(1933\) 160 Va 116, 168 SE 465.](#)

Plaintiff widow, survivor of military veteran, was granted tax refund relief for funds withheld from her Survivor Benefit Plan receipts for period of time for which she was retroactively entitled to Dependency and Indemnity Compensation benefits, which were nontaxable under [38 USCS § 5301](#) and were credited retroactively against withholding from taxable Survivor Benefit Plan payments pursuant to [10 USCS § 1450\(c\)](#). [Ebert v United States \(2005\) 66 Fed Cl 287, 2005-2 USTC P 50495, 96 AFTR 2d 5163.](#)

Payments made by VA under compensated work therapy program described in [38 USCS § 1718](#) are veterans' benefits within meaning of [38 USCS § 5301](#); accordingly, such payments are qualified military benefits under [26 USCS § 134](#) and are exempt from federal income tax. [Rev. Rul. 2007-69 \(2007\) 2007-49 IRB 1083.](#)

18. --Payments to guardian

Exemption from taxation of compensation and war risk insurance disability benefits to mentally incompetent veteran, conferred by predecessor to [38 USCS § 3101](#) [now [38 USCS § 5301](#)] was not enlarged by fact that payment is made to his guardian. [Trotter v Tennessee \(1933\) 290 US 354, 78 L Ed 358, 54 S Ct 138.](#)

Where guardian of veteran received warrants or checks of government in payment of adjusted compensation or insurance due ward, and he deposited them in bank which collected them and credited proceeds to veteran's account, such deposits were not subject to taxation by county and municipal authorities. [Lawrence v Shaw \(1937\) 300 US 245, 81 L Ed 623, 57 S Ct 443,](#) 108 ALR 1102.

Where pensioner was non compos mentis and his pension was being paid to his guardian, such pension was nontaxable. [Manning v Spry \(1903\) 121 Iowa 191, 96 NW 873.](#)

Payment of pension or compensation to guardian does not leave money in control of government so as to be exempt from taxation. [State ex rel. Smith v Board of Comm'rs \(1931\) 132 Kan 233, 294 P 915,](#) cert den [\(1931\) 283 US 855, 75 L Ed 1462, 51 S Ct 648.](#)

Exemption from taxation ceased as soon as money was paid to veteran, it not being then "payable", and payment to his guardian was payment to veteran and has same effect. [Arcese v Commonwealth \(1933\) 160 Va 116, 168 SE 465.](#)

19. Taxation of interest on benefit payments

Interest received by guardian on money paid by United States was not exempt from state income tax. [20 Op Atty Gen 270.](#)

Interest received on pension money was not exempt from taxation. [*Bednar v Carroll* \(1908\) 138 Iowa 338, 116 NW 315.](#)

20. Taxation of property purchased with benefit payments

Exemption from taxation of compensation paid by United States to its disabled veterans and of disability benefits under policy of war risk insurance, conferred by predecessor to [38 USCS § 3101](#) [now [38 USCS § 5301](#)] was lost when money is converted into land and buildings. [*Trotter v Tennessee* \(1933\) 290 US 354, 78 L Ed 358, 54 S Ct 138.](#)

Land purchased by guardian of incompetent World War veteran out of compensation was not exempt from taxation. [*Johnson v Board of Comm'rs* \(1933\) 61 SD 372, 249 NW 683; *State v Blair* \(1933\) 165 Tenn 519, 57 SW2d 455, affd \(1933\) 290 US 354, 78 L Ed 358, 54 S Ct 138.](#)

Property purchased by guardian with money paid by United States was not exempt from state property taxation. [20 Op Atty Gen 270.](#)

Property purchased with benefit payment was not exempt from state taxation. [20 Op Atty Gen 1190.](#)

Exemption from taxation did not extend to land purchased with proceeds of compensation. [*State v Wright* \(1932\) 224 Ala 357, 140 So 584.](#)

Lands purchased with money paid by United States to World War veterans as adjusted service compensation or bonus were subject to state taxation. [*Ford v Harrington* \(1934\) 189 Ark 48, 70 SW2d 49.](#)

Real estate purchased with exempt money was exempt from taxation. [*Atlanta v Stokes* \(1932\) 175 Ga 201, 165 SE 270](#) (criticized in [*Trotter v Tennessee* \(1933\) 290 US 354, 78 L Ed 358, 54 S Ct 138](#)) and (criticized in [*City Council of Augusta v Ransom* \(1934\) 179 Ga 179, 175 SE 497](#)) and (criticized in [*Porter v Watson* \(1935\) 51 Ga App 848, 181 SE 680](#)) and (criticized in [*Liles v H. K. Mulford Co.* \(1935\) 52 Ga App 674, 184 SE 396](#)).

Property purchased by veteran with money paid to him by government was not exempt from taxation. [*Martin v Guilford County* \(1931\) 201 NC 63, 158 SE 847, 76 ALR 978; *Lambert v Guilford County* \(1931\) 201 NC 67, 158 SE 849.](#)

Compensation money invested in real property did not render land exempt from taxation. [*Raburn v Board of Comm'rs* \(1934\) 168 Okla 4, 31 P2d 840.](#)

Mortgages purchased with proceeds of compensation paid to veteran were not exempt from taxation. [*Saxe v Board of Revision of Taxes* \(1932\) 107 Pa Super 108, 163 A 317, affd \(1933\) 311 Pa 545, 166 A 853.](#)

Exemption from taxation with respect to payments of benefits did not extend to real estate purchased in part or wholly out of such payments. [*Lucas v Board of Equalization* \(1957\) 165 Neb 315, 85 NW2d 638, cert den \(1958\) 356 US 938, 2 L Ed 2d 813, 78 S Ct 780.](#)

21. Miscellaneous

Legislation making benefits paid by Veterans' Administration [now Department of Veterans Affairs] exempt from taxation and creditors' claims should be liberally construed to protect funds granted by Congress for maintenance and support of beneficiaries of such legislation. [*Porter v Aetna Casualty & Surety Co.* \(1962\) 370 US 159, 8 L Ed 2d 407, 82 S Ct 1231.](#)

38 USCS § 5301

Proceeds of war risk insurance policy payable to insured's estate may be used by executor to pay delinquent taxes due from insured to United States government for previous years. [In re Coleman's Estate \(1936\) 179 Okla 251, 65 P2d 467.](#)

IV. EXEMPTION FROM CLAIMS OF CREDITORS AND PROCESS

A. In General

22. Generally

Amendments to veteran relief acts making government insurance proceeds exempt from creditors are effective retroactively. [In re McCormick's Estate \(1938\) 169 Misc 672, 8 NYS2d 179.](#)

Pensioner may use money in any manner he may see proper for his own benefit and to secure comfort of his family, free from attacks of creditors. [Holmes v Tallada \(1889\) 125 Pa 133, 17 A 238.](#)

23. Construction and interpretation

Legislation making benefits paid by Veterans' Administration [now Department of Veterans Affairs] exempt from taxation and creditors' claims should be liberally construed to protect funds granted by Congress for maintenance and support of beneficiaries of such legislation. [Porter v Aetna Casualty & Surety Co. \(1962\) 370 US 159, 8 L Ed 2d 407, 82 S Ct 1231.](#)

Words "attachment, levy or seizure" are not to be construed so narrowly as to embrace only process in hands of officer for service. [Mahar v McIntyre \(1936, DC Mass\) 16 F Supp 961.](#)

Statute exempting veterans' benefits from claims of creditors must receive liberal interpretation. [Yake v Yake \(1936\) 170 Md 75, 183 A 555; Hoerster v Johnson City State Bank \(1933, Tex Civ App\) 58 SW2d 142.](#)

Right of veterans to be exempt from creditor claims against benefits must be liberally construed to protect funds granted by Congress for maintenance and support of eligible veterans. [American Training Services, Inc. v Veterans Admin. \(1977, DC NJ\) 434 F Supp 988.](#)

24. What constitutes "benefits"

In an action by named beneficiary under National Service Life Insurance policy for recovery of expenditures incurred in defending claim to proceeds in state court, statutory exemption from seizure of proceeds under [38 USCS § 3101](#) [now [38 USCS § 5301](#)] is not "benefit" of policy which Government has the duty to protect, and failure of Government to protect such claim to the policy proceeds in state courts does not violate any statutory or contractual duty to beneficiary, policy terms and statutory provisions advantageous to an insured and his beneficiaries being primarily intended to protect those individuals from inaction or wrongdoing by agency charged with administering NSLI Program. [Smith v United States \(1972, CA9 Wash\) 460 F2d 985.](#)

Dividends payable under NSLI policy were benefits payable by Veterans' Administration [now Department of Veterans Affairs], and exempt under predecessor to [38 USCS § 3101](#) [now [38 USCS § 5301](#)]. Administrator's decision, Veterans Administration, No. 832, November 25, 1949.

25. Who are "creditors"

38 USCS § 5301

State institution was entitled to reimbursement out of veteran's exempt funds for care and maintenance of veteran in such institution, since state was not creditor within meaning of predecessor to [38 USCS § 3101](#) [now [38 USCS § 5301](#)]. [Savoid v District of Columbia \(1961, App DC\) 110 US App DC 39, 288 F2d 851](#); [In re Guardianship of Bemowski \(1958\) 3 Wis 2d 133, 88 NW2d 22](#).

State hospital asserting claim against insured's estate for maintenance of elderly beneficiary of NSLI policy was not creditor within meaning of [38 USCS § 3101](#) [now [38 USCS § 5301](#)]. [Cruce v Arkansas State Hospital \(1966\) 241 Ark 680, 409 SW2d 342](#).

Bank in which veteran's compensation was deposited could not be considered "creditor" of veteran, but was debtor. [Gaine v Bank of Thomasville \(1933\) 176 Ga 736, 168 SE 877](#).

26. --Guardians

Claim of de facto guardian, made in guardianship proceedings, for expenditures on behalf of ward constituted charge arising during administration of ward's estate, rather than claim of creditor, and benefits paid by Veterans Administration [now Department of Veterans Affairs] were not exempt from such claim. [In re Guardianship of Giambastiani \(1934\) 1 Cal App 2d 639, 37 P2d 142](#).

Guardian of incompetent veteran was not "creditor," and estate was not exempt from payment of compensation to guardian under order of court. [Hines v McKenzie \(1933\) 216 Iowa 1388, 250 NW 687](#).

27. --Spouses

Divorced wife of veteran claiming payment of statutory dower in personalty out of funds in hands of his guardian received from United States government as compensation was not creditor, and fund was subject to appropriation in payment of her claim, notwithstanding fact that government had allotted her \$ 30 per month out of veteran's disability compensation. [Stone v Stone \(1934\) 188 Ark 622, 67 SW2d 189](#).

Funds paid to war veteran as compensation were not exempt from demand for alimony, wife not being creditor. [Hollis v Bryan \(1932\) 166 Miss 874, 143 So 687](#).

Alimony due wife under decree of divorce, even where solely for support of child, did not render divorced wife a "creditor," and fact that Veterans' Administration [now Department of Veterans Affairs] had made allotment from such compensation to child did not prevent seizure. [In re Gardner \(1936\) 220 Wis 493, 264 NW 643](#).

28. Duration of exemption

Fund is protected only while in course of transmission to pensioner, and when it has been paid to him it is liable to seizure. [McIntosh v Aubrey \(1902\) 185 US 122, 46 L Ed 834, 22 S Ct 561](#).

Under terms of [38 USCS § 3101](#) [now [38 USCS § 5301](#)], exemption clearly applies to funds within terms of statute after payment thereof by government and after receipt thereof by veteran, his guardian, or other fiduciary. [Hannah v Hannah \(1940\) 191 Ga 134, 11 SE2d 779](#); [James v James \(1942, Hardin Co\) 69 Ohio App 485, 24 Ohio Ops 206, 37 Ohio L Abs 66, 44 NE2d 368](#).

Although money derived from pension is protected by congressional enactment against demands of creditors of pensioner while it remains with pension office, or in hands of any officer or agent thereof, or is in course of transmission to such pensioner, after it reaches his hands, it becomes same as money derived from other sources. [Sohl v Wainwright Trust Co. \(1921\) 76 Ind App 198, 130 NE 282](#).

38 USCS § 5301

Exemption from creditors' claims is inapplicable to funds which have come into possession of veteran or his guardian. [Department of Public Welfare use of Central State Hospital v Allen \(1934\) 255 Ky 301, 74 SW2d 329.](#)

Amount of pension money may be taken into account in estimating income for purpose of fixing alimony, provision that pension "shall inure wholly to his benefit" being effectuated by payment to him. [Wheeler v Wheeler \(1912, NJ Ch Ct\) 94 A 85; Bailey v Bailey \(1904\) 76 Vt 264, 56 A 1014.](#)

Pension is protected only in transit to pensioner, and no further. [Omans v Beeman \(1910\) 66 Misc 625, 124 NYS 166.](#)

Pension check given by pensioner to his wife is not subject to attachment. [Bullard v Goodno \(1901\) 73 Vt 88, 50 A 544.](#)

29. Bankruptcy of recipient of benefits and effect thereof

Pension money in hands of bankrupt as it was received, at time petition in bankruptcy was filed, is exempt. [In re Bean \(1900, DC Vt\) 100 F 262.](#)

Pension moneys, received by bankrupt before filing his petition, are not exempt, even though they have not been invested or intermingled with other funds. [In re Jones \(1909, DC Me\) 166 F 337.](#)

Pension is something against which trustee in bankruptcy has no claim. [In re Hoag \(1915, DC NY\) 227 F 480.](#)

Proceeds of bonds paid to veteran are exempt from claims of creditors of veteran on his adjudication as bankrupt. [In re Houchins \(1937, DC Va\) 17 F Supp 556.](#)

Where debtor agreed to pay creditor his future monthly retirement and veterans disability payments in exchange for lump sum payment, agreement did not create express trust and agreement was subject to discharge because: (1) creditor's argument that agreement created purported trust failed because there was no trust res as rights to military retired pay and veterans' disability benefits were neither entitlements nor vested rights, (2) [37 USCS § 701\(c\)](#) and [38 USCS § 5301\(a\)\(1\)](#) restricted debtor's right to transfer benefits, and (3) creditor's reliance on Uniformed Services Former Spouses' Protection Act was misplaced because nothing in that statute suggested that Congress intended it to apply outside domestic relations context. [Bowden v Structured Invs. Co., LLC \(In re Bowden\) \(2004, BC WD Wash\) 315 BR 903.](#)

Where debtors elected to use exemptions specified in [11 USCS § 522\(d\)](#) they were precluded from invoking federal non-bankruptcy exemptions, except where non-Title 11 law explicitly provided for protection of debtors in bankruptcy; here, creditor met its burden of proof that exemptions were not properly claimed, [Fed. R. Bankr. P. 4003\(c\)](#); therefore, debtors, having elected federal exemptions, could not claim exemptions for bank military retirement account under § 522(d)(10)(E) and [38 USCS § 5301](#). [In re Schena \(2010, BC DC NM\) 439 BR 776, 64 CBC2d 714, CCH Bankr L Rptr P 81865.](#)

Bankruptcy court disagreed with bankruptcy trustee's argument that Georgia domiciliary who declared Chapter 7 bankruptcy was not allowed under [38 USCS § 5301](#) to exempt VA retirement and disability payments he received pre-petition because he placed those funds in bank accounts where they were commingled with nonexempt funds, but required debtor to show that money in his bank accounts could be traced to payments he received from [VA. In re McFarland \(2012, BC SD Ga\) 481 BR 242.](#)

30. Attorney fee claims

Lien provision in fee agreement between veteran and counsel granting attorney lien on veteran's claim for benefits and any sum recovered is unreasonable and unenforceable under [38 USCS § 7263\(d\)](#) because it conflicts with [38](#)

38 USCS § 5301

[USCS § 5301\(a\)](#) and [38 USCS § 5904\(d\)\(3\)](#). [Busch v West \(1999\) 12 Vet App 552, 1999 US App Vet Claims LEXIS 950](#).

Award of alimony out of pension money was valid, but attorney fees could not be allowed, as relationship of debtor and creditor existed as to that item. [Stone v Stone \(1934\) 188 Ark 622, 67 SW2d 189](#).

Claim on assignment of portion of war risk insurance covering attorney fees in excess of amount fixed by rules is disallowed. [In re Zadurian's Estate \(1931\) 142 Misc 24, 253 NYS 652](#).

Proceeds of government life insurance policy were chargeable with attorneys fees for legal services which included collection of insurance proceeds. [In re Roosevelt's Estate \(1947\) 191 Misc 840, 77 NYS2d 252](#).

Unpublished Opinions

Unpublished: To extent that fee agreement provided that contingent fee would have been taken from future Department of Veterans Affairs benefits, it was unreasonable under [38 USCS § 7263\(d\)](#) because it was not permitted by law and was thus unenforceable. [Yracheta v Principi \(2004, US\) 2004 US App Vet Claims LEXIS 841](#).

31. Miscellaneous

District court erred in dismissing [42 USCS § 1983](#) claim brought by inmate against prison employees who deducted funds derived from inmate's Veteran's Administration disability benefits check to pay fine to New Jersey Victims of Crime Compensation Board pursuant to [N.J. Stat. Ann. § 2C:43-3.1](#), as employees' action was levy or seizure of benefits prohibited by [38 USCS § 5301\(a\)](#). [Higgins v Beyer \(2002, CA3 NJ\) 293 F3d 683](#).

Proceeds of war risk insurance and allowances for military services were exempt, and levy and sale were enjoined. [Rucker v Merck \(1931\) 172 Ga 793, 159 SE 501](#) (criticized in [City Council of Augusta v Ransom \(1934\) 179 Ga 179, 175 SE 497](#)) and (criticized in [Porter v Watson \(1935\) 51 Ga App 848, 181 SE 680](#)) and (criticized in [Liles v H. K. Mulford Co. \(1935\) 52 Ga App 674, 184 SE 396](#)).

Sureties of veteran's administrator are liable for payment to creditor made by administrator with compensation which was part of veteran's estate. [Morris v National Surety Co. \(1934\) 179 Ga 902, 177 SE 677](#).

B. Application of Exemption to Funds in Possession of Particular Persons or Entities

32. Administrators and executors

Sureties of veteran's administrator are liable for payment to creditor made by administrator with compensation which was part of veteran's estate. [Morris v National Surety Co. \(1934\) 179 Ga 902, 177 SE 677](#).

Pension fund in hands of administrator of estate of pensioner was not exempt. [Appanoose County v Carson \(1930\) 210 Iowa 801, 229 NW 152](#).

Proceeds of war risk insurance in hands of administrator of dead veteran were not subject to claims of creditors of either insured or distributee of fund. [Mixon v Mixon \(1932\) 203 NC 566, 166 SE 516](#).

Where beneficiary in war risk insurance policy died before insured, and no other designation of beneficiary were made by insured, proceeds in hands of personal representative of insured are not exempt from claims of creditors. [In re Bollow's Estate \(1936\) 223 Wis 262, 270 NW 82](#), 109 ALR 429.

33. Guardians or committees

38 USCS § 5301

Payments made by United States under National Service Life Insurance on life of deceased soldier, while in hands of guardian of estate of deceased's minor child, were exempt from claims of creditors and were not subject or liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by beneficiary. [Maddox v Elliott \(1946\) 248 Ala 271, 27 So 2d 498.](#)

Monies paid to guardian of mentally incompetent veteran under [38 USCS § 3101](#) [now [38 USCS § 5301](#)] could not be subjected by garnishment against guardian for payment of judgment obtained by creditor against such non compos mentis. [Allen v Glover \(1974\) 293 Ala 377, 304 So 2d 172.](#)

Payment to guardian did not leave fund in custody of government so as to be exempt under Act June 7, 1924, § 22. [State ex rel. Smith v Board of Comm'rs \(1931\) 132 Kan 233, 294 P 915](#), cert den [\(1931\) 283 US 855, 75 L Ed 1462, 51 S Ct 648.](#)

Money in hands of committee for insane veteran, which had been paid him by government as compensation for disabled veteran, was subject to claims for alimony and other debts of soldier. [Arms' Committee v Arms \(1935\) 260 Ky 634, 86 SW2d 542.](#)

Accumulation of disability benefits paid to veteran's committee during lifetime of veteran were not exempt from claims of creditors of veteran after his death. [In re Cerello's Estate \(1935\) 155 Misc 709, 281 NYS 599.](#)

Guardian of person non compos mentis, who was entitled to pension from United States, was not bound to apply pension money in his hands to payment of pre-existing debts of his ward. [Grandview Hospital Co. v Clark \(1928, Hamilton Co\) 30 Ohio App 30, 164 NE 67.](#)

Principal of pension in hands of guardian was exempt, while interest thereon was not. [Appanoose County v Henke \(1929\) 207 Iowa 835, 223 NW 876.](#)

Guardian had no right to waive exemption, and his investment of fund and commingling of principal and interest did not render part of fund representing principal subject to execution, and where guardian had made expenditures, it would be presumed that they are made from non-exempt interest. [Appanoose County v Henke \(1929\) 207 Iowa 835, 223 NW 876.](#)

34. Designated beneficiaries or distributees

Sum representing present value of unpaid installments of War Risk insurance paid to estate of insured were not exempt from claims of creditors of distributees of estate once such sums were distributed by estate. [Funk v Luithle \(1929\) 58 ND 416, 226 NW 595.](#)

Exemption of proceeds of War Risk insurance from claims of creditors operated in favor of substituted beneficiary where designated beneficiary died in lifetime of insured. [Perrydore v Hester \(1926\) 215 Ala 268, 110 So 403.](#)

Pension moneys, received from federal government, were exempt in hands of widow of deceased pensioner. [Surplus v Remmele \(1949\) 194 Misc 1036, 87 NYS2d 651.](#)

Where unpaid installments on veteran's policy were paid to his estate upon his death and distributed under laws of Texas by administrator, share of distributee, who was not beneficiary, was subject to garnishment. [Vita v Morris \(1934, Tex Civ App\) 75 SW2d 157.](#)

Where beneficiary in policy died before receiving all installments, and balance due was paid in lump sum to administratrix, heir of insured took as beneficiary under policy and his interest was not subject to garnishment. [Hunt v Slagle \(1932\) 45 Ga App 470, 165 SE 287](#) (criticized in [Porter v Watson \(1935\) 51 Ga App 848, 181 SE 680.](#))

38 USCS § 5301

While proceeds of insurance, in hands of ultimate beneficiaries, were not exempt, they were exempt where sought to be reached by claim against estate of insured. *Succession of Robinson* (1931) 16 La App 82, 132 So 261.

35. Estate of decedent

Where deceased soldier had taken out contract of yearly renewable term war risk insurance payable to himself as beneficiary, payments to his estate were exempt from claims of creditors and allowances for costs and charges of administration. [*Haley v United States* \(1942, DC Mont\) 46 F Supp 4](#), vacated on other grounds (1944, CA9 Mont) [145 F2d 235](#).

Purpose of exemption is protection of veteran, and exemption should not be extended to deceased veteran's estate. [*In re Buxton's Estate* \(1944\) 246 Wis 97, 16 NW2d 399, 33 AFTR 294](#).

War risk insurance becoming part of estate of intestate was to be distributed according to applicable laws of descent, subject to claims of creditors. [*In re Hallbom's Estate* \(1933\) 189 Minn 383, 249 NW 417](#), affd [\(1934\) 291 US 473, 78 L Ed 921, 54 S Ct 497](#).

Installments which became payable to estate of insured soldier upon death of designated beneficiary were subject to garnishment by creditors of veteran. [*Granite City Bank v Burt* \(1935\) 52 Ga App 308, 183 SE 125](#).

Proceeds of policy payable to estate were not exempt from claims of creditors after death of insured. [*First Nat'l Bank v Cann's Ex'x* \(1932\) 247 Ky 618, 57 SW2d 461](#).

War risk insurance proceeds, after death of both insured and beneficiaries, became asset generally of insured's estate and was available for payment of claims by creditors of deceased soldier. [*In re Hallbom's Estate* \(1933\) 189 Minn 383, 249 NW 417](#), affd [\(1934\) 291 US 473, 78 L Ed 921, 54 S Ct 497](#).

Proceeds of NSLI policy payable to insured's estate were benefits payable under laws relating to veterans and exempt within meaning of predecessor to [38 USCS § 3101](#) [now [38 USCS § 5301](#)]. [*In re Frazier's Estate* \(1953\) 204 Misc 542, 124 NYS2d 295](#).

36. Miscellaneous

Exemption granted does not extend beyond insured and designated beneficiary, and, if such beneficiary dies before receiving all installments, remainder thereof is not exempt from claims of creditors of deceased insured. [*Pagel v Pagel* \(1934\) 291 US 473, 78 L Ed 921, 54 S Ct 497](#); [*In re Fox's Estate* \(1934\) 62 SD 586, 255 NW 565](#).

Pension money in possession of pensioner was exempt from seizure. [*Folschow v Werner* \(1881\) 51 Wis 85, 7 NW 911](#).

Exemption was not allowed to heirs at law of person to whom award was made under policy. [*Dunagin's Guardianship v East Mississippi State Hospital* \(1933\) 167 Miss 766, 150 So 370](#).

C. Application of Exemption to Particular Dispositions of Funds

37. Deposits in financial institutions

Payments made by Veterans' Administration [now Department of Veterans Affairs] to incompetent Air Force veteran as disability compensation due to him and deposited by veteran's committee in accounts in federal savings and loan associations were exempt from attachment by judgment creditor of veteran by virtue of [38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)] where particular savings and loan associations involved permitted withdrawals from

38 USCS § 5301

accounts as quickly as withdrawal from checking account, integrity of deposits was assured by federal supervision of associations plus federal insurance of accounts, deposits were neither of speculative character nor time deposits at interest, and deposits were only funds available to meet veteran's needs. [Porter v Aetna Casualty & Surety Co. \(1962\) 370 US 159, 8 L Ed 2d 407, 82 S Ct 1231.](#)

Exemption of veterans' benefits from claims of creditors extended to payments deposited in bank by beneficiary or his guardian. [Derzis v Vafes \(1933\) 227 Ala 471, 150 So 461; Hannah v Hannah \(1940\) 191 Ga 134, 11 SE2d 779; Speer v Pierce \(1934\) 18 Tenn App 351, 77 SW2d 77.](#)

Money paid by government to guardian and deposited in bank by him was not subject to garnishment. [Wilson v Sawyer \(1928\) 177 Ark 492, 6 SW2d 825.](#)

Deposit of pension money in mutual savings bank was exempt from execution. [Price v Society for Sav. \(1894\) 64 Conn 362, 30 A 139.](#)

Under predecessor to [38 USCS § 3101](#) [now [38 USCS § 5301](#)] exempting proceeds of war risk insurance from claims of creditors, money paid over to beneficiary and deposited by her in bank was not subject to garnishment. [Payne v Jordan \(1921\) 152 Ga 367, 110 SE 4](#), subsequent app (1927) [36 Ga App 787, 138 SE 262](#) (criticized in [Trotter v Tennessee \(1933\) 290 US 354, 78 L Ed 358, 54 S Ct 138](#)) and (criticized in [Porter v Watson \(1935\) 51 Ga App 848, 181 SE 680](#)).

Bank account, composed solely of proceeds of pension checks, was not exempt from claim of state for payment of charges assessed under its mental health act for care of incompetent veteran in state hospital. [Department of Public Welfare v Sevcik \(1960\) 18 Ill 2d 449, 164 NE2d 10.](#)

Dismissal of count in complaint whereby plaintiff challenged provisions of money manager agreement authorizing defendant bank to make charges against funds on deposit in plaintiff's checking account on theory that some of funds in that account derived from veterans' disability compensation payments made to him, and these were exempt, under [38 USCS § 3101](#) [now [38 USCS § 5301](#)], from kinds of charges purportedly authorized by money manager agreement, was correct where count failed to allege that defendant had in fact made any charges against funds in plaintiff's account. [Rush v Casco Bank & Trust Co. \(1975, Me\) 348 A2d 237.](#)

Exemption of veterans' benefits from claims of creditor extended to payments deposited in bank account which was subject to check or draft, and did not draw interest. [In re Bowen \(1943\) 141 Ohio St 602, 26 Ohio Ops 173, 49 NE2d 753.](#)

Back compensation for disability, received by veteran and deposited in bank by his mother after he turned it over to her, was exempt from creditors. [Speer v Pierce \(1934\) 18 Tenn App 351, 77 SW2d 77.](#)

Pension money deposited in name of wife in savings account was subject to attachment by creditor of pensioner. [Spelman v Aldrich \(1878\) 126 Mass 113.](#)

Pension money mingled with other money of pensioner in deposit in bank could be taken by bank in satisfaction of debt owing from pensioner to bank. [Pentz v First Nat'l Bank \(1920\) 75 Pa Super 1.](#)

38. Investments and purchases

Deposit of veterans' benefits by veteran in his name as "attorney" did not amount to investment of funds so as to subject deposit to claims of creditors. [Williams v United States Fidelity & Guaranty Co. \(1939\) 71 App DC 9, 107 F2d 210.](#)

38 USCS § 5301

Benefits, which are readily available as needed for support and maintenance, and retain qualities of moneys, and which have not been converted into permanent investments, are exempt from claims. [District of Columbia v Phillips \(1965, App DC\) 121 US App DC 11, 347 F2d 795.](#)

Exemption of veterans' benefits from claims of creditors did not extend to property purchased with such benefits or to investment of such benefits. [Hannah v Hannah \(1940\) 191 Ga 134, 11 SE2d 779; Hale v Gravallesse \(1960\) 340 Mass 722, 166 NE2d 557; In re Bowen \(1943\) 141 Ohio St 602, 26 Ohio Ops 173, 49 NE2d 753.](#)

Exemption did not extend to savings account and savings bonds growing out of deposits and purchases of proceeds of veteran's disability pension checks. [Hale v Gravallesse \(1960\) 340 Mass 722, 166 NE2d 557.](#)

39. --Bonds or notes

Negotiable notes and United States bonds purchased for incompetent World War veteran by his guardian out of benefits paid under Federal laws relating to such veterans, and held as investments, were not exempt from execution upon judgment against veteran, under predecessor to [38 USCS § 3101](#) [now [38 USCS § 5301](#)] exempting "payments of benefits due or to become due" and "such payments made to, or on account of, a beneficiary." [Carrier v Bryant \(1939\) 306 US 545, 83 L Ed 976, 59 S Ct 707.](#)

Government bonds owned by prisoner were not exempt from Michigan Prison Reimbursement Act though they were purchased with funds received by prisoner's guardian from Veterans' Administration [now Department of Veterans Affairs]. [Auditor General v Olezniczak \(1942\) 302 Mich 336, 4 NW2d 679.](#)

Funds received by guardian of veteran were not exempt after being invested in mortgages or United States bonds. [In re Gardner \(1936\) 220 Wis 493, 264 NW 643.](#)

40. --Real or personal property

Benefits in form of pension and war risk insurance paid to veteran or his guardian by federal government and deposited in checking account in bank were exempt from claims of creditors; but such benefits, when placed in savings account at interest or converted into real estate, lost their exempt status and became investments amenable to creditor's demands. [In re Bowen \(1943\) 141 Ohio St 602, 26 Ohio Ops 173, 49 NE2d 753.](#)

Automobile, purchased by veteran with money received as compensation from United States, was subject to execution for debt. [Liles v H. K. Mulford Co. \(1935\) 52 Ga App 674, 184 SE 396.](#)

Property purchased with pension money was liable to sale on execution. [Cavanaugh v Smith \(1882\) 84 Ind 380; Faurote v Carr \(1886\) 108 Ind 123, 9 NE 350; Johnson v Elkins \(1890\) 90 Ky 163, 13 SW 448.](#)

Property purchased by veteran with disability benefits funds received from government was not exempt from claims of creditors. [In re Guardianship of Letourneau \(1941\) 238 Wis 473, 300 NW 248](#) (ovrld in part on other grounds by [In re Guardianship of Bemowski \(1958\) 3 Wis 2d 133, 88 NW2d 22\).](#)

Real estate of veteran was not exempt from levy though purchased with benefit payments received from federal government. [McCurry v Peek \(1936\) 54 Ga App 341, 187 SE 854; Henderson v Missoula \(1938\) 106 Mont 596, 79 P2d 547, 116 ALR 1425.](#)

Land, standing in name of wife, which had been purchased with pension money of her husband, was liable to execution for husband's debts. [Crow v Brown \(1890\) 81 Iowa 344, 46 NW 993.](#)

38 USCS § 5301

Where pensioner gave his pension certificate to his wife, with which she purchased real estate in her own name, such property was not subject to execution on judgment against pensioner. [Marquardt v Mason \(1893\) 87 Iowa 136, 54 NW 72.](#)

Homestead acquired with pension money could be sold on execution. [Curtis v Helton \(1900\) 109 Ky 493, 59 SW 745; Friend v Garcelon \(1884\) 77 Me 25.](#)

Land was not exempt merely because price was paid with pension money. [Hudspeth v Harrison \(1884\) 13 Ky Ops 25](#) (ovrld in part on other grounds by [Matthews v Lewis \(1981, Ky\) 617 SW2d 43](#)).

Provisions exempting from levy, execution, and seizure proceeds of veterans adjusted service compensation and disability compensation did not extend to realty purchased by veteran with proceeds of such compensation. [James v James \(1942, Hardin Co\) 69 Ohio App 485, 24 Ohio Ops 206, 37 Ohio L Abs 66, 44 NE2d 368.](#)

D. Application of Exemption to Claims for Support or Maintenance

1. Veteran

41. Governmental entities' claims

Benefits of veteran serviceman were not exempt from claims of state agency that undertook full responsibility for veteran's care and maintenance. [Department of Health & Rehabilitative Services v Davis \(1980, CA5 Ala\) 616 F2d 828](#) (criticized in [Reames v Oklahoma ex rel. Okla. Health Care Auth. \(2005, CA10 Okla\) 411 F3d 1164](#)).

State or public institution was not entitled to have such part of its claim for care and maintenance of veteran as accrued prior to appointment of veteran's guardian or committee paid out of funds in hands of guardian or committee realized from veterans' benefit payments. [District of Columbia v Reilly \(1957, App DC\) 102 US App DC 9, 249 F2d 524; In re Guardianship of Bemowski \(1958\) 3 Wis 2d 133, 88 NW2d 22.](#)

Rules adopted by boards of commissioners of soldiers' homes, requiring inmates to contribute portion of their pension money to support of home, did not violate [38 USCS § 3101](#) [now [38 USCS § 5301](#)]; state soldiers' home could require inmates who received pensions to surrender all of it over \$ 6 per month, to be paid to certain relatives, if any, or if no such specified relatives, be credited to support fund. [Ball v Evans \(1896\) 98 Iowa 708, 68 NW 435.](#)

[38 USCS § 3101](#) [now [38 USCS § 5301](#)] did not bar recovery by state from guardian of veteran, all of whose estate was derived from veteran's benefits, for services rendered in caring for veteran in state mental hospital. [State v Bean \(1963\) 159 Me 455, 195 A2d 68.](#)

State could recover under state prison reimbursement statute, out of exempt funds, for maintenance and support of veteran in state prison. [Auditor General v Olezniczak \(1942\) 302 Mich 336, 4 NW2d 679.](#)

Money in estate of deceased veteran, which came from federal veteran's pension payable to decedent during his lifetime, was not exempt from judgment claim recovered by state on account of care and treatment furnished veteran in state hospital. [State v Monaco \(1963, Law Div\) 81 NJ Super 448, 195 A2d 910.](#)

State could enforce claim against funds received by incompetent veteran based on state statutory liability on part of committee to pay reasonable cost of incompetent's maintenance and treatment in state institution. [In re Simpson \(1946\) 270 App Div 902, 61 NYS2d 529, app dismd \(1947\) 296 NY 831, 72 NE2d 20.](#)

Exemption of veterans benefits from claims of creditor applied even to claim for care and maintenance of incompetent veteran in state institution. [In re Cervantes \(1940\) 174 Misc 594, 22 NYS2d 116.](#)

38 USCS § 5301

Proceeds of veteran's disability pension, accrued and placed on deposit in account, which, upon such veteran's death, was paid to his administrator, was not exempt from claim by state for such veteran's care and maintenance. [State v Wendt \(1953\) 94 Ohio App 440, 52 Ohio Ops 150, 116 NE2d 30.](#)

State was attributed special status because it had provided very support for which veterans' benefits were intended by providing incompetent veteran with care and maintenance in state mental institution where state had no choice but to accept veteran and provide necessary support since it was engaged in governmental function and could not, as private individual or institution might, refuse services prior to payment so that deceased incompetent veteran's estate was subject to state claims for cost of care and maintenance. [State ex rel. Eastern State Hospital v Beard \(1979, Okla\) 600 P2d 324.](#)

Exemption extended to claim for care and maintenance furnished to veteran as inmate of state institution. [In re Guardianship of Letourneau \(1941\) 238 Wis 473, 300 NW 248](#) (ovrld in part on other grounds by [In re Guardianship of Bemowski \(1958\) 3 Wis 2d 133, 88 NW2d 22.](#))

Exemption in favor of veteran did not apply to claim for care and support furnished to incompetent veteran by state while such veteran was confined to state mental institution and under guardianship. [In re Guardianship of Bemowski \(1958\) 3 Wis 2d 133, 88 NW2d 22.](#)

42. Miscellaneous

Assignment of his pension certificate by inmate of national home for volunteer soldiers did not give home right to collect pension for any period of time other than that during which he remained inmate of home. [\(1879\) 16 Op Atty Gen 374.](#)

Exemption does not extend to nonresident adult heirs of veteran as against claim for board and lodging furnished veteran. [In re Cerello's Estate \(1935\) 155 Misc 709, 281 NYS 599.](#)

Insurance paid into veteran's estate after death of beneficiary was not subject to claim for lodging and care alleged to have been furnished veteran during years 1906 to 1918. [In re McCormick's Estate \(1938\) 169 Misc 672, 8 NYS2d 179.](#)

Wife could collect judgment for support money from fund consisting exclusively of money furnished by Veterans' Administration [now Department of Veterans Affairs], for care, maintenance, and support of incompetent veteran husband. [Pishue v Pishue \(1949\) 32 Wash 2d 750, 203 P2d 1070.](#)

2. Dependents of Veteran

43. Generally

Obligation of father to support his minor children was not exempted debt, and benefits due veteran would be subject to claims for their care. [Gaskins v Security-First Nat'l Bank \(1939\) 30 Cal App 2d 409, 86 P2d 681.](#)

Pensioner could be compelled to use pension to support wife. [Tully v Tully \(1893\) 159 Mass 91, 34 NE 79; Martin v Hurlburt & Rutland Sav. Bank \(1888\) 60 Vt 364, 14 A 649.](#)

Exemption does not prevent payment of support for infant from funds received by her from Veterans' Administration [now Department of Veterans Affairs]. [In re Delano's Guardianship \(1952, Sur\) 114 NYS2d 183.](#)

44. Governmental entities' claims

38 USCS § 5301

Action by Commissioner of Public Assistance to recover amount of aid furnished defendant, on statutory ground that she had received \$ 10,000 as beneficiary of war risk insurance policy, was not dismissible on ground that insurance received was exempt from claims of creditors, levy, and execution. [King v Sturtevant \(1954\) 206 Misc 153, 134 NYS2d 605.](#)

[38 USCS § 3101](#) [now [38 USCS § 5301](#)] did not bar recovery of claims of state hospital against incompetent parent of deceased serviceman under [38 USCS § 321](#). [Cruce v Arkansas State Hospital \(1966\) 241 Ark 680, 409 SW2d 342.](#)

County was entitled to collect for care of deceased widow of veteran, where assets of estate was pension money. [In re Todd's Estate \(1952\) 243 Iowa 930, 54 NW2d 521.](#)

Exemption did not extend to claim of state for maintenance of insane beneficiary at insane hospital, since purpose of pension was to supply support and maintenance. [In re Lewis' Estate \(1938\) 287 Mich 179, 283 NW 21.](#)

In action to receive compensation for services rendered in care and maintenance of incompetent veteran's deceased mother by state hospital, income accumulated by veteran through pension fund was subject to claim by hospital. [In re Thellusson \(1947\) 190 Misc 470, 74 NYS2d 837.](#)

Committee of incompetent veteran could be required to pay state hospital for care, maintenance, and medical treatment of veteran's wife out of income, current or accumulated, received from pension funds or investment thereof. [In re Shinberg \(1947, Sup\) 76 NYS2d 334.](#)

Though deceased's estate consisted of items accumulated from proceeds of pension as widow of Civil War veteran, state department could be allowed claim against her estate for her care and maintenance while she was confined in county asylum, as against contention that exemption extended to estate of deceased pensioner. [In re Buxton's Estate \(1944\) 246 Wis 97, 16 NW2d 399, 33 AFTR 294.](#)

45. Court orders

State statute construed by state courts as authorizing award of child support from veteran's disability benefits which are his sole income does not conflict with [38 USCS § 3101](#) [now [38 USCS § 5301](#)] since Congress intended veterans' disability benefits to used in part to support veteran's family; under Supremacy Clause of [U.S. Constitution \(Art VI, Cl 2\)](#) state statute is not preempted by [38 USCS § 3101](#) [now [38 USCS § 5301](#)] providing that veterans' benefits payments shall not be liable to "attachment, levy, or seizure" where § 3101 [now § 5301] does not apply to shield veterans' disability payments from seizure under otherwise valid child support order. [Rose v Rose \(1987\) 481 US 619, 95 L Ed 2d 599, 107 S Ct 2029.](#)

Award of alimony pendente lite is not "attachment, levy, or seizure" under [38 USCS § 3101\(a\)](#) [now [38 USCS § 5301\(a\)](#)], since award of alimony pendente lite is legal enforcement of marital duty rather than process for collection of debt. [Collins v Collins \(1984, La App 3d Cir\) 458 So 2d 1008.](#)

Court-appointed guardian of incompetent veteran may make voluntary payments of spousal support in accordance with California court order from bank account representing accumulated compensation payments, but funds are not subject to direct attachment or involuntary diversion except to extent permitted under [42 USCS § 662\(f\)\(2\)](#). VA GCO 4-84.

Exemption was inapplicable to children's support payments enforceable by civil contempt only. [Dillard v Dillard \(1960, Tex Civ App Austin\) 341 SW2d 668.](#)

46. Miscellaneous

38 USCS § 5301

Claims for support and care of minor children of incompetent veteran were not subject to exemption of veteran's benefits from claims of creditors, since obligation of father to support minor children was not debt within purview of exemption statute, such obligation growing out of parental status and public policy. [Gaskins v Security-First Nat'l Bank \(1939\) 30 Cal App 2d 409, 86 P2d 681.](#)

Award of alimony out of pension money was valid, but attorney fees could not be allowed, as relationship of debtor and creditor existed as to that item. [Stone v Stone \(1934\) 188 Ark 622, 67 SW2d 189.](#)

Veterans Administration's reduction of disability benefits payable to incarcerated veteran was upheld on finding that apportionment of those benefits to veteran's dependents does not violate nonassignability provision in [38 USCS § 5301\(a\)\(1\)](#) because § 5301(a)(1) relates to payments of benefits "due or to become due," and benefits that are apportioned to veteran's dependents are not "due or to become due" to veteran. [Ferenc v Nicholson \(2006\) 20 Vet App 58, 2006 US App Vet Claims LEXIS 303.](#)

V. COLLECTION OF CLAIMS OF UNITED STATES

47. Generally

Government can charge fund in its possession with claims it has against fund's owner. [Di Silvestro v United States \(1966, ED NY\) 268 F Supp 516,](#) rev'd on other grounds (1968, CA2 NY) [405 F2d 150.](#)

Veterans Administration [now Department of Veterans Affairs] is not entitled to setoff for indebtedness from benefits payable under laws it administers absent specific authorization. 1954 ADVA 949.

Except as to overpayments arising with respect to Veterans' Administration [now Department of Veterans Affairs] benefits no payments can be offset to liquidate indebtedness owed United States except where beneficiary voluntarily requests deduction from benefit amount otherwise payable. VA GCO 29-79.

48. Fines

Sums due United States from veteran on account of fine imposed in criminal prosecution may not be setoff against, or withheld from, sums awarded veteran as disability compensation. [McElhany v United States \(1944\) 101 Ct Cl 286.](#)

United States may not withhold amount of fine imposed against veteran from his monthly disability compensation payments, and veteran's claim to recover such wrongfully withheld payments accrues when amounts are withheld on first day of month following month for which amounts became due. [Hermann v United States \(1949\) 113 Ct Cl 54, 81 F Supp 830.](#)

49. Insurance and payments thereon

Government may recover on counterclaim for amounts erroneously paid to beneficiary under insurance contract where beneficiary brought suit upon government's refusal to pay further installments. [Cummings v United States \(1929, DC Minn\) 34 F2d 284.](#)

Where payments of insurance of deceased veteran are erroneously divided among his half brothers and sisters without taking into account children of deceased half sister, amounts which should have been paid to children may be deducted when final settlement is made by lumpsum payment. [Bowling Green Trust Co. v United States \(1939, DC Ky\) 27 F Supp 970.](#)

50. --Dividends and premiums

Dividends payable under National Service Life Insurance policy are benefits payable by Veterans' Administration [now Department of Veterans Affairs] under law it administers and relating to veterans, and hence such dividends are not subject to setoff or claims of United States arising under any other act or acts administered by any agency other than Veterans' Administration [now Department of Veterans Affairs]. 1949 ADVA 832.

Though withholding of premiums forwarded by or for veteran is not authorized in order to reinstate lapsed policy of insurance, to purchase additional insurance, or to liquidate overpayment of compensation, pension, subsistence allowance, readjustment allowance, or indebtedness arising out of loan guaranty or insurance under former [38 USC §§ 694](#) et seq., withholding dividends or premiums refundable because of retroactive finding of total disability is proper in liquidating such overpayments or illegal payments. 1949 ADVA 804.

51. Loan guarantees

Proceeds paid pursuant to loan guaranty under former [38 USCS §§ 694](#) et seq. and not recouped from property are recoverable from veteran's pension or insurance payments, unless Administrator [now Secretary] in his discretion determines that veteran was not at fault and that such recovery would defeat purposes of benefits otherwise payable or would be against equity or good conscience; but such payments are not recoverable from pension benefits payable to veteran's widow or dependents or from any insurance payable to beneficiary after his death. 1944 ADVA 607.

Pension benefits payable to widow of serviceman killed in World War II for herself and minor children were subject to offset for amount paid pursuant to loan guaranteed under Servicemen's Readjustment Act of 1944 ([38 USCS §§ 1801](#) et seq.); however, benefits payable to or for minor children in their own right were not subject to offset if widow was remarried, even though such payments were made to her. 1953 ADVA 925.

52. Miscellaneous

Payments made to deceased veteran's wife as "dependent widowed mother," by reason of her son and daughter, stepchildren of veteran, could be set off against balance sought by widow as administratrix of her husband's estate, where children had been inmates in veteran's home and not members of soldier's household, but rule was otherwise as to payments made to daughter, and to mother as legal guardian of her son, there being no mutuality between claim and setoff as to such payments. [United States v Mroch \(1937, CA6 Ohio\) 88 F2d 888](#).

It was error to satisfy veteran's indebtedness for unaccounted vocational training property out of compensation due him before reinstating his war risk insurance contract, rather than from payments due under insurance contract upon its reinstatement, which error greatly lessened amount of insurance revived. [United States v Robinson \(1939, CA9 Cal\) 103 F2d 713](#).

Whether or not pension payments or disability compensation erroneously received by plaintiff from Veterans' Administration should be set off against salary payments due him from it is matter for administrative settlement through consideration and decision by Administrator of Veterans' Administration [now Secretary of Veterans Affairs] and not by courts. [Egan v United States \(1952\) 123 Ct Cl 460, 107 F Supp 564](#), and on other grounds [\(1952\) 123 Ct Cl 472, 112 F Supp 958](#).

Claim of United States arising from payment of settlement check is not overpayment or illegal payment arising under laws administered by Veterans Administration [now Department of Veterans Affairs] and related to veterans under [38 USCS § 3101\(b\)](#) [now [38 USCS § 5301\(b\)](#)] for purposes of recovery of such claim by offset against Veterans Administration [now Department of Veterans Affairs] benefits; such claim may not be considered indebtedness arising from participation in benefits program administered by Veterans Administration [now

Department of Veterans Affairs] for purposes of offset under authority of [38 USCS § 3114\(a\)](#) [now [38 USCS § 5314\(a\)](#)]. VAG CO 9-83.

Research References & Practice Aids

Code of Federal Regulations:

Fiscal Service, Department of the Treasury--Garnishment of accounts containing Federal benefit payments, [31 CFR 212.1](#) et seq.

Department of Veterans Affairs--United States Government life insurance, [38 CFR 6.1](#) et seq.

Department of Veterans Affairs--National Service life insurance, [38 CFR 8.0](#) et seq.

Department of Veterans Affairs--Vocational rehabilitation and education, [38 CFR 21.1](#) et seq.

Related Statutes & Rules:

This section is referred to in [38 USCS § 1908](#); [42 USCS § 417](#).

Am Jur:

[9A Am Jur 2d, Bankruptcy § 1506](#).

[30 Am Jur 2d, Executions and Enforcements of Judgments § 573](#).

[31 Am Jur 2d, Exemptions §§ 171-173, 253, 254](#).

[44A Am Jur 2d, Insurance § 1883](#).

71 Am Jur 2d, State and Local Taxation § 237.

77 Am Jur 2d, Veterans and Veterans' Laws § 38.

Bankruptcy:

[4 Collier on Bankruptcy \(Matthew Bender 16th ed.\), ch 522, Exemptions P 522.02](#).

Annotations:

National Service Life Insurance: Change of beneficiary. [13 ALR Fed 6](#).

Exemption of proceeds of National Service Life Insurance from claims of creditors. [54 ALR2d 1335](#).

Trust, or contract to hold for benefit of another, with respect to proceeds of National Service Life Insurance. [70 ALR2d 1358](#).

UNITED STATES CODE SERVICE

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