performed “as a member of the uniformed services.”

Statement as to How Petersen Differs From the Agency’s Policy

The WEP is a modified formula for calculating the retirement or disability benefits of a person who receives a pension from noncovered work (i.e., work that is not defined as employment for Social Security purposes and where Social Security taxes were not deducted from the employee’s pay). The WEP applies to persons who attain age 62 or become eligible for disability benefits after 1985 and who first become eligible for a monthly payment (such as a civilian service pension) after 1985 “which is based in whole or in part upon his or her earnings for service which did not constitute ‘employment’ as defined in” 42 U.S.C. 410. 42 U.S.C. 415(a)(7)(A)(III). The WEP applies to persons with noncovered employment in the CSRS which includes the civilian employment of a “dual status” National Guard technician. A formula is used to compute the person’s primary insurance amount (PIA), which then is used to compute the amount of the person’s Social Security benefits. 42 U.S.C. 415(a)(7)(B); 20 CFR 404.213(c). The formula results in a lower Social Security benefit.

Congress amended the WEP in 1994 in Pub. L. 103–296, the Social Security Independence and Program Improvements Act of 1994 (the Independence Act). Section 308 of the Independence Act, codified at 42 U.S.C. 415(a)(7)(A)(III), created a new exemption from the WEP, which applies to “a payment based wholly on service as a member of a uniformed service” as defined in 42 U.S.C. 410(m). We interpret the uniformed services exception to the WEP to mean that only monthly payments based on military service are exempt from the WEP. Under this interpretation, monthly payments that are based on noncovered civilian public employment, including that of National Guard technicians who work under the CSRS, are not exempt from the WEP. Moreover, the effect of the uniformed services exception to the WEP and the regulatory provision found at 20 CFR 404.213(o)(9) is to exempt from the WEP only military retirement pay based on reserve inactive duty training (IDT). Other kinds of military duty, such as active duty, already were not subject to the WEP because they have been covered employment since 1956. The WEP does not apply to noncovered work before 1957. The legislative history of the uniformed services exception to the WEP explains that the purpose of the exception was to exempt military retired pay, based on noncovered IDT military duty, from application of the WEP. The exception was not intended to exempt any pension based on civilian work from application of the WEP. The Court of Appeals declined to consider the legislative history of the uniformed services exception because it found there was no ambiguity to the uniformed services exception.

Explanation of How SSA Will Apply the Petersen Decision Within the Circuit

Social Security old-age or disability applicants and beneficiaries who receive a CSRS pension based on noncovered work as dual status National Guard technicians, and who are permanent legal residents of a State within the Eighth Circuit, should have their Social Security benefits computed using the normal PIA, rather than the WEP PIA described in 42 U.S.C. 415(a)(7) of the Act. A decisionmaker should not apply this AR to an applicant or beneficiary who is not a permanent legal resident of a State within the Eighth Circuit at the time of making the determination or decision to apply the WEP. Before we determine that the WEP does not apply, we must have evidence that an applicant’s or beneficiary’s CSRS pension is based on service as a dual status civilian technician with the National Guard.

DEPARTMENT OF STATE

Culturally Significant Objects Imported for Exhibition Determinations: “Plants of Virtue and Rocks by a Stream” by Shitao

ACTION: Notice, correction.

SUMMARY: On August 14, 2012, notice was published on pages 48582–3 of the Federal Register (volume 77, number 157) of determinations made by the Department of State pertaining to the object “Plants of Virtue and Rocks by a Stream” by Shitao. The referenced notice is corrected here to change the name of the exhibition in which that object will appear to “The Artful Recluse: Painting, Poetry, and Politics in 17th-Century China”.

FOR FURTHER INFORMATION CONTACT: For further information, including a listing of the exhibit object, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.


J. Adam Ereli,
Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

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