tax which the taxpayer had made for 1951. The Internal Revenue Service did not match the taxpayer's preparation of the return for 1951 and was not aware of the taxpayer's error. In March 1955, an agent of the Internal Revenue Service discovered the possibility of the erroneous overpayment when he assisted the taxpayer in preparing her income-tax return for 1954. At that time the 3-year statutory period of limitation had not expired, and the agent advised the taxpayer to file a claim for refund. The taxpayer, however, did not file her claim until about 2 months later, at which time the statutory period had expired, and the claim could not under the law be allowed. The record on this bill affords no explanation for the taxpayer's failure to file a timely claim for refund.

The statutory period of limitations, which the Congress has included in the revenue system as a matter of sound policy, is essential in order to achieve finality in tax administration. Granting special exceptions to this rule would be likely to result in a discrimination against other taxpayers similarly situated and would create an undesirable precedent.

For these reasons I am constrained to withhold my approval from the bill.

On August 28, 1958:

HARRY N. DUFF

H. R. 10419. I am withholding my approval from H. R. 10419, for the relief of North Counties Hydro-Electric Co.

This bill would direct the Secretary of the Treasury to pay to the Southwestern Research Institute such sum, not exceeding $3,000.94, as the Housing and Home Finance Administrator may approve. This payment would be for services rendered by the beneficiary in excess of its written contract with the Government.

Approval of this legislation could well encourage others to perform unauthorized work and expect payment therefor from the Government. Furthermore, under this bill this organization would receive a payment which has in the past been denied other research contractors who performed work in excess of their contract obligations.

On September 2, 1958:

HARRY N. DUFF

H. R. 1695. I am withholding my approval from H. R. 1695, for the relief of Harry N. Duff.

This bill would confer jurisdiction on the Court of Claims, notwithstanding the applicable statute of limitations, to adjudicate the claim of Harry N. Duff arising out of the failure of the then War Department to retire him, in 1946, for physical disability incurred as an incident of his military service.

The beneficiary of this bill had a long history of spinal trouble and arthritis while serving as an officer in the Army during World War II. He contends that these disabilities were suffered or aggravated as a result of injuries incurred in the service. Although early medical records do not support this contention, in 1945 an Army retiring board found the beneficiary incapacitated for active duty as an incident of the service and recommended his retirement.

Reviewing the case in accordance with applicable regulations, the Office of the Surgeon General of the Army disagreed with the findings of the retiring board and requested it to reconsider the case. Upon reconsideration, the retiring board reaffirmed its previous findings, whereupon the Surgeon General recommended to the Secretary of War that the findings of the board be disapproved. The recommendation of that opinion was based on the fact that a spinal defect and arthritis clearly had existed prior to entry on active duty and had not been aggravated permanently by such service. The findings of the board were disapproved by the Secretary of War, and the beneficiary was thereupon released from active duty in 1946, without entitlement to retired pay. In 1949, however, he was awarded disability compensation by the Veterans' Administration on account of service-aggravation of a congenital defect.

The beneficiary appealed the decision in his case to the statutory Army Dis- covering Board. In 1947 this Board affirmed the decision of the Secretary of War and, subsequently, reaffirmed its decision upon a request for reconsideration. In 1955 the Army Board for Correction of Military Records found no error or injustice in the determinations which had been made in the beneficiary's case. He also brought an action in the United States Court of Claims which was dismissed as barred by the statute of limitations.

Traditionally, eligibility for retirement on account of physical disability has been determined by the military services in accordance with general provisions of law. Appellate review of these determinations has been provided within the executive branch by means of statutory boards such as the Disability Review Board and the Board for Correction of Military Records.

In recent years the Court of Claims has been petitioned in various cases to award disability retirement to individuals who have not been entitled to such pay by the courts of the United States. In consistently disallowing these petitions, the court has stated, in effect, that, under the statutory procedure for determining and reviewing entitlement to retirement, it has jurisdiction only in cases where it can be shown that the Secretary of War has acted arbitrarily, capriciously, or plainly contrary to law.

I believe that this rule which the Court of Claims has adopted is a sound one. It conforms to the many hundreds of individuals who have been given adjudicatory status by law. For this reason and since there is no evidence in this case that the Secretary of War acted arbitrarily, capriciously, or contrary to law, I can see no justification for special legislation which would require the Court of Claims to grant the beneficiary a de novo hearing.

Approval of this bill would discriminate against the many hundreds of individuals who have had their claims for disability retirement denied without benefit of judicial review. It would also establish an undesirable precedent leading to other exceptions to the orderly procedure which is now provided for under general law and which currently governs the hundreds of similar cases that are adjudicated each year.

On September 2, 1958:

TOLEY'S CHARTER BOATS, INC., ET AL.

H. R. 3193. I am withholding my approval from H. R. 3193, entitled "For the relief of Toley's Charter Boats, Inc., Thomas Engebretsen, and Harry Homlar, et al.," which would actuarially, or contrary to law. I can see no justification for special legislation which would require the Court of Claims to grant the beneficiary a de novo hearing.

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