



DIGEST - L-Trans

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-155521

FEB 23 1965

Southern Pacific Company
65 Market Street
San Francisco, California 94105

Attention: Auditor of Revenue Accounts

Gentlemen:

Reference is made to the request in your letter of October 26, 1964, file EM-85-D-207195-M, for review of the settlement of March 15, 1956, which disallowed your claim for \$7,998.13 under your supplemental bill D-207195-9 of November 1955, our file EM-304147. You also make reference in your letter to the partial allowance of \$2,874.77 made on your claim of January 1964 (your bill D-207195-M) and urge payment of a balance of \$5,123.36 asserted to be due.

The record shows that your request for review pertains to eight shipments which were delivered to final destination at Richmond, California, on March 13, 1943, and the charges were paid as billed by your company. Thereafter, a Notice of Overcharges, Form 1003, was stated and \$9,589.15 was refunded or collected by deduction in February 1947. On December 27, 1954, your company was allowed \$6,714.38 of the amounts claimed by your supplemental bills No. D-207195 of May 1950 and August 1952. On January 5, 1956, a third supplemental bill (NOV 1955) claiming an additional amount of \$7,998.13 was received in our Office, which was disallowed by the settlement dated March 15, 1956. There is no indication that any further correspondence relative to the matter was received from your company until your supplemental bill of January 1964 was received here on February 11, 1964.

The act of October 9, 1940, 54 Stat. 1061 (31 U.S.C. 71-a), provides, in part, that every claim or demand against the United States cognizable by the General Accounting Office shall be forever barred unless such claim shall be received in our Office within ten full years after the date such claim first accrued. A claim for transportation charges against the United States accrues upon the completion of the transportation service, that is, the date of delivery of the shipment to the consignee, and the statute of limitations begins to run from that time. See Arkansas Oak Flooring Co. v. Louisiana & Arkansas Railway Co., 166 F. 2d 98; United States v. Wilder, 13 Wall.

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254; Southern Pacific Co. v. United States, 67 Ct. Cl. 414, certiorari denied 280 U.S. 507; Atlantic Coast Line Railroad Co. v. United States, 66 Ct. Cl. 576; and Hughes Transportation, Inc. v. United States, 109 Fed. Supp. 373. However, where upon postaudit a determination is reached that an overpayment was made and the overpayment is collected by refund or deduction under 49 U.S.C. 66, a new right then accrues, if such collection proves erroneous, to recover such amount within ten years of the date of collection. See in this connection Williams v. United States, 63 Ct. Cl. 668, certiorari denied 275 U.S. 539; Eastern Freight Ways v. United States, 155 Fed. Supp. 22, and the act of August 26, 1958, 72 Stat. 866, 49 U.S.C. 66, as to transportation performed subsequent to August 26, 1958. Such new right applies only to the extent of the amount so collected and does not, of course, create a right greater than the quantum of the collection effected. Thus the primary purpose of the act of October 9, 1940, as shown by its legislative history, is to relieve the Government of the necessity for retaining or going back over old records for the purpose of revising settled claims.

Under the regulations of our Office a claimant, if he desires, may request review by the Comptroller General of the final action taken in the settlement of its claim by the Transportation Division. While such regulations do not place a specific time limit upon such requests for review, it is obvious, in the light of the act of October 9, 1940, supra, and its primary purpose, that such request must be made within a reasonable period after the date the settlement is issued. Without attempting to establish what constitutes a reasonable time in all instances, we cannot consider a request received over eight years after the settlement was issued to have been timely filed. Accordingly, your request for review must be denied and your letter considered as constituting a new claim.

The ten-year period during which we could consider your claim began to run at the latest from the date your refund was received in our Office during February 1947 and the time was not extended by either the partial allowance in December 1954 or by the settlement issued March 15, 1956, which disallowed your claim made January 5, 1956. These settlements disposed of your claims and after issuance there was nothing before our Office upon which to act until your claim of January 1964 was received on February 11, 1964. Since this claim was received in our Office more than ten years after the refund was made in February 1947, it was barred under the act of October 9, 1940, supra, and no allowance of any part of your claim was proper. However, we will not insist upon your

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refunding the sum of \$2,874.77 allowed you by the settlement of July 29, 1964. Insofar as your letter of October 26, 1964, could be considered a new claim for the sum of \$5,123.36 it is barred and no part of it may be allowed.

Very truly yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States