

**DECISION**



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

40930  
95260

FILE: B-181391

DATE: JUL 11 1974

MATTER OF: Payment of docket fees by United States.

**DIGEST:** Docket fee may be awarded as cost against Government as set forth in 28 U.S.C. 1923, since after balancing 28 U.S.C. 2412 prohibition against taxing of attorney fees and expenses (docket fee appearing to be attorney's compensation for docketing suit) against allowance of such fees in sections 1920 and 1923, it appears that allowance of such fee accords with congressional intent in 1966 amendment of section 2412, which appears to be remedial in nature, to bring parity to private litigant respecting costs in litigation with U. S.

This decision to the Attorney General is in response to a request dated May 3, 1974 (your reference SPC:RMP:TBScullen:ts 5-70-508), from the Assistant Attorney General, Tax Division, for our views as to whether docket fees properly may be charged against the United States.

It is explained that an administrative settlement has been approved on behalf of the Attorney General in the suit entitled Jessie H. Ward, Executrix of the Estate of Louis E. Ward Deceased v. United States, Civil No. 8486, EC ED Tenn., and that a refund check representing refund of estate taxes, will be delivered by the U.S. Attorney upon receipt from the taxpayer's counsel of record of a stipulation that "the above entitled action be dismissed with prejudice, each party to bear its own costs."

However, counsel for the plaintiff has objected to stipulating that each party bear its own costs.

The taxing of costs against the Government is authorized by Pub. L. 89-507, approved July 18, 1966, 80 Stat. 308, which amended 28 U.S.C. 2412 to provide in pertinent part as follows:

**"§ 2412. Costs**

**"Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of**

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this title but not including the fees and expenses of attorneys may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or official of the United States acting in his official capacity, in any court having jurisdiction of such action. \* \* \*."

We note that 28 U.S.C. 2412 states that costs "but not including the fees and expenses of attorneys may be awarded to a party prevailing over the United States in a civil action. Therefore, the question is whether a docket fee is an attorney's fee or expense which thus may not be awarded as costs under the act.

It is somewhat unclear exactly what the docket fee represents. We understand that such fee is not one collected by the Clerk of the Court but rather appears to be a form of compensation to an attorney for going to court to have a case put on the court docket. See Goodyear v. Sawyer, 17 Fed. 7 (1883); also, Karsoules v. Moscoso, 19 F.R.D. 585 (1954). At least three court opinions have held that a docket fee constituted an attorney's fee within the meaning of 28 U.S.C. 2412. See McConville v. United States, 197 F. 2d 680 (1952), North Atlantic v. Gulf SS Co. v. United States, 209 F. 2d 437 (1954), and George Jensen Inc. v. United States, 135 F. Supp. 251 (1960). However, such decisions were rendered prior to the 1966 amendment to 28 U.S.C. 2412.

The legislative history of the 1966 amendment does not indicate why taxation of attorneys' expenses as costs was prohibited along with attorneys' fees. However, during hearings held on H.R. 14182, 89th Cong., which when enacted became Pub. L. 89-507, the Assistant Attorney General John W. Douglas stated:

"The kinds of costs that may be awarded by this amendment of 28 U.S.C. 2412 are enumerated in the existing provisions of 28 U.S.C. 1920. Specifically excepted from this enumeration by the bill are fees and expenses for expert witnesses as well as all attorneys' fees. The payment of attorney's fees raises many issues in various types of litigation that should be considered, if at all, in separate legislation. These costs include fees of the clerk and marshal, necessary transcripts, printing, and docket fees. These costs, now specified in Section 1920 could be included in the costs awarded to the prevailing party." (Underscoring supplied.)

In addition, both the Senate and House reports accompanying H.R. 14182 (H. Rept. No. 1535, 89th Cong., 2d Sess.; S. Rept. No. 1329, 89th Cong., 2d Sess.) indicate that the amendment's

purpose was to put private litigants and the United States on an equal footing regarding cost awards. The reports state that the costs which a private litigant can receive in a successful action against the Government are listed in 28 U.S.C. 1920 "and include fees of the clerk and the marshal, necessary transcripts, printing, and docket fees." Section 1920 refers to docket fees under section 1923 which specifies attorneys' and proctors' docket fees as included in the costs which may be awarded. See also: Barron and Holtzoff, Federal Practice and Procedure, s 1200; 7B Moore's Federal Practice s 2412; and, Wright and Miller, Federal Practice and Procedure: Civil § 2672. Consequently, the amendment may be viewed as remedial in nature. Sutherland Statutory Construction § 60.02.

It is necessary, therefore, to balance the section 2412 prohibition against taxation of attorneys' fees and expenses against sections 1920 and 1923 authorizing allowance of docket fees. In doing so the amendment's remedial nature should be considered warranting a liberal construction to effectuate the purpose as expressed in the legislative history, and exceptions should be narrowly construed. National Automatic Laundry and Cleaning Council v. Shultz, 143 U.S. App. D.C. 274 (1971); Sutherland Statutory Construction § 60.01.

Accordingly, and since payment of docket fees by the Government clearly appears to have been contemplated by the Congress, we view such payment as being authorized by 28 U.S.C. 2412 and proper for awarding as costs against the Government as set forth in 28 U.S.C. 1923.

R. F. KELLER

Deputy, Comptroller General  
of the United States