

DECISION

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

FILE: B-183922

DATE: AUG 5 1975

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expenditures

DIGEST: Internal Revenue Service general appropriation statute providing for "necessary expenses * * * for investigation and enforcement activities * * *" is sufficiently broad to support expenditures on the behalf of an "informant/witness" except for periods in which the same witness also qualified for such support from Department of Justice pursuant to Title V, "Protected Facilities for Housing Government Witnesses" of the "Organized Crime Control Act of 1970," Pub. L. No. 91-452 (84 Stat. 922, 933) (18 U.S.C.A. § 3481).

This action is in response to a letter dated May 12, 1975, from the Department of the Treasury requesting our decision as to the propriety of expending Internal Revenue Service (IRS) funds for the protection, support, and maintenance of an "informant/witness" in a case involving alleged criminal violations of Internal Revenue laws.

The facts giving rise to this matter are as follows: From early 1972 until the present, an IRS "informant/witness" (hereafter John Doe) has provided the IRS with information which has proven instrumental in the obtaining of indictments as well as in the collection of investigatory data prior to the indictment stage. John Doe was both an informant for the IRS and a witness for the Department of Justice and for the IRS at all times pertinent to this inquiry. In 1972, the Attorney General classified John Doe as a potential witness with respect to several cases forwarded to the Justice Department by IRS for criminal prosecution. The Attorney General, pursuant to Title V "Protected Facilities for Housing Government Witnesses" (hereafter Title V) of the "Organized Crime Control Act of 1970" (84 Stat. 922, 933) (18 U.S.C.A. § 3481), determined that the life and person of John Doe was in jeopardy and, accordingly, authorized protection, support, and maintenance expenditures on John Doe's behalf. John Doe accepted the Attorney General's offer and was enrolled in the Justice Department's Title V Witness Protection Program. In January 1974, John Doe formally executed a waiver of further Title V assistance. The Justice Department then disenrolled John Doe from the Witness Protection Program on January 14, 1974. Subsequent

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thereto, circumstances changed and John Doe sought reenrollment in the Witness Protection Program. The Attorney General declined further assistance, thereby rendering John Doe ineligible for Title V aid. Thereafter, John Doe sought support and maintenance assistance from the IRS for whom he was also serving as an "informant/witness." Upon investigation by the IRS, it was determined that John Doe was in need of support and maintenance assistance if his services as an "informant/witness" were to continue. IRS officials authorized the necessary disbursements until May 1975 when the Department of Justice again determined to render the witness financial assistance. The propriety of the IRS authorization is the subject matter of this inquiry. IRS did not authorize protective expenditures for any period during which John Doe was enrolled in the Department of Justice Title V Witness Protection Program.

This case presents the threshold question as to whether the IRS may properly expend funds for the purpose of protecting, supporting, and maintaining informants and witnesses. Additionally, the facts of this case present the collateral issue of whether support and maintenance expenditures by the IRS, if ordinarily permissible, are authorized after the "informant/witness" is disenrolled from the Justice Department's Title V Witness Protection Program, but, in fact, continues to be a witness for the Justice Department.

The FY 1975 IRS appropriation statute neither contains specific authority nor a specific appropriation for protection, support, and maintenance expenditures on the behalf of an "informant/witness." However, the "Compliance" portion of its general appropriation does provide for the "*** necessary expenses of the Internal Revenue Service *** for investigation and enforcement activities ***." Act of August 21, 1974, Pub. L. No. 93-381, Title 1, 93 Stat. 613. The legislative history of this provision is silent as to the meaning of "investigation and enforcement activities." The numerous objects of expenditures necessary to conduct "investigation and enforcement activities" are obviously quite broad. It is readily apparent, therefore, that a large measure of discretion is vested in the Commissioner as to which expenditures are necessary in aid of "investigation and enforcement activities." Consequently, the use of generally appropriated funds for objects not specifically mentioned in the Appropriations Act, and not otherwise proscribed, will not ordinarily be questioned by this Office when such expenditures are deemed to have a direct connection with and to be necessary to the carrying out of the Appropriation Act's stated general purpose. See B-173149, August 10, 1971. "Informant/witness" maintenance and support aid has long been recognized as an indispensable investigative and law enforcement tool. See generally, Hearings on S. 30 and Related Bills

Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 91st Cong., 1st Sess. 545-547 (1969). Without the assurances of maintenance and support, the potential "informant/witness" may be reluctant to aid in the investigative, enforcement, and prosecutorial processes. As early as 1969, Congress was expressly advised of the Treasury Department's extensive involvement in this area and raised no objection thereto. Hearings on S. 30 and Related Bills Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 91st Cong., 1st Sess. 547 (1969); Hearings on S. 30 and Related Proposals Before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong., 2d Sess. 181 (1970). For the foregoing reasons, we view the FY 1975 IRS appropriation statute as sufficiently broad to support the expenditures in question.

Although the IRS may, as a general rule, undertake to make expenditures on the behalf of an informer or witness consistent with the "Compliance" portion of its general appropriation, we believe that the passage of Title V, "Protected Facilities for Housing Government Witnesses" of the "Organized Crime Control Act of 1970," Pub. L. No. 91-452 (84 Stat. 922, 933) (18 U.S.C.A. § 3481), operates as a limitation on the Commissioner's otherwise broad authority. Congress, in enacting Title V, sought to give the Attorney General broad discretionary authority to provide for the protection of actual and potential Government witnesses when organized crime syndicates threatened the life or person of a witness or a member of his family. H.R. Rep. No. 1549, 91st Cong., 2d Sess. 48 (1970); S. Rep. No. 91-617, 91st Cong., 1st Sess. 150 (1969). Formerly, the Justice Department's authority to deal with the problem was not well defined and each case was approached in an ad hoc fashion. Hearings on S. 30 and Related Proposals Before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong., 2d Sess. 181 (1970). Title V authorized the Attorney General to provide such amounts as he deemed necessary for the protection, health, and welfare of witnesses and persons intended to be called as a witness whenever, in his discretion, the life or person of an actual or potential witness or a member of his family was in jeopardy as a result of the witness' willingness to testify. It is noted that while the Department of Justice must determine that the witness' life or person is in jeopardy in order to render or continue to render financial assistance, the IRS is not subject to a similar restriction and can make determinations of the need for protective assistance on other grounds. Additionally, Title V aid would not be available unless legal proceedings were involved and the underlying factual situation embraced organized criminal activity.

While we recognize that the general language of the IRS appropriation statute vests broad discretion in the Commissioner to pay

protective expenses of an "informant/witness," it does not authorize the simultaneous augmentation of the support and maintenance payments from the Department of Justice received by one enrolled in Title V's Witness Protection Program. The rule is well established that existence of a specific appropriation for an object precludes the use of a more general appropriation which would otherwise be available. B-118803, February 24, 1954; cf. 20 Comp. Gen. 739, 741 (1941). In the instant case, however, the IRS seeks a decision as to whether it may properly extend support and maintenance assistance to a person not enrolled in the Title V Witness Protection Program. Title V does not operate preemptively merely because John Doe is a witness for the Government in a case involving organized criminal activity if he is otherwise ineligible for Department of Justice protective payments. The operation of Title V requires a determination by the Attorney General that the witness is in jeopardy of life or limb and therefore qualifies for enrollment in the Witness Protection Program. Since, during the period in question, the Attorney General had not designated John Doe as a qualified Title V witness, Title V was not preemptive of the Commissioner's authority to extend support and maintenance assistance in aid of IRS investigation and enforcement activities.

Accordingly, since the IRS made an administrative determination that it was necessary to provide John Doe with support and maintenance assistance in order to retain his continued services as an informant/witness, its appropriations are available to provide such support and maintenance for any period during which he was not a qualified Title V witness enrolled in the Justice Department's Witness Protection Program.

R. F. KEMMER

{ Deputy }

Comptroller General
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