

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

FILE:

DATE:

JUN 30 1976

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MATTER OF:  
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DIGEST:

Nguyen Thi Chung and Chau Thi Nguyen - Claims for proceeds of checks issued to relatives who were not successfully evacuated from Vietnam. Incident to evacuation of U.S. personnel and local national employees from Vietnam, employees turning in Vietnamese piasters were given receipts on the bases of which Treasury checks were subsequently issued. Checks for payees still in Vietnam were placed in special deposit account pursuant to 31 U.S.C. §§ 123-128 for benefit of payees and may not be paid out to relatives in U.S. who claim power of attorney to receive proceeds.

Two claims, involving similar facts and legal issues, have been submitted by the Chief Disbursing Officer, Bureau of Government Financial Operations, Fiscal Service, Department of the Treasury, pursuant to 4 GAO § 5.1 (September 1, 1967) due to doubt as to the claimants' entitlement to funds currently deposited to Treasury receipt account No. 20F3875. The question presented in each claim is whether the proceeds of a United States Treasury check issued to a payee in Vietnam may be paid to a claimant in the United States, purportedly acting for the payee or based on a right derived from the payee.

The record shows that in anticipation of the evacuation of United States personnel and local national employees from Vietnam, the United States Disbursing Officer in Saigon was authorized to accept Vietnamese piasters from local national employees in exchange for either United States currency or Treasury checks. In some cases, due to lack of time, the disbursing officer issued receipts on Standard Form 1165, "Receipt For Cash-Subvoucher", for the piasters turned in. It was apparently intended that Treasury checks would be issued, based on the receipts, subsequent to evacuation.

The submission in claim No. Z-2618527 reveals that check No. 613,154 was issued to Nguyen Thi Kim Lan on the basis of one of these Standard Form 1165 receipts, dated April 28, 1975. Nguyen Thi Kim Lan remained in Vietnam. By letter dated April 29, 1975, Nguyen Thi Chung, the payee's cousin, was authorized by the payee to "get my Receipt for Cash-Subvoucher in amount of \$2,000 to be issued subsequently." The check was not forwarded to the payee in Vietnam but was deposited to Treasury receipt account No. 20F3875, pursuant to provisions of sections 123 to 128, title 31, United States Code (1970). Nguyen Thi Chung contends that she is entitled to the proceeds of check No. 613,154 on the basis of the April 29, 1975, authorization from the payee.

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In claim No. Z-2622548 the submission indicates that check No. 613,145 was issued on the basis of a Standard Form 1155 receipt payable to Nguyen Van Minh. The payee was killed during the evacuation from Vietnam. His wife remained in Saigon. His daughter, Chau Thi Nguyen, who was evacuated to the United States, claims the proceeds of the check based on her possession of the Receipt for Cash-Subvoucher, Standard Form 1165. She states that, after her father was killed, her mother gave her the receipt with the intention that she be able to get the money. This check also has been deposited to Treasury receipt account No. 20F3875, pursuant to provisions of sections 123 to 128, title 31, United States Code (1970).

Section 123, title 31, United States Code (1970), provides that no check drawn against funds of the United States or any of its agencies shall be sent from the United States for delivery in a foreign country in any case in which the Secretary of the Treasury determines that postal, transportation, or banking facilities in general, or local conditions in the country to which the check is to be delivered, are such that there is not a reasonable assurance that the payee will actually receive the check and be able to negotiate it for full value. The amounts of such undelivered checks are eventually to be transferred to a special deposit account with the Treasurer of the United States. 31 U.S.C. § 124 (1970).

31 U.S.C. § 125 (1970) provides, in pertinent part, that payment of the amounts which have been deposited in the special deposit account in accordance with 31 U.S.C. § 124 (1970) shall be made by checks drawn against it by the Secretary of the Treasury, " \* \* \* only after the claimant shall have established his right to the amount of the check \* \* \*" to the satisfaction of the Secretary of the Treasury, and the Secretary has determined that there is a reasonable assurance that he will actually receive the check and be able to negotiate it for full value. It is provided in 31 U.S.C. § 127 (1970) that the Secretary of the Treasury is authorized to prescribe such rules and regulations as he in his discretion may deem necessary or proper for the administration and execution of the foregoing provisions. The Secretary of the Treasury on April 15, 1976, determined that postal, transportation and banking facilities in general, or local conditions in Vietnam are such that there is not a reasonable assurance that the payee of a check drawn against funds of the United States will actually receive the check and be able to negotiate it for full value, and therefore, that such checks should be withheld in accordance with sections 123 to 128, title 31, United States Code (1970). 41 Fed. Reg. 15846, 15847 (1976).

In the case of Nguyen Thi Chung, claim No. Z-2618527, a Standard Form 1165 receipt was issued to the payee, Nguyen Thi Kim Lan, in the amount of \$2,000, dated April 28, 1975. According to the claimant, the payee gave the claimant the receipt, along with a letter of authorization intended to allow the claimant to collect the amount claimed on behalf of the payee. The letter, dated April 29, 1975, reads in part as follows:

"\* \* \* To authorize Mrs. Nguyen-Thi-Chung ID No. 4604. To get my Receipt for cash-Subvoucher in amount of \$2,000 to be issued subsequently."

While the letter of authorization by its terms would have permitted the claimant, Mrs. Chung, to get only the receipt, rather than the check to be issued on the strength of the receipt, that interpretation is inconsistent with Mrs. Chung's statement that the payee, Mrs. Lan, was then in possession of the receipt and gave it to Mrs. Chung. Mrs. Chung's explanation is supported by the fact that the receipt issued to Mrs. Lan predates the authorization to "get my Receipt."

However, even on the assumption that Mrs. Lan fully intended to authorize Mrs. Chung to collect the money on her behalf (and that the confusing language of the authorization document is attributable to difficulty in expressing that intent in English), the claim could not be paid to Mrs. Chung. Regulations issued by the Secretary of the Treasury pursuant to 31 U.S.C. § 127 state, at 41 Fed. Reg. 15847 (1976), that:

"(d) Powers of attorney for the receipt or collection of checks or warrants or for the proceeds of checks or warrants included within the determination of the Secretary of the Treasury [that there is not a reasonable assurance that checks intended for delivery in Vietnam will be received by the payee and that they can be negotiated for full value] will not be recognized."

Thus, even assuming that the letter of authorization amounts to a valid power of attorney, constituting Mrs. Chung as Mrs. Lan's attorney-in-fact for purposes of collecting the funds in question, the Treasury regulation would preclude payment to Mrs. Chung.

In the case of Chau Thi Nguyen, claim No. Z-2622548, the payee, reportedly having been killed, a power of attorney, even if one existed, would be without effect. The claimant possesses the Standard Form 1165 receipt but there is no evidence, beyond the claimant's statement, to indicate that the payee, Nguyen Van Minh, or his estate, intended the

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claimant to be given the proceeds of the check. (The claimant does not assert that she herself is the next of kin.) The statute provides for the funds to be held for the payee (or, by implication, his estate) in these circumstances. We are aware of no basis in this case to deviate from that rule.

The special deposit account in the Treasury, established pursuant to 31 U.S.C. § 124, is regarded as a trust fund for the benefit of the payees of the checks. It is the view of this Office that there is no statute of limitation which would run against a claim of a person for whom the trust was created. B-144046, October 31, 1960. It is for the protection of the payees that the funds are thus held. Should conditions change, it may become possible to make payment to the payees or their estates.

For the above stated reasons, we concur in the determination of the Chief Disbursing Officer not to certify for payment the claims of Nguyen Thi Chung and Chau Thi Nguyen.

~~W. F. KELLER~~  
Deputy  
Comptroller General  
of the United States