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**DECISION**



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

FILE: B-158810

DATE: February 22, 1977

MATTER OF: Payment of attorney's fees awarded in tax cases

DIGEST: Attorney fees awarded pursuant to Pub. L. No. 94-559 in proceedings to enforce, or charging a violation of the Internal Revenue Code are payable from funds appropriated by 31 U.S.C. § 724a (subject to the \$100,000 limit therein), since awards of attorney fees in these cases would arise under the provisions of title 28, United States Code, covered by the judgment appropriation and no other source of payment is specified by law.

The Commissioner of the Internal Revenue Service has requested our decision as to whether the permanent appropriation established by 31 U.S.C. § 724a (1970) for payment of final judgments, awards, and compromise settlements against the United States is available for the payment of attorney's fees awarded to prevailing defendants in tax cases as authorized by Pub. L. No. 94-559.

Section 724a of title 31 provides in pertinent part:

"There are appropriated, out of any money in the Treasury not otherwise appropriated, and out of the postal revenues, respectively, such sums as may on and after July 27, 1956 be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, awards, and compromise settlements (not in excess of \$100,000, or its equivalent in foreign currencies at the time of payment, in any one case) which are payable in accordance with the terms of sections 2414, 2517, 2672, or 2677 of Title 28, together with such interest and costs as may be specified in such judgments or otherwise authorized by law  
\* \* \*"

The Commissioner explains that Pub. L. No. 94-559 (October 19, 1976), 90 Stat. 2641, provides courts with discretionary authority to award reasonable attorney's fees to prevailing parties, other than the United States, in, inter alia--

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"\* \* \* any civil action or proceeding, by or on behalf of the United States of America to enforce, or charging a violation of, a provision of the United States Internal Revenue Code \* \* \*."

The Commissioner suggests that since Congress did not otherwise provide for the payment of these costs, payments may be made from 31 U.S.C. § 724a.

We agree. Nothing in the language of Pub. L. No. 94-559 or its legislative history indicates the source of payment for such attorney fee awards, and we are not aware of any other statutory provision which would specifically cover their source of payment. The language of 31 U.S.C. § 724a is unambiguous and, among other things, that section appropriates funds for the payment of costs specified in judgments payable in accordance with 28 U.S.C. §§ 2414, 2517, 2672, and 2677. While the precise scope of Pub. L. No. 94-559 with respect to attorney fee awards in tax cases is not entirely clear, it appears that any such awards would be made under one of the title 28 provisions cited in 31 U.S.C. § 724a.

Accordingly, it is our opinion that funds appropriated by 31 U.S.C. § 724a are available for the payment of attorney fee awards in tax cases pursuant to Pub. L. No. 94-559. We would point out that 31 U.S.C. § 724a only provides for the payment of final judgments, awards, and compromise settlements not exceeding \$100,000. Should the amount of a judgment, award, or compromise settlement in a tax case which involves the award of attorney fees exceed \$100,000, a specific appropriation for its payment would be necessary.

  
Acting Comptroller General  
of the United States