



The Comptroller General
of the United States

Washington, D.C. 20548

Martin-Koisky

Decision

Matter of: Bureau of Alcohol, Tobacco, and Firearms--
Augmentation of Appropriations--Replacement of
Autos by Negligent Third Parties

File: B-226004

Date: July 12, 1988

DIGEST

Even though an agency may have a specific appropriation to cover the costs of replacing agency vehicles, the acceptance of in-kind replacement of vehicles damaged beyond repair by a negligent third party in lieu of cash payment does not require the agency to make an offsetting transfer of funds from its current appropriations to the miscellaneous receipts fund of the Treasury in order to comply with the requirements of 31 U.S.C. § 3302(b), since the statute only applies to moneys received for the use of the United States. 22 Comp. Gen. 1133, 1137 (1943) clarified.

DECISION

In a letter of December 23, 1986, the Chief of Financial Management of the Bureau of Alcohol, Tobacco, and Firearms (ATF), requested our decision on whether ATF may legally accept a replacement vehicle from a negligent third party who damages an ATF vehicle beyond repair without transferring an amount equal to the value of the replaced vehicle from ATF's current appropriations to the miscellaneous receipts fund of the Treasury. As explained below, we conclude that ATF is not required to make such a transfer in order to comply with 31 U.S.C. § 3302(b) since, by its terms, that section applies only to moneys received for the use of the government.

BACKGROUND

The ATF appropriation for fiscal year 1987 is available "for necessary expenses of [ATF], including purchase of three hundred vehicles for police-type use for replacement only. . . ." Pub. L. No. 99-591, 100 Stat. 3341, 3341-310 (1986). ATF is concerned that this provision might be construed to require it to make an offsetting transfer of funds from its current appropriations to the miscellaneous receipts fund if it allows negligent third parties to replace ATF vehicles damaged beyond repair with equivalent vehicles. ATF does not think this is required, but seeks our concurrence.

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ATF's concern focuses upon the following statement in 22 Comp. Gen. 1133, 1137 (1943):

" . . . Where funds have been appropriated for the specific purpose of repairing or replacing certain property, a failure to transfer [from current appropriations to miscellaneous receipts] such an amount [i.e., the value of the repairs or replacements received] might be deemed an unauthorized augmentation of the appropriated funds." (Emphasis added and citations omitted.)

DISCUSSION

Consistent with the requirements of 31 U.S.C. § 3302(b) (1982), we have long held that when a private party damages property of the United States and agrees or is compelled to make restitution by means of cash payments to the government, the amount recovered is generally for deposit into the Treasury as a miscellaneous receipt. E.g., 3 Comp. Gen. 808 (1924); 26 Comp. Gen. 618 (1947); 64 Comp. Gen. 431 (1985). At the same time, however, we have also held that where a private party damages government property and agrees or is compelled to make restitution by either replacing the damaged property "in kind," or arranging and making payment directly for its repair to the government's satisfaction, there are no funds received for the use of the government which are required by 31 U.S.C. § 3302(b) to be promptly deposited in the Treasury. In other words, the miscellaneous receipts statute is applicable only when money, as opposed to goods or services, has been provided to the agency. There is thus no reason to require it to make an offsetting transfer from current appropriations to miscellaneous receipts. E.g., A-24076, June 2, 1931 (citing 14 Comp. Dec. 310 (1907)); B-87636, Aug. 4, 1949; 64 Comp. Gen. 217, 219-20 (1985); 64 Comp. Gen. 431, 433 (1985). This is true despite the fact that, had the tortfeasor paid the government rather than the person making the repairs, the money would have to be deposited as miscellaneous receipts. E.g., B-87636, supra. As was observed in 64 Comp. Gen. at 433, these cases represent an "exception [to the general rule] that may be advantageous if the timing of repair and payment can be made to coincide."

We note that the position suggested in 22 Comp. Gen. at page 1137 was just dicta since the property damage involved in that case was covered by an insurance policy, the proceeds of which "might be used to effect the purpose of the insurance--namely, the repair or replacement of the property damaged." To the extent that case suggests that an off-setting transfer of funds from an agency's current funds

to the miscellaneous receipts fund of the Treasury is required when damaged property is repaired or replaced in kind, we do not adopt that principle.

We note that ATF seems to suggest in its argument that it does not have authority to pay for the replacement of vehicles accidentally destroyed in the course of its operations. For purposes of clarification, we think the appropriation is broad enough to cover such replacement since the appropriation language does not limit its use to replacements necessitated by "age, mileage, and condition" only. We think that the periodic, accidental destruction of vehicles can be anticipated in any large fleet of vehicles.

for 
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