



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Recovery by the Administrative Office of the United States Courts of Offsetting Receipts Transferred to Fiscal Year 1989 Appropriation in Excess of the Amount Needed

File: B-257579

Date: September 22, 1994

DIGEST

The Administrative Office of the United States Courts (AOUSC) may recover the amount of offsetting receipts transferred from a special fund receipt account established pursuant to 28 U.S.C. § 1931 that exceeded the amount needed for purposes of the transferee fiscal year 1989 appropriation.

DECISION

The Administrative Office of the United States Courts (AOUSC) asks whether offsetting receipts initially deposited in a special fund receipt account (special fund) and then transferred to the credit of a fiscal year 1989 appropriation may now be recovered and redeposited in the special fund, the balances of which are available until expended. The AOUSC's question arises because obligations against the fiscal year 1989 appropriation have been adjusted downward and therefore the amount of offsetting receipts previously credited to the fiscal year 1989 appropriation exceeded the amount needed. We conclude that the offsetting receipts transferred but not needed for purposes of the fiscal year 1989 appropriation may be recovered and redeposited in the special fund.

Background

Section 407(c) of the Judiciary Appropriation Act,¹ 1987, Pub. L. No. 99-591, 100 Stat. 3341-61, 3341-63, allows the judiciary to retain civil filing fees as offsetting collections, but makes their availability for obligation and disbursement conditional on annual appropriations. Section 407(c) of that Act amended Chapter 123 of title 28, United States Code, by adding:

¹ The Judiciary Appropriation Act is the name of Title IV of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act.

"§ 1931. Disposition of filing fees. The following portion of monies paid to the clerk of court as filing fees under this chapter shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States as provided in annual appropriations Acts"

The Judiciary Appropriation Act, 1989, Pub. L. No. 100-459, 102 Stat. 2211, included the following provision for the Salaries and Expenses of the Courts of Appeals, District Courts, and other Judicial Services (S&E):

"Provided further, That such sums as may be available in the fund established pursuant to 28 U.S.C. § 1931 may be credited to this appropriation as authorized by section 407(c) of the Judiciary Appropriation Act, 1987 (Public Law 99-591, 100 Stat. 3341-64)."

In fiscal year 1989, \$5,500,000 from the special fund was transferred and credited to the S&E appropriation of the Courts of Appeals, District Courts, and other Judicial Services. Subsequent downward adjustments of obligations recorded against the fiscal year 1989 S&E appropriation have been made in the amount of \$3.9 million, resulting in an unobligated balance in the appropriation.

In fiscal year 1990, the Judiciary Appropriation Act, 1990, Pub. L. No. 101-162, 103 Stat. 1016, amended 28 U.S.C. § 1931 by striking out the language "as provided in annual appropriation Acts". This had the effect of converting the special fund into a permanent, indefinite, no year appropriation in which the fees accumulating in the fund would be available for reimbursing certain appropriation accounts until expended.²

Because the special fund balances are continuously available, AOUSC asks whether the judiciary may recover the deobligated amount representing an excess of fees transferred to the S&E appropriation in fiscal year 1989 and redeposit the excess to the special fund established by 28 U.S.C. § 1931, which is currently available to offset funds appropriated for the operations and maintenance of the courts of the United States.

²Section 1931 was further amended by Pub. L. No. 102-572, 106 Stat. 4511 (1992), in a manner not germane to the matter before us.

ANALYSIS

A special fund receipt account is defined as a receipt account credited with collections that are earmarked by law for a specific purpose. Terms Used in the Federal Budget Process, GAO/AFMD-2.1.1, 1993, p. 5. Monies deposited into these funds are classified as "offsetting receipts." These are defined as collections which arise as a result of the government's business-type or market-oriented activities. *Id.*, p. 29. As originally enacted by section 407(c) of the Judiciary Appropriation Act, 1987, 28 U.S.C. § 1931 created a special fund receipt account to retain filing fees collected to be available for the operation and maintenance of the courts of the United States. It did not, however, establish a permanent indefinite appropriation, since the fund could be used to reimburse the S&E appropriation only to the extent provided in annual appropriation acts.

For fiscal year 1989, Public Law 100-459 provided that amounts in the special fund, may be credited to the S&E appropriation for the Courts of Appeal, District Courts, and Other Judicial Services. As authorized, \$5.5 million was transferred from the special fund based on total obligations recorded against the fiscal year 1989 S&E appropriation. Due to subsequent downward adjustments of obligations recorded against the fiscal year 1989 S&E appropriation, there is an unobligated balance of \$3.9 million in that appropriation.

The transfer from the special fund to the credit of the transferee appropriations was authorized but not required by the statutory language. Having made a discretionary transfer in response to and in anticipation of obligations against the fiscal year 1989 S&E appropriations, we do not find a reason in the statutory language or its purpose for depriving the special fund (and by extension post-1989 appropriations) of the use of the transferred funds that ultimately went unused.³ Therefore, we conclude that the fiscal year 1989 appropriation's unobligated balance of \$3.9 million may transfer back to the

³ The apparent purpose of section 407(c) of the Judiciary Appropriation Act, 1987, was to provide a funding source for certain purposes of the S&E appropriation. The AOUSC has informally advised us that the special fund has been so used. In addition, the amendment made to section 407 by section 406 of the Judiciary Appropriation Act, 1990, Pub. L. No. 101-162, 103 Stat. 1016, discussed below, further supports the view that the Fund was established to supplement amounts appropriated to the courts for operation and maintainance.

special fund receipt account.⁴ The special fund's authority to subsequently expend the recovered \$3.9 million is governed by its authorizing statute.

Section 406 of the Judiciary Appropriation Act, 1990, Pub. L. No. 101-162, 103 Stat. 1016, changed the special fund from a receipt account to a revolving account and authorized a permanent, no-year, indefinite appropriation. In other words, the fees deposited in the special fund became available until expended without needing further congressional action to obligate or expend. Any statute which authorizes the deposits of receipts in a specific fund, and which makes the fund available for carrying out specific purposes, without the need for further congressional action, constitutes a continuing or permanent appropriation. *E.g.*, 60 Comp. Gen. 323, 325 (1981); B-193573, Dec. 19, 1979; 57 Comp. Gen. 311, 313 (1978).

The 1990 amendment to 28 U.S.C. § 1931 did not rescind, terminate, or abolish the special fund, its authorization, or the assets of the fund. The amendment merely removed the need for further congressional action of an annual appropriation to obligate or expend. Consequently, the assets of the fund in 1989 remain a part of the corpus of the fund to be included in the assets of the successor fund of 1990.

CONCLUSION

The \$3.9 million transferred from the special fund to the credit of the fiscal year 1989 S&E appropriation in excess of the amount actually needed in 1989 for purposes of the appropriation may be properly credited back to the special fund. The 1989 balance would then carry over as part of the assets of the fund, which in 1990 became available until

⁴This treatment of transferred amounts unneeded due to reductions in the transferee account's obligations is similar to that employed in other situations that share some of the characteristics present here. For example, refunds include returns of advances and adjustments for previous amounts disbursed that are directly related to, and are reductions of, previously recorded payments from the accounts. GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 7, § 5.4 (TS 7-43, May 18, 1993). Refunds are not required to be deposited to the credit of miscellaneous receipts but are to be deposited to the credit of the appropriation or fund charged with the original expenditure. *Id.*

expended. Since the fund remains available until expended, there is no distinction between a credit to 1989 or 1994. Therefore, the judiciary may recover the deobligated amount and redeposit it to the current special fund to be used for currently authorized purposes.

/s/ James F. Hinchman
for Comptroller General
of the United States