

CITATIONS ONLY



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

UNRESTRICTED - GGM

B-221498.8

February 19, 1986

Mr. Arvid E. Roach II
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7560
Washington, D.C. 20044

Dear Mr. Roach:

This responds to your January 30, 1986, letter on behalf of the Commonwealth of Puerto Rico, requesting that we reconsider our determination that two Department of the Treasury accounts from which payments are made to the Commonwealth of Puerto Rico are subject to sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177). The two accounts were omitted from the January 15, 1986 report of the Directors of the Office of Management and Budget and the Congressional Budget Office and were added by our own report under the Act, dated January 21, 1986. See 51 Cong. Rec. 2844 (1986). We included the two accounts because they are not covered by any exemption, exception, or special rule under Public Law 99-177.

The accounts in question constitute receipt accounts, one for customs duties, taxes, and fees collected in Puerto Rico by the United States Customs Service, the other for excise taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States or consumed in the Commonwealth. Expenditures from both accounts are made under permanent indefinite appropriations. In the first case, funds are used to administer Customs Service activities in Puerto Rico, with amounts remaining transferred to the Treasury of Puerto Rico. See 48 U.S.C. § 740. In the second case, all funds collected are to be covered into the Treasury of Puerto Rico. 26 U.S.C. § 7652(a)(c).

Permanent indefinite appropriations constitute budgetary resources subject to sequestration under section 251(a)(3)(F)(iv)(I) of Public Law 99-177. That section provides that outlay reductions required under the Act be achieved by uniform percentage reductions in a variety of budgetary resources for non-defense accounts, including "new budget authority" and

"spending authority." The definition of spending authority was revised by section 211 of the Act to include authority "to make payments by the United States (including loans, grants, and payments from revolving funds) * * * the budget authority for which is not provided in advance by appropriation Acts." The legislative history of this provision indicates that it was intended to cover "all new spending authority not subject to the annual review of the appropriations process, such as certain permanent appropriations * * *." H.R. Rep. No. 433, 99th Cong., 1st Sess. 111 (1985) (emphasis added).

As is the case with other permanent appropriations, payments to Puerto Rico from the two accounts in question are subject to sequestration under Public Law 99-177, unless they fall within any of the specific exemptions, exceptions, or special rules contained therein. The fact that such funds are intended to fulfill a longstanding congressional mandate to invest Puerto Rico with financial resources for its governance, or that they constitute funds for the benefit of Puerto Rico, collected and held in trust by the United States, are not sufficient grounds to consider the payments exempt from sequestration. The Act is mechanical in nature, and applies to a variety of payments intended to benefit states, territories, and other entities, regardless of the rationale behind such payments.

In conducting our review of these accounts, we specifically considered the applicability of the "payments to trust funds" exemption of section 255(g)(1), which you cite in your letter as covering payments such as those at issue here. The clear language of the statute, however, exempts payments to, and not from, trust funds. Indeed, to read that provision as a generic exemption for all payments from trust funds would render redundant the many specific trust fund exemptions listed in the Act.

Based on the foregoing, we restate our conclusion that payments from these two accounts are subject to sequestration under the Act.

Sincerely yours,

Milton J. Aroslan
for Comptroller General
of the United States