

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

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P-137762.33

The Honorable Sam M. Gibbons
House of Representatives

Dear Mr. Gibbons:

This refers to your letter dated September 12, 1977, in which you state:

"I have your letter of August 5, 1977, responding to my letter of April 18, in which you conclude that the payment during fiscal 1976 of more than \$808 million out of the Treasury on account of earned income credits in excess of income tax liabilities was not a violation of the constitutional requirement that no money shall be drawn from the Treasury without an appropriation. * * *"

"As I read your letter, if Congress wants to withdraw money from the Treasury to pay a subsidy without an appropriation for that purpose, it can simply grant a credit against the income tax for the subsidy and provide that any credit in excess of tax liability shall be treated as an overpayment of tax. Thus, if Congress gives farmers a credit against the income tax for not growing wheat, and provides that any credit in excess of tax liability shall be treated as an overpayment of income tax, money can be drawn from the Treasury to pay the subsidy as a charge against the continuing appropriation for refunding internal-revenue collections.

"I enclose a copy of a letter dated August 12, 1977, from Senators Russell B. Long and Edward M. Kennedy to Secretary of the Treasury Blumenthal in which it is proposed, first, that the investment tax credit be refundable to taxpayers when the credit exceeds income tax liability, and second, that the amount of the credit be 'refunded' to certain organizations which are exempt from income tax. I gather from your letter that it is your position that money could be drawn from the Treasury to pay the subsidy proposed by the Senators without any appropriation for

that purpose (in view of the 1948 provision) so long as the statute authorizing the payments states that the subsidy, in excess of tax liability, shall be treated as the refund of an overpayment of tax which was not collected from the taxpayer or from the tax-exempt organization. Will you please let me know whether I have correctly stated your position?"

Our position on this issue may be stated as follows: If a statute is enacted which expressly, or in effect, makes an existing appropriation available for a new purpose, then payments for that purpose from that appropriation do not violate the constitutional requirement that moneys not be drawn from the Treasury without an appropriation.

To refer specifically to the example you give, we would agree that money could properly be drawn from the Treasury to pay the refund of excess investment tax credits proposed by Senators Long and Kennedy if the statute authorizing the payments provides that they are to be considered as overpayments of tax, within the meaning of the Internal Revenue Code. This is because, as discussed in our earlier letter, an appropriation exists for refunding overpayments (section 101, Act of June 19, 1948, 62 Stat. 561) and authority to draw upon it for that purpose also exists (26 U.S.C. § 6402(a)(1970)).

Stated otherwise, by virtue of a statutory provision that excess investment tax credits be considered as overpayments of Internal Revenue collections, the appropriation for refunding Internal Revenue collections would become available for refunding the investment tax credit. Similarly, the appropriation for refunds of Internal Revenue collections was in effect made available for payments of earned income credits by Pub. L. No. 94-12, as discussed in our earlier letter.

We trust the foregoing is of assistance to you.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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APPROPRIATIONS

- ② Availability
- Refund of investment tax credit

TAXES

- Investment credit
- Refunds
- Appropriation availability

APPROPRIATIONS

- Authorization
- Payment procedure

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