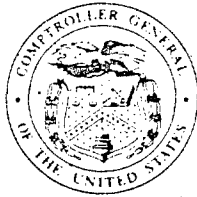


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DECISION



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

[Prepayment by U.S. Treasury of Estimates of Taxes, Duties, and Fees To Be Collected in Guam and Virgin Islands]

FILE: B-114808

DATE: August 7, 1979

MATTER OF: Remission to Guam and Virgin Islands of estimates of moneys to be collected for taxes, duties and fees.

DIGEST: Sections 1(c) and 4(c)(2) of Pub. L. No. 95-348 amended laws pertaining to Guam and Virgin Islands to permit prepayment by U.S. Treasury to territorial treasuries of estimates of moneys to be collected from certain taxes, duties, and fees. While the prepayment provisions constitute permanent authority for the program, they do not constitute permanent indefinite appropriations since the intent to make an appropriation may not be inferred but must be stated explicitly in the statute.

The Assistant Director, Accounting Operations, Fiscal Service, Department of the Treasury, has requested our opinion on whether sections 1(c) and 4(c)(2) of Pub. L. No. 95-348 (August 18, 1978), 92 Stat. 487, can be considered permanent indefinite appropriations. For the reasons that follow, we conclude they may not.

Public Law No. 95-348 authorizes appropriations for certain insular areas of the United States including Guam and the Virgin Islands. Section 1(c) of the Act, which amended section 30 of the Organic Act of Guam, 48 U.S.C. § 1421h (1976), provides in pertinent part:

"Beginning as soon as the government of Guam enacts legislation establishing a fiscal year commencing on October 1 and ending on September 30, the Secretary of the Treasury, prior to the commencement of any fiscal year, shall remit to the government of Guam the amount of duties, taxes, and fees which the governor of Guam with the concurrence of the government comptroller of Guam, has estimated will be collected in or derived from Guam under this section during the next fiscal year * * *. The Secretary of the Treasury shall deduct from or add to the amounts so remitted the difference between the amount of duties, taxes, and fees actually collected during the prior fiscal year and the amount of such duties, taxes, and fees as estimated and remitted at the beginning of that prior fiscal year, * * *."

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Section 4(c)(2) of the Act is substantially the same for the Virgin Islands.

The prepayment provisions would apply to collections which are not covered directly into the territorial treasuries, such as Federal income taxes paid by United States citizens residing in the territories. Under current procedures, such amounts are paid over to the territorial treasuries quarterly by the U.S. Treasury. According to the Treasury Department, the collections never actually entered the U.S. Treasury, and appropriations were therefore not needed, and in fact were not made, to permit remission to the territories. The prepayment provisions would not apply to duties and fees "collected in or derived from" the territories which are deposited directly into the treasuries of the respective territories.

Sections 1(c) and 4(c)(2) will require a change in the current procedures. They provide that, after Guam and the Virgin Islands conform their fiscal years to that of the United States, estimated amounts of such monies are to be remitted to those territories prior to collection. The estimates are to be made by the Governors of Guam and the Virgin Islands with the concurrence of the comptrollers of those territories. Presumably, the amounts actually collected in the preceding year, in great measure, will determine the amount of the estimates for any given year.

A legal memo from the Department of the Treasury submitted with its request concluded that appropriations were "necessary to the extent that a withdrawal from the U.S. Treasury is necessary to make the first year's whole or a part of any subsequent year's advance." The memo then went on to discuss whether the prepayment provisions constituted permanent indefinite appropriations and, although noting that the advice was not "conclusive," stated:

"Thus, logically all indications to the contrary notwithstanding, the Congress must have intended and must be construed to have made a permanent indefinite appropriation of such amounts as may initially, and from time to time, exceed moneys collected and, thus, represent an advance."

We agree that the prepayment to Guam and the Virgin Islands at the beginning of each fiscal year based on estimates of future collections requires an appropriation before moneys can be drawn from the Treasury. Further, we would agree that Congress probably did not anticipate that appropriations would be needed in order to implement the prepayment provisions. Nevertheless, based on our review

of the statutory language, legislative history, available precedent, and the material submitted by Treasury, we must conclude that sections 1(c) and 4(c)(2) do not constitute permanent indefinite appropriations.

There is little legislative history on the prepayment provisions. In the House floor debate on June 5, 1978, Congressman Burton said:

"[C] ertain taxes collected for these governments will be estimated and prepaid by the United States to these governments, rather than making such payments after collection." 124 Cong. Rec. H4969 (daily ed. June 5, 1978).

On August 3, 1978, during the Senate debate, Senator Jackson stated:

"[T] his prepayment does not include any moneys which go directly upon collection into the Treasury of Guam, and is designed to compensate Guam for interest and cash flow impacts on those funds withheld by the Secretary of the Treasury upon collection until some future point." Id., S12423 (daily ed. Aug. 3, 1978).

The provisions were also discussed in a statement by the Director of the Office of Territorial Affairs, Department of the Interior, in a hearing on S. 2821 before the Senate Committee on Energy and Natural Resources on July 18, 1978. (The prepayment provision in S. 2821 contained a five-year limitation, which was subsequently removed.) The Director said:

"Section 1(c) concerns section 30 of the Guam Organic Act, the provision under which certain Federal duties, taxes, and fees collected in Guam are covered into the treasury of Guam. As a practical matter, section 30 principally involves the payment to Guam of Federal income taxes, collected by the United States, and paid by United States citizens in Guam. The taxpayers, in turn, are very largely military personnel and other Federal employees. Such taxes are now paid over to Guam by the U.S. on a quarterly basis after they are actually received. Section 1(c) would permit them to be paid over at the beginning of the fiscal year, on the basis of estimates of likely collections, with the estimates to be made by the Governor with the concurrence

of the Federal comptroller. Adjustments for errors in the estimates would be made the following year. The authority contained in section 1(c) would continue for five years, and would be contingent upon Guam's adoption of the U.S. fiscal year of October 1 through September 30. Guam, like the Virgin Islands, continues to utilize the former U.S. fiscal year of July 1 through June 30." Hearing on S. 2821 Before the Senate Committee on Energy and Natural Resources, 95th Cong., 2d Sess. 19-20 (1978).

The United States Constitution requires "appropriations made by law" before moneys can be drawn from the Treasury. U.S. Const., Art. 1, § 9, cl. 7. Section 627 of title 31 of the United States Code requires that such appropriations be made in specific terms:

"No Act of Congress after June 30, 1906, shall be construed to make an appropriation out of the Treasury of the United States * * * unless such Act shall in specific terms declare an appropriation to be made * * *."

In addition, 1 U.S.C. § 105 (1976) provides:

"The style and title of all Acts making appropriations for the support of Government shall be as follows: 'an Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year).'"

Thus, the making of an appropriation is not to be inferred but must be expressly stated. This principle is even more important in the case of a permanent appropriation. In 21 Comp. Gen. 46, 49 (1941), we quoted the following principle from an earlier decision of the Comptroller of the Treasury:


"[A] s to appropriations which remove from annual scrutiny of Congress the use of public money, the rule of construction must necessarily be, that if they can exist by inference at all, the language from which such inference is drawn must be clear and conclusive. This is essential, to preserve the control of Congress over appropriations. Permanent indefinite appropriations, as a general rule, are against the spirit of the Constitution." (1 First Comp. Dec. 141, 144 (1880)).

The language of sections 1(c) and 4(c)(2) does not expressly establish appropriations. If such a conclusion is to be drawn, it can be inferred only from the words "shall remit," and we do not think this is sufficient to satisfy 31 U.S.C. § 627 and 1 U.S.C. § 105. While it is true that permanent legislation may be deduced from words of futurity, even in annual appropriation acts (see, e.g., 21 Comp. Gen. at 48), the words of futurity here--"The Secretary of the Treasury shall remit to the government of Guam the amount of duties, taxes and fees which the governor of Guam * * * has estimated will be collected * * *" in our opinion merely establish permanent authority for the program rather than a permanent indefinite appropriation. (Emphasis added.)

In a recent decision B-160998, April 13, 1978, we found that section 11 of the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. § 2210(c)(1976), did constitute a permanent indefinite appropriation. Section 11 provides for payment of claims to fire services or their parent jurisdictions by the Secretary of the Treasury "from moneys in the Treasury not otherwise appropriated." (Emphasis added). Another section of that Act authorized annual appropriations to implement its provisions except for section 11. Reading the two sections together, we concluded that section 11 was an appropriation, indefinite in amount. The key language was the phrase "from moneys * * * not otherwise appropriated," a clear indication of the intent to make an appropriation, which is not present in this case. Thus, B-160998 does not provide authority for a contrary result here.

In sum, although we think that sections 1(c) and 4(c)(2) of Pub. L. No. 95-348 do establish permanent authority for future appropriations, we conclude that they do not establish permanent indefinite appropriations. Thus, the Department of the Treasury cannot remit funds to Guam and the Virgin Islands under these sections until Congress makes appropriations for that purpose.

Acting


Comptroller General
of the United States