

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 2054850803
97174

FILE: B-184067

DATE: June 19, 1975

MATTER OF: UNIDEV, Incorporated

DIGEST:

Amount due contractor who cannot be located following completion of two contracts should be paid to IRS, since Government as matter of law has right of setoff against sums due under contracts for amount of taxes due and owing.

The following constitutes an advance decision pursuant to a request from an authorized certifying officer of the National Aeronautics and Space Administration, Marshall Space Flight Center, Alabama, in regard to the proper disposition of the final payments due UNIDEV, Incorporated (UNIDEV), under contracts NAS8-26702 and NAS8-29198.

The amount owing the contractor under contracts -26702 and -29198 is \$392.55 and \$3,256.22, respectively. All attempts to locate the contractor have been unsuccessful.

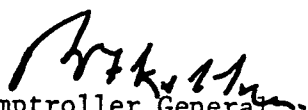
An employee of the contractor has obtained a judgment against UNIDEV for \$1,500 plus costs and on February 5, 1975, NASA was served with a Garnishment on Judgment as Garnishee in the action. On March 17, 1975, the suit was removed from the state court to the United States District Court for the Northeastern District of Alabama and on March 21, 1975, a motion was filed to dismiss the garnishment proceeding and to quash the summons of garnishment pursuant to 28 U.S.C. § 1442(a) (1970) as the Government had not consented to the suit. Our Office has learned that on May 27, 1975, the motion was granted.

Therefore, as the garnishment proceeding is no longer a viable claim against the contract funds, the only remaining claim is a tax levy filed by the Internal Revenue Service (IRS) on April 17, 1974, in the amount of \$3,786.05.

The Government as a matter of law has a right to set off the sums due under the contracts against the amount of taxes due and

owing. General Casualty Company v. United States, 130 Ct. Cl. 520, 526 (1955) and B-152698, November 21, 1963.

Accordingly, the remaining contract funds should be paid to IRS.


Deputy Comptroller General
of the United States