

**DECISION**

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

FILE: B-184300

DATE: JUL 28 1976

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98808MATTER OF: **Community Services Administration - grantee tax indebtedness.**

- DIGEST:
1. Section 115 of Economic Opportunity Amendments of 1969, 42 U.S.C. § 2705, requires that upon notification from Treasury Secretary of grantee tax delinquency, Director, Community Services Administration, must suspend grant payments to "any person otherwise entitled to receive a payment pursuant to a grant" in amount sufficient to satisfy delinquency. Statute does not distinguish between delinquencies incurred before and those incurred after awarding of grant but legislative history indicates all outstanding delinquencies were intended to be included. Hence, all grant payments, up to amount of total delinquency, must be suspended until satisfactory provision for payment of delinquency is made.
  2. Set-off of grant payments suspended or withheld against tax delinquency of grantee is not appropriate since grant payments are not reimbursements for expenses already incurred by grantee and therefore do not constitute debts of the United States.
  3. Since statute authorizing grant to college for equal opportunity demonstration program contemplates that portion of grant will be used to pay employment and other taxes required by Internal Revenue Service Code, tax delinquency may be paid by granting agency to IRS on behalf of grantee from suspended or withheld grant funds to extent of delinquencies arising from current or prior Federal grants. However, delinquencies not attributable to current or prior Federal grants may not be paid from suspended grant funds.

The Commissioner of Internal Revenue requested our opinion as to whether the Internal Revenue Service (IRS) has a right to setoff certain grant proceeds being held by the Community Services Administration (CSA), successor agency to the Office of Economic Opportunity (OEO), against the grantee's tax indebtedness.

On June 8, 1973, the OEO awarded \$453,300 to Kittrell College in Henderson, North Carolina for an equal opportunity demonstration project (OEO Grant No. 40622). By letters dated June 10, 1974, and

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November 1, 1974, the IRS informed OEO that it had been unable to negotiate an acceptable liquidation of \$93,039.13 in delinquent employment taxes which the prior administration of Kittrell College allowed to arise for the first and second quarters of 1972 and the third quarter of 1973. The IRS asked that an amount of the grant proceeds sufficient to satisfy Kittrell's outstanding tax liability be withheld and paid to the IRS. In November, 1974, OEO suspended further payments under the grant, retaining \$151,108 in undisbursed funds. However, no setoff has been made against either the suspended funds or other grant funds not yet disbursed to Kittrell. We have been informally advised that at least some grant payments have since been resumed.

We have received the views of CSA in this matter in a letter from its General Counsel. CSA takes the position that the proceeds of awarded grants do not represent claims or demands upon the United States, and are not otherwise debts owed to the grantees which would be appropriate for setoff. To require setoff in such circumstances would have a deleterious effect on the agency's ability to carry out the purposes of their statutory mission—to assist the poor. CSA also maintains that section 115 of the Economic Opportunity Amendments of 1969, 42 U.S.C. § 2705 (1970), which requires suspension of economic opportunity grants upon notification by the Secretary of the Treasury or his delegate that the grantee is delinquent in his tax payments, preempts general setoff authority and in any case is applicable only to delinquencies incurred subsequent to award of the grant—in the case of Kittrell College, those incurred for the third quarter of 1973.

Section 115 of the Economic Opportunity Amendments of 1969, 42 U.S.C. § 2705 (1970), provides that:

"Upon notice from the Secretary of the Treasury or his delegate that any person otherwise entitled to receive a payment made pursuant to a grant, contract, agreement, loan or other assistance made or entered into under this chapter is delinquent in paying or depositing (1) the taxes imposed on such person under chapters 21 and 23 of the Internal Revenue Code of 1954, Title 26, or (2) the taxes deducted and withheld by such person under chapters 21 and 24 of such Code, the Director of the Office of Economic Opportunity shall suspend such portion of such payment due to such person, which, if possible, is sufficient to satisfy such delinquency, and shall not make or enter into any new grant,

contract, agreement, loan or other assistance under this chapter with such person until the Secretary of the Treasury or his delegate has notified him that such person is no longer delinquent in paying or depositing such tax or the Director of the Office of Economic Opportunity determines that adequate provision has been made for such payment. In order to effectuate the purpose of this section on a reasonable basis the Secretary of the Treasury and the Director of the Office of Economic Opportunity shall consult on a quarterly basis." (Emphasis supplied.)

The regulations implementing section 115 provide, in part, that:

"(a) Any grantee receiving financial assistance under the Economic Opportunity Act of 1964 will comply with the applicable sections of the Federal tax code by withholding taxes, filing the appropriate tax returns and remitting taxes to the designated Internal Revenue Service District Office.

"(b) Failure to comply with IRS requirements for reporting and remitting the withheld taxes will result in IRS notifying OEO to suspend further payments due the grantee and to refuse to refund, make supplements, or provide any other assistance, as prescribed in section 115 of the 1969 amendments to the Economic Opportunity Act of 1964, until adequate provisions have been made to satisfy tax obligations."  
45 C.F.R. § 1068.6-3 (1974).

OEO Grant No. 40622 was accepted by Kittrell College on a Statement of OEO Grant (OEO Instruction 6710-1) on June 22, 1973. The General Conditions attached to the Statement provide that:

"Program funds expended under authority of this funding action are subject to the provisions of the Economic Opportunity Act as amended, the general conditions listed below, any attached special grant conditions, and OEO directives.

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"14. SUSPENSION AND TERMINATION. The Director of OEO may in accordance with published regulations, suspend or terminate this grant in whole or in part for cause, which shall include: (1) failure or unwillingness of the grantee or its delegate agencies to comply with the approved program including attached conditions, with applicable statutes and Executive Order, or with such OEO directives as may become generally applicable at any time. \* \* \*."

We think it is clear from the words of the statute that upon receipt of the required statutory notice from the Secretary of the Treasury, the Director of CSA must suspend payment of grant funds until the tax deficiency has been taken care of.

In the instant situation CSA withheld only those grant funds from Kittrell which arose after the date of grant award and paid out the remaining grant funds. Hence, we are initially called on to determine whether grant payments must be suspended upon notification of tax delinquencies incurred prior to award of the grant.

Neither the language nor the legislative history of the statute is entirely compelling on this point. The Act requires suspension of grant payments to "any person otherwise entitled to receive a payment pursuant to a grant" and does not distinguish between tax delinquencies incurred before and those incurred after the awarding of the grant. However, it must be noted that while the Senate bill originally required the recipient of a grant to set aside an amount sufficient to satisfy "expected liability" under the various employment tax statutes, the conference committee eliminated this requirement in favor of the compulsory suspension of payments in an amount sufficient to satisfy "such delinquency." The conference report describes this delinquency as "any delinquency which is outstanding." (Emphasis added.) This suggests that the suspension was not intended to apply only to tax liabilities directly related to the grant but to any outstanding tax liability, regardless of when incurred.

Remaining for consideration is whether the portion of the grant proceeds held by CSA are subject to setoff as proposed by the Internal Revenue Service or may otherwise be paid over to IRS in satisfaction of the tax delinquency. The statute provides that the Director should suspend such portion of any payment due to a grantee which will, if possible, satisfy the grantee's tax delinquency but it does not specifically provide for the disposition of the suspended funds.

With respect to setoff, it has long been recognized that the Federal Government has the right "which belongs to every creditor to apply the unappropriated moneys of his debtor, in his hands, in the extinguishment of the debts due to him." Gratiot v. United States, 40 U.S. (15 Pet.) 336, 370 (1841); accord, United States v. Munsey Trust Co., 332 U.S. 234, 239 (1947); Seaboard Surety Co. v. United States, 107 Ct. Cl. 34, 44, cert. denied 330 U.S. 826 (1946); 1 Comp. Gen. 605, 606 (1922).

Thus, no specific statutory authority is necessary to authorize the Government to exercise its common law right of setoff. If the Federal payments in question were in the nature of reimbursements to Kittrell College for expenses already incurred in carrying out the program, we would agree with IRS that the funds withheld could be offset against the Government debt. However, we must agree with CSA that the grant payments in question are not reimbursements and do not constitute a Government debt in order to qualify for offset.

Nevertheless, it is clear that a portion of the amounts awarded under these grants is intended, by both the granting agency and the grantee, to be used to pay employment, and any other, taxes due from salary payments made from the grants. The use of grant funds to pay this tax liability is therefore authorized as one of the grant's purposes.

It is our view that by authorizing the suspension of current grant payments, even though the delinquency may have arisen from previous grants and by precluding the awarding of new grants (or other forms of assistance) to grantees who are delinquent in their taxes, it was intended that the suspended payments be used to satisfy, to the extent possible, such delinquencies. While this approach may result in a decrease in the service performed under the current grant, presumably the grantee provided additional services (by expending funds which should have gone to taxes for other grant purposes) under the previous grants. Thus, on balance the public will have received the amount of services for which the grants were made. Accordingly, we believe that the statute expects CSA to satisfy, to the extent of the suspended grant payments, the tax delinquency. In this circumstance, CSA would be making direct payment on the grantee's behalf to one of its creditors for a debt incurred in carrying out past and present CSA grant programs.

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Suspended payments are not available, however, to satisfy tax delinquencies which were not incurred in carrying out CSA grants since this would not be one of the grant's purposes. Nonetheless, until such other delinquencies have been satisfied in accordance with the statute, CSA may not make any new grants, or provide any other new kind of assistance, to the grantee.

~~Deputy~~

R.F.KELLER

Comptroller General  
of the United States