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R. Parsons CCM

DECISION



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

FILE: B-190751

DATE: April 11, 1978

MATTER OF: Treasury Department -- \$50 Special Payment Authority

DIGEST: Section 406 of Pub. L. No. 95-30, 91 Stat. 156, ending further \$50 Special Payments under section 702(a), Pub. L. No. 94-12, 89 Stat. 66 should not be construed to abolish retroactively rights to payments that accrued before enactment of Pub. L. No. 95-30. Therefore, beneficiaries declared eligible by Social Security Administration before cut-off date but whose vouchers were lost in the mail may still receive payment.

This responds to a request from the Fiscal Assistant Secretary, Department of the Treasury (Treasury), for our decision concerning Treasury's authority to issue checks for \$50 Special Payments under section 702(a) of the Tax Reduction Act of 1975, Pub. L. No. 94-12, 89 Stat. 66, March 29, 1975, (hereafter referred to as section 702(a)) in view of a prohibition in section 406 of the Tax Reduction and Simplification Act of 1977, Pub. L. No. 95-30, 91 Stat. 156 (hereafter referred to as section 406) against making payments after May 23, 1977.

According to the Treasury submission, the Social Security Administration (SSA) wrote to Mr. Elmo McClure, in a letter dated April 7, 1977, that Mr. McClure, his wife and child were each eligible for \$50 Special Payments and that he should receive checks for these amounts on or about April 15, 1977. In response to our request to the Secretary of Health, Education, and Welfare for a report on this matter, the Director of the Bureau of Retirement and Survivors Insurance, SSA, who signed the April 7 letter, explains that before the April 7 letter was mailed to Mr. McClure, Voucher No. R-636 was sent by the Bureau to Treasury's Birmingham Disbursing Center, authorizing payment. The Director also says that his office has been unable to locate the voucher, which he assumes was lost in the mail. (This lost voucher also authorized payment to one other beneficiary.)

The fact that the Treasury Department did not receive and make payment on the voucher before the May 23, 1977, enactment of Pub. L. No. 95-30, raises the question presented by the Assistant Secretary. Section 702(a) of the 1975 Act provides as follows:

"PAYMENT. --The Secretary of the Treasury shall, at the earliest practicable date after the enactment of this

B-190751

Act, make a \$50 payment to each individual, who for the month of March, 1975, was entitled (without regard to sections 202(j)(1) and 223(b) of title II of the Social Security Act and without the application of section 5(a)(ii) of the Railroad Retirement Act of 1974) to--

"(1) a monthly insurance benefit payable under title II of the Social Security Act,

"(2) a monthly annuity or pension payment under the Railroad Retirement Act of 1935, the Railroad Retirement Act of 1937, or the Railroad Retirement Act of 1974, or

"(3) a benefit under the supplemental security income benefits program established by title XVI of the Social Security Act;

except that, (A) such \$50 payment shall be made only to individuals who were paid a benefit for March 1975 in a check issued no later than August 31, 1975; (B) no such \$50 payment shall be made to any individual who is not a resident of the United States (as defined in section 210(i) of the Social Security Act); and (C) if an individual is entitled under two or more of the programs referred to in clauses (1), (2), and (3), such individual shall be entitled to receive only one such \$50 payment. For purposes of this subsection, the term 'resident' means an individual whose address of record for check payment purposes is located within the United States."

Section 406, enacted May 23, 1977, provides as follows:

"Notwithstanding the provisions of section 702(a) of the Tax Reduction Act of 1975, no payment shall, after the date of the enactment of this Act, be made under that section."

The Senate Finance Committee Report (S. Rep. No. 95-66, 46 (1977)), commenting on the Senate-added payment prohibition, explains section 403 as follows:

"The Tax Reduction Act of 1975 authorized a special one-time payment to the beneficiaries of certain Federal income maintenance programs.

This payment of \$50 was made to those eligible individuals who for March 1975 were entitled to receive monthly insurance benefits under title II of the Social Security Act, to monthly pension or annuity benefits under the Railroad Retirement Acts, or to supplemental security income (SSI) benefits. In order to be eligible for the payment under the 1975 Act, an individual must have been a resident of the United States who actually received a benefit for March 1975 before September 1 of that year.

"During its consideration of the House bill, the committee noted that special payments under the Tax Reduction Act of 1975 are still being made in certain cases. These cases have usually arisen where the beneficiary was a foreign resident at the time he or she received the March 1975 benefit payment (before September of that year), but subsequently moved back to the United States and applied for the special payment. Since the two tests of U.S. residency and receipt of the March 1975 benefit were mutually exclusive, the opportunity to receive the 1975 special payment at some later time was technically not foreclosed under the 1975 Act. The committee amendment prevents this subsequent payment problem under the 1977 stimulus program by requiring that a recipient's address of record for purposes of receiving the April 1977 benefit must be within the United States in order to be eligible for the 1977 special payment.

"The committee did not believe that it was the intent of Congress in the Tax Reduction Act of 1975 to have these special payments made at a future date when beneficiaries who were foreign residents at the time of the 1975 payment returned to the United States. In view of this, the committee added an amendment to terminate any further special payments under the 1975 Act to federal income maintenance beneficiaries."

There is no question but that the payments involved here are within the scope of the literal language of section 406. However, as the United States Supreme Court stated in Church of the Holy Trinity v. United States, 143 U.S. 457 (1892):

"* * * frequently words of general meaning are used in a statute, words broad enough to include the

B-190751

act in question and yet a consideration of the whole legislation or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words makes it unreasonable to believe that the legislator intended to include the particular act."

After considering the above-quoted legislative history of section 408 we do not believe that the Congress intended to preclude payments in the situation herein described.

In view of all the facts and circumstances and considering both the small number of persons and small amount of money involved, as well as the limited congressional concern disclosed by the above-quoted legislative history, payments may be made to the McClures and others similarly situated (i. e., where the payment vouchers were issued prior to May 23, 1976) without objection by the General Accounting Office.

Deputy


Comptroller General
of the United States