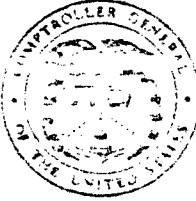


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DECISION



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

FILE: B-201707

DATE: July 14, 1981

MATTER OF: Thomas L. Hinkle

- DIGEST:**
1. 31 U.S.C. § 122, which bars claims on checks or warrants appearing from records of General Accounting Office (GAO) or Treasury Department to have been paid unless received by GAO or Treasurer of United States within 6 years after date of issuance, was incorrectly applied in settlement action disallowing claim to contract refund. While voucher indicates that refund was authorized to be paid by check no. 001158, dated April 14, 1972, no evidence has been provided that such check was ever, in fact, paid. Absent evidence that claim was actually paid, 31 U.S.C. § 122 is not applicable.
 2. 31 U.S.C. § 132 applies to payment of check on presentation, not to situation where check is not available and is not basis for claim.
 3. Under 31 U.S.C. § 71a, claims cognizable by GAO are forever barred unless received by GAO within 6 years after date they first accrue. Claim for refund of money not received after cancellation of Government sales contract in April of 1972 was received by GAO on October 16, 1979. Section 71a bar includes original claims for money not received. Thus, claim is barred and may not be considered by this Office. B-173348, February 27, 1979.

Mr. Leon G. Maquera, attorney for Mr. Thomas L. Hinkle, has requested reconsideration of the action of our Claims Group disallowing his claim against the Government for \$30,000. We conclude that the disallowance was correct.

Mr. Hinkle, proprietor of the South Asia Facility, was awarded the right to purchase certain Government property (scrap metals), located in Saigon, Vietnam, by the United States Sales Division Property Disposal Agency. In March of 1972, he paid the Government 12,300,000 Vietnamese piasters (\$30,000 United States equivalent) for the property, but before he could haul it away, the property disposal

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of the South Vietnamese Government. The Disposal Agency then cancelled the contract and, according to a voucher dated April 14, 1972, issued a refund check in Vietnamese piasters to the South Asia Facility for the full amount of Mr. Hinkle's deposit. Mr. Hinkle states that he never received that check or any other refund under the cancelled contract.

For the next 7 years, Mr. Hinkle corresponded with the Department of the Army and various other Government agencies in an attempt to substantiate his contention that the refund check had never been received. No cancelled check was ever discovered, nor was the check in question listed by the Treasury Department on its outstanding check list. Finally, by letter dated October 10, 1979, the United States Army Finance and Accounting Center referred Mr. Hinkle's claim to the General Accounting Office (GAO) for settlement.

Unfortunately, by this time—more than 7 years after the claim for a refund arose—our Office was precluded from considering the claim on the merits by 31 U.S.C. § 71a, which provides:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued * * *."

Although Mr. Hinkle diligently pursued his claim through many Government channels prior to the expiration of the 6-year period he did not present it to GAO. Our decisions have consistently held that the filing of a claim with another agency does not toll the running of 31 U.S.C. § 71a. See 57 Comp. Gen. 281, 283 (1978); 53 *id.* 148, 155 (1973); 42 *id.* 337, 339 (1963); and 32 *id.* 257 (1952). Consequently, our Claims Group had no choice but to disallow the claim because it was barred by 31 U.S.C. § 71a by the time it was received.

Mr. Hinkle's attorney, Mr. Maquera, contends that the Claims Group's settlement action incorrectly applied the 6-year statute of limitations found at 31 U.S.C. § 122, which he believes is not applicable. We agree. Section 122 of title 31, United States Code, provides in pertinent part that claims on account of any checks or warrants appearing from the records of GAO or the Treasury Department to have been paid, shall be barred if not presented to GAO or the Treasurer of the United States within 6 years after the date of issuance of the checks or warrants involved. While the agency, however, processes that a refund was authorized to be paid by check no. 001153, dated April 14, 1972, no

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evidence has been provided that such check was ever, in fact, issued or paid. In the absence of evidence that the check involved was actually paid, 31 U.S.C. § 122 is not applicable.

Mr. Maquera also contends that his client's claim is for the proceeds of an unpaid check under 31 U.S.C. § 132, payable without limitation of time. Section 132 of title 31, United States Code, provides in pertinent part that checks drawn on the Treasurer of the United States are payable without limitation of time and that the limitation period in 31 U.S.C. § 71a of 6 years on claims against the United States does not apply to original or substitute checks drawn on the Treasurer. Section 132 applies to payment of checks on presentation, and is therefore not applicable to this situation, where the check is not available and is not the basis for the claim.

In essence, our Office has been requested to reconsider the disallowance of a claim for refund of the money not received after cancellation of a Government sales contract in April of 1972. The first notice of material pertaining to the claim was received by GAO on October 16, 1979. The language of 31 U.S.C. § 71a refers to "every claim or demand" and includes an original claim for money not yet received. B-173348, February 27, 1979. Under 31 U.S.C. § 71a as amended, effective July 2, 1975, by Pub. L. No. 93-604, approved January 2, 1975, 88 Stat. 1965, claims cognizable by GAO are forever barred unless they are received in GAO within 6 years after the date they first accrue. Thus, Mr. Hinkle's claim is barred by 31 U.S.C. § 71a and may not be considered by this Office.

For the reasons stated above, we affirm the settlement action of our Claims Group.

MILTON J. SOCOLAR

Acting Comptroller General
of the United States